

## **USE OF FORCE**

The San Francisco Police Department's highest priority is safeguarding the life, dignity and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department 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. This Department General Order builds upon the Supreme Court's broad principles in *Graham v. Connor* (1989) 490 U.S. 386 and is more restrictive than the constitutional standard and state law. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unnecessary force. These are key factors in maintaining legitimacy with the community and safeguarding the public's trust.

This order establishes policies and reporting procedures regarding the use of force. The purpose of the policy is to guide an officer's decisions regarding the use and application of force to ensure such applications are used only to effect arrest or lawful detentions or to bring a situation under legitimate control and assist the Department in achieving its highest priority. No policy can predict every situation. Officers are expected to exercise sound judgment and critical decision making when using force options.

### **I. POLICY**

- A. 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 human rights, dignity and life.
- B. 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.
- C. DE-ESCALATION.** Officers shall, when feasible, 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. Officers shall when feasible, attempt to understand and consider the possible reasons why a subject may be noncompliant or resisting arrest. A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm

the subject and allow officers to use de-escalation techniques while maintaining public and officer safety. Officers who act to de-escalate an incident, which can delay taking a subject into custody, while keeping the public and officers safe, will not be found to have neglected their duty. They will be found to have fulfilled it.

- D. 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.
- E. CRISIS INTERVENTION.** When feasible, Crisis Intervention Team (CIT) trained officers shall respond to calls for service involving individuals in mental or behavioral health crisis pursuant to Department General Order XX.XX.
- F. DUTY TO INTERVENE.** When in a position to do so, officers shall intervene when they know or have reason 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.
- G. FAIR AND UNBIASED POLICING.** Members shall carry out their duties, including the use of force, in a manner that is fair and unbiased pursuant to Department General Order 5.17.

## II. DEFINITIONS:

- A. 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.
- B. 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.
- C. 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.
- ~~C.~~D. PERSONAL BODY WEAPONS.** An officer'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.
- ~~D.~~E. REASONABLE FORCE.** An objective standard of force viewed from the perspective of a reasonable officer, 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.

**E.F. 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 an officer, 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.

**F.G. 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.

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

### III. 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, an officer 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.**

#### B. USE OF FORCE EVALUATION

The United States Supreme Court in *Graham v. Connor* (1989) 490 U.S. 386 held that an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the time. This General Order builds upon the broad principles in *Graham* by adding additional factors upon which an officer's use of force shall be evaluated. This General Order is more restrictive than the constitutional standard and state law. Officers must strive to use the minimal amount of force necessary.

1. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than 20/20 hindsight, and without regard to the officer's underlying intent or motivation.

2. Factors for evaluating the use of force include but are not limited to:
  - a. The severity of the crime at issue;
  - b. Whether the suspect posed an immediate threat to the safety of the officers or others;
  - c. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight;
  - d. Whether the use of force is proportional to the threat;
  - e. The availability of other feasible, less intrusive force options;
  - f. The officer's tactical conduct and decisions preceding the use of force;
  - g. 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;
  - h. 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;
  - i. Whether there was any assessment by the officer of the subject's ability to cease resistance and/or comply with the officer's commands;
  - j. Specialized knowledge, skills, or abilities of subjects;
  - k. Prior contact;
  - l. Environmental factors, including but not limited to lighting, footing, sound conditions, crowds, traffic and other hazards; and
  - m. 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.

3. *California Penal Code section 835a states that "Any officer who has reasonable cause to believe that a person to be arrested has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to overcome resistance."*

*A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by use of reasonable force to effect the arrest or to prevent escape of overcome resistance."*<sup>1</sup> **(In current policy; Not in Draft; Subject to 'Meet and Confer')**

**C. DE-ESCALATION.** When encountering a non-compliant subject or a subject armed with a weapon other than a firearm, officers 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 an officer 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.

**D. CRITICAL DECISION-MAKING MODEL.** Using a critical decision-making model, officers shall collect information, assess the threats and risk, consider police powers and the Department's policies, identify options and determine the best course of action, and review and re-assess the situation.

**E. UNLAWFUL PURPOSES.** Penal Code Section 149 provides criminal penalties for every public officer who "under color of authority, without lawful necessity, assaults or beats any person." An assault and battery committed by officers constitute gross and unlawful misconduct and will be criminally investigated.

**F. 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. **OFFICER'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:
  - a. Notify DEM, monitor radio communications, respond to the incident (e.g., "3X100, I'm monitoring the incident and responding.");
  - b. *Notify responding officers, while en-route, absent a "Code 33" or other articulable reasons why it would be unsafe to do so, to protect life, isolate and contain the subject, maintain distance, find cover, build rapport, engage in communication without time constraint, and call for appropriate resources;*<sup>ii</sup> **(In Draft; Subject to "Meet and Confer")**
  - c. Upon arrival, where appropriate, the supervisor shall assume command, and ensure appropriate resources are on-scene or are responding.

#### **IV. LEVELS OF RESISTANCE.**

- A. Compliant. Subject offers no resistance.

- B. **Passive Non-Compliance.** Does not respond to verbal commands but also offers no physical form of resistance.
- C. **Active Resistance.** Physically evasive movements to defeat an officer's attempt at control including bracing, tensing, running away, verbally or physically signaling an intention to avoid or prevent being taken into or retained in custody.
- D. **Assaultive.** Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person.
- E. **Life-threatening.** Any action likely to result in serious bodily injury or death of the officer or another person.

## V. LEVELS OF FORCE.

Officers shall strive to use the minimum amount of force necessary to accomplish their lawful purpose.

- A. **Low Level Force.** The level of control necessary to interact with a subject who is or displaying passive or active resistance. This level of force is not intended to and has a low probability of causing injury.
- B. **Intermediate Force.** This level of force poses a foreseeable risk of significant injury or harm, but is neither likely nor intended to cause death. . Intermediate force will typically only be acceptable when officers are confronted with active resistance and a threat to the safety of officers or others. Case law decisions have specifically identified and established that certain force options such as OC spray, impact projectiles, K-9 bites, **carotid restraint control hold**<sup>iii</sup> and baton strikes are classified as intermediate force likely to result in significant injury.
- C. **Deadly Force.** Any use of force substantially likely to cause serious bodily injury or death, including but not limited to the discharge of a firearm, the use of an impact weapon under some circumstances, other techniques or equipment, and certain interventions to stop a subject's vehicle (see DGO 5.05, Response and Pursuit Driving.)

## VI. FORCE OPTIONS.

The force options authorized by the Department are physical controls, personal body weapons, chemical agents, impact weapons, extended range impact weapons, vehicle interventions, K-9 bites and firearms. These are the force options available to officers, but officers are not required to use these force options based on a continuum. While deploying a particular force option and when feasible, officers shall continually evaluate whether the force option may be discontinued while still achieving the arrest or lawful objective.

### A. Tools and Techniques for Force Options

The following tools and techniques are not in a particular order nor are they all inclusive.

- Verbal Commands/Instructions/Command Presence
- Control Holds/Takedowns
- Impact Weapons
- Chemical Agents (Pepper Spray, OC, etc.)
- K-9 Bite
- Vehicle Intervention (Deflection)
- Firearms
- Personal Body Weapons
- Impact Projectile
- ~~Carotid Restraint Control Hold~~<sup>iv</sup>

B. **PHYSICAL CONTROLS/PERSONAL BODY WEAPONS.** Physical controls, such as control holds, takedowns, strikes with personal body weapons, and other weaponless techniques are designed to gain compliance of and/or control over uncooperative or resistant subjects. The use of physical control techniques and equipment against vulnerable populations – including children, elderly persons, pregnant women, people with physical and mental disabilities, people with limited English proficiency, and other – can undermine public trust and should be used as a last resort.<sup>v</sup> **(In Draft—Subject to ‘Meet and Confer’)**

1. **PURPOSE.** When a subject offers some degree of passive or active resistance to a lawful order, in addition to de-escalation techniques and appropriate communication skills, officers may use physical controls consistent with Department training to gain compliance. A subject’s level of resistance and the threat posed by the subject are important factors in determining what type of physical controls or personal body weapons should be used.
2. **USE.** Officers shall consider the relative size and possible physical capabilities of the subject compared to the size, physical capabilities, skills, and experience of the officer. When faced with a situation that may necessitate the use of physical controls, officers shall consider requesting additional resources to the scene prior to making contact with the subject, if feasible. Different physical controls involve different levels of force and risk of injury to a subject or to an officer. Some physical controls may actually involve a greater risk of injury or pain to a subject than other force options.
3. **PROHIBITED USE OF CONTROL HOLDS.** Officers are prohibited from using the following control holds:
  - a. carotid restraint **(In Draft as Prohibited—Subject to ‘Meet and Confer’)**<sup>vi</sup>
  - b. choke hold--choking by means of pressure to the subject’s trachea or other means that prevent breathing.
4. **MANDATORY MEDICAL ASSESSMENT.** 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.

5. **REPORTING.** Use of physical controls is a reportable use of force when the subject is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold. Striking a subject with a personal body weapon is a reportable use of force.

C. **CHEMICAL AGENTS.** Chemical agents, such as Oleoresin Capsicum (OC) Spray, are designed to cause irritation and temporarily incapacitate a subject.

1. **PURPOSE.** Chemical agents can be used to subdue an unarmed attacker or to overcome active resistance (unarmed or armed with a weapon other than a firearm) that is likely to result in injury to either the subject or the officer. In many instances, chemical agents can reduce or eliminate the necessity to use other force options to gain compliance, consistent with Department training.
2. **WARNING.** Officers shall provide a warning prior to deploying a chemical agent, if feasible:
  - a. Announce a warning to the subject and other officers of the intent to deploy the chemical agent if the subject does not comply with officer commands; and
  - b. Give the subject a reasonable opportunity to voluntarily comply unless it would pose a risk to the public or the officer, or permit the subject to undermine the deployment of the chemical agent.
3. **MANDATORY FIRST AID.** At the scene or as soon as possible, officers shall administer first aid by:
  - a. Seating the subject or other person(s) exposed to a chemical agent in an upright position, and
  - b. Flushing his/her eyes out with clean water and ventilate with fresh air.
4. **MANDATORY MEDICAL ASSESSMENT.** Any person exposed to a chemical agent shall be medically assessed by emergency medical personnel. Any exposed person shall be kept under direct visual observation until he/she has been medically assessed. If an exposed person loses consciousness or has difficulty breathing, an officer shall immediately request for emergency medical personnel, render first aid and monitor the subject until relieved by emergency medical personnel. Officers shall notify dispatch to expedite emergency medical personnel if the person loses consciousness or has difficulty breathing.
5. **TRANSPORTATION.** Subjects in custody exposed to a chemical agent must be transported in an upright position by two officers. The passenger officer shall closely monitor the subject for any signs of distress. If the subject loses consciousness or has difficulty breathing, officers shall immediately seek emergency medical attention. Hobble cords or similar types of restraints shall only be used to secure a subject's legs together. They shall not be used to connect the subject's legs to his/her waist or hands or to a fixed object.
6. **BOOKING FORM.** Officers shall note on the booking form that the subject has been exposed to a chemical agent.
7. **REPORTING.** If an officer deploys a chemical agent on or near someone, it is a reportable use of force.



D. **IMPACT WEAPON.** Department issued and authorized impact weapons include the 26” straight wooden baton, the 36” straight wooden baton, the wooden or polymer Yawara stick, the 21’ to 29” telescopic metal baton and the wooden bokken, and are designed to temporarily incapacitate a subject.

1. **PURPOSE.** An impact weapon may be used in accordance to Department training to administer strikes to non-vital areas of the body, which can subdue an assaultive subject who is actively resisting and poses a threat to the safety of officers or others. Only Department issued or authorized impact weapons shall be used. Officers may resort to the use of other objects as impact weapons, such as a flashlight or police radio, if exigent circumstances exist, and officers shall articulate in writing the reason for doing so.
2. **WARNING.** When using an impact weapon, an officer shall, if feasible:
  - a. Announce a warning to the subject of the intent to use the impact weapon if the subject does not comply with officer’s commands; and
  - b. Give the subject a reasonable opportunity to voluntarily comply, except that officers need not do so where it would pose a risk to the public or the officer or permit the subject to undermine the use of the impact weapon.
3. **RESTRICTED USES.** Unless exigent circumstances exist, officers shall not intentionally strike vital areas, including the head, neck, face, throat, spine, groin or kidney. The use of an impact weapon to a vital area has a likelihood of causing serious bodily injury or death, and the intentional use of an impact weapon to these areas shall only be used in situations where lethal force is justified.
4. **PROHIBITED USES.** Officers shall not:
  - a. Use the impact weapon to intimidate a subject or person, such as slapping the palm of their hand with an impact weapon where neither the use of an impact weapon or impact weapon warning is appropriate.
  - b. Striking a handcuffed prisoner who poses no threat is an inappropriate action and may result in disciplinary action and/or criminal prosecution.
5. **MANDATORY MEDICAL ASSESSMENT.** Any officer who strikes a subject with an impact weapon shall ensure the subject is medically assessed.
6. **REPORTING.** If an officer strikes a subject with an impact weapon, it is a reportable use of force.

E. **EXTENDED RANGE IMPACT WEAPON (ERIW).** An Extended Range Impact Weapon (ERIW), such as a beanbag shotgun, is a weapon that fires a bean bag or other projectile designed to temporarily incapacitate a subject. An ERIW is generally not considered to be a lethal weapon when used at a range of 15 feet or more.

1. **PURPOSE.** The ERIW may be used on a subject who is armed with a weapon, other than a firearm, that could cause serious injury or death. This includes, but is not limited to, edged weapons and improvised weapons such as baseball bats, bricks, bottles, or other objects. The ERIW may also be used in accordance with Department training to subdue an aggressive, unarmed subject who poses an immediate threat of serious injury to another person or the officer.

2. **USE.** The ERIW shall be properly loaded and locked in the shotgun rack of the passenger compartment of the vehicle. Officers shall observe the following guidelines:
  - a. An officer deploying an ERIW shall always have a lethal cover officer. When more than one officer is deploying an ERIW, tactical judgment and scene management in accordance with Department training will dictate the appropriate number of ERIW and lethal cover officers.
  - b. The ERIW officer's point of aim shall be Zone 2 (waist and below). The ERIW officer's point of aim may be Zone 1 (waist and above) if:
    - i. Zone 2 is unavailable; or
    - ii. The ERIW officer is delivering the round from 60 feet; or
    - iii. Shots to Zone 2 have been ineffective or in the officers judgment a shot to zone 2 would be ineffective.Officer shall articulate in writing the reason for intentionally aiming the ERIW at Zone 1
  - c. The use of an ERIW to a vital area has a likelihood of causing serious bodily injury or death, and the intentional use of an ERIW to these areas shall only be used in situations where deadly force is justified.
  - d. The ERIW officer shall assess the effect of the ERIW after each shot. If subsequent ERIW rounds are needed, the officer shall aim at a different target area.
3. **LIMITED USES.** The ERIW should not be used in the following circumstances (unless the use of deadly force is appropriate):
  - a. The subject is at the extremes of age (elderly and children) or physically frail.
  - b. The subject is in an elevated position where a fall is likely to cause serious injury or death.
  - c. The subject is known to be or appears pregnant.
  - d. At ranges of less than 15 feet.
  - e. Concerned raised by a community member about restricting women's breasts as a target area; this requires input from Subject Matter Expert).
4. **WARNING.** When using the ERIW, an officer shall, if feasible:
  - a. Announce to other officers the intent to use the ERIW by stating "Red Light! Less Lethal! Less Lethal!"
  - b. All other officers at scene to acknowledge imminent deployment of ERIW by echoing, "Red Light! Less Lethal! Less Lethal!"
  - c. Announce a warning to the subject that the ERIW will be used if the subject does not comply with officer commands;
  - d. Give the subject a reasonable opportunity to voluntarily comply unless it would pose a risk to the community or the officer, or permit the subject to undermine the deployment of the ERIW.
5. **MANDATORY MEDICAL ASSESSMENT.** Any subject who has been struck by an ERIW round shall be medically assessed by emergency medical personnel.

6. **BOOKING FORM.** Persons who have been struck by an ERIW round shall have that noted on the booking form.
7. **REPORTING.** Discharge of an ERIW is a reportable use of force.

**F. VEHICLE INTERVENTIONS.** An officer's use of a police vehicle as a "deflection" technique, creation of a roadblock by any means, or deployment of spike strips, or any other interventions resulting in the intentional contact with a noncompliant subject's vehicle for the purpose of making a detention or arrest, are considered a use of force and must be objectively reasonable under the circumstances. The Department's policies concerning such vehicle intervention tactics are set forth in DGO 5.05, Response and Pursuit Driving.

**CONDUCTED ENERGY DEVICE (CED).** See Special Operations Bureau Order on use of CED. (Not in Draft; POA has not agreed to remove CEDs)

**CAROTID RESTRAINT.** *The carotid restraint is a control technique in which the carotid arteries on the sides of the neck are compressed, restricting blood flow to the brain, causing the subject to lose consciousness.*

**1. USE.** *The Carotid Restraint is considered an intermediate force option. Based on the totality of circumstances, it may be an acceptable use of force in the following circumstances:*

- a. *When an officer is physically attacked.*
- b. *To stop a physical attack on another person*
- c. *An officer has attempted a lesser level of force and found it to be inadequate*
- d. *In the officer's best judgment having evaluated a particular circumstance, a lesser level of force would be inadequate.*

**2. WARNING BEFORE USE.** *When deploying the carotid restraint, an officer shall, if feasible:*

- a. *Announce a warning to the subject to stop resisting; and*
- b. *Give the subject a reasonable opportunity to voluntarily comply, except that officers need not do so where it would pose a risk to safety or permit the subject to undermine the deployment of the carotid restraint.*

**3. MANDATORY MEDICAL ASSESSMENT.**

*In all cases where the carotid restraint is used, the subject shall be medically assessed and medically evaluated. Officers shall monitor the subject's vital signs closely. Additionally, if the subject has difficulty breathing or does not immediately regain consciousness, officers shall immediately seek medical care by trained personnel. (See Section II.E.)*

**4. BOOKING FORM.** *Persons who have been the subject of a carotid restraint shall have that noted on the booking form.*

**5. REPORTING.** *Use of carotid restraint, even if unsuccessful, is a reportable use of force. (This is current policy; Not in Draft; Subject to 'Meet and Confer')*

**G. FIREARMS AND OTHER DEADLY FORCE.** It is the policy of this Department to use deadly force only as a last resort when reasonable alternatives have been exhausted or are not feasible to protect the safety of the public and police officers. The use of firearms and other deadly force is the most serious decision an officer may ever make. When safe and feasible under the totality of circumstances, officers shall consider other objectively reasonable force options before discharging a firearm or using other deadly force.

**1. HANDLING, DRAWING AND POINTING FIREARMS.**

- a. **HANDLING FIREARMS.** An officer shall handle and manipulate a firearm in accordance with Department-approved firearms training. An officer shall not manually cock the hammer of the Department-issued handgun to defeat the first shot double-action feature.
- b. **AUTHORIZED USES.** An officer may draw, exhibit or point a firearm in the line of duty when the officer has reasonable cause to believe it may be necessary for the safety of others or for his or her own safety. When an officer determines that the threat is over, the officer shall holster his or her firearm or shoulder the weapon in the port arms position pointed or slung in a manner consistent with Department approved firearms training.
- c. **DRAWING OTHERWISE PROHIBITED.** Except for maintenance, safekeeping, inspection by a superior officer, Department-approved training, or as otherwise authorized by this order, an officer shall not draw a Department issued firearm.
- d. **POINTING A FIREARM AT A PERSON.** The pointing of a firearm at a person is a seizure and requires legal justification. No officer shall point a firearm at or in the direction of a person unless there is a reasonable perception of a substantial risk that the situation may escalate to justify deadly force. If an officer points a firearm at a person, the officer shall, if feasible, safe and when appropriate, advise the subject the reason why the officer(s) pointed the firearm.
- e. **REPORTING.** When an officer intentionally points any firearm at a person, it shall be considered a reportable use of force. Such use of force must be reasonable under the objective facts and circumstances.

**2. DISCHARGE OF FIREARMS OR OTHER USE OF DEADLY FORCE.**

- a. **PERMISSIBLE CIRCUMSTANCES.** Except as limited by Sections G.2.d. and e., an officer may discharge a firearm or use other deadly-force in any of the following circumstances:
  - i. In self-defense when the officer has reasonable cause to believe that he or she is in immediate danger of death or serious bodily injury; or

- ii In defense of another person when the officer has reasonable cause to believe that the person is in immediate danger of death or serious bodily injury. However, an officer may not discharge a firearm at, or use deadly force against, a person who presents a danger only to him or herself, and there is no reasonable cause to believe that the person poses an immediate danger of death or serious bodily injury to the officer or any other person; or
- iii. To apprehend a person when both of the following circumstances exist:
  - The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of deadly force; AND
  - The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed; or
- iv. To kill an animal posing an immediate threat.

The above circumstances (2.a, i-iv) apply to each discharge of a firearm or application of deadly force. Officers shall ~~constantly~~ reassess the situation, when feasible and safe, to determine whether the subject continues to pose an active threat. **(POA's suggested addition: Officers, however, are not required to reassess the situation between each shot being fired or the repeated use of any force where the time and effort necessary to reassess may jeopardize the safety of any officer or other person.)** <sup>vii</sup>

- b. **VERBAL WARNING.** If feasible, and if doing so would not increase the danger to the officer or others, an officer shall give a verbal warning to submit to the authority of the officer before discharging a firearm or using other deadly ~~lethal~~ force.
- c. **REASONABLE CARE FOR THE PUBLIC.** To the extent feasible, an officer shall take reasonable care when discharging his or her firearm so as not to jeopardize the safety of the public or officers.
- d. **PROHIBITED CIRCUMSTANCE.** Officers shall not discharge their firearm:
  - i. As a warning; or
  - ii. At a person who presents a danger only to him or herself.

~~d.e.~~ **MOVING VEHICLES.** An officer shall not discharge a firearm at the operator or occupant of a moving vehicle unless the operator or occupant poses an immediate threat of death or serious bodily injury to the public or an officer by means other than the vehicle. Officers shall not discharge a firearm from his or her moving vehicle. **(In Draft; Subject to 'Meet and Confer')**

**(Below is the full provisions suggested by POA for Moving Vehicle Threats)**

The following policies shall govern the discharge of firearms at or from a moving vehicle or at the operator or occupant of a moving vehicle:

At a Moving Vehicle: An officer shall not discharge a firearm at a moving vehicle with the intent to disable the vehicle.

From a Moving Vehicle. An officer shall not discharge a firearm from a moving vehicle unless the officer has reasonable cause to believe there is an immediate danger of death or serious bodily injury to the officer or to others.

At the Operator or Occupant of a Moving Vehicle: Discharging a firearm at the operator or occupant of a moving vehicle is inherently dangerous to officers and the public. Disabling the operator will not necessarily eliminate an immediate danger of death or serious bodily injury. Further, a moving vehicle with a disabled operator may crash and cause injury to innocent members of the public or officers. Accordingly, it is the policy of the Department that officers are prohibited from discharging their firearm at the operator or occupant of a moving vehicle except in the narrow circumstances set in this subsection. An officer shall not discharge a firearm at the operator or occupant of a moving vehicle except under the following circumstances:

If the operator or occupant of a moving vehicle is threatening the officer with immediate danger of death or serious bodily injury by means other than the vehicle itself.

If the operator of the moving vehicle is threatening the officer with immediate danger of death or serious bodily injury by means of the vehicle, and the officer has no reasonable and apparent way to retreat or otherwise move to a place of safety.

In defense of another person when the officer has reasonable cause to believe that the person is in immediate danger of death or serious bodily injury.

To apprehend a person when both of the following circumstances exist:

The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of deadly force; AND

The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed.

In reviewing incidents involving the discharge of firearms from a moving vehicle or at an operator or occupant of a moving vehicle, the Department will consider the totality of the circumstances, including but not limited to whether the officer or others were in immediate danger of death or serious bodily injury and whether the officers who were present employed tactics consistent with Department approved training. (In current policy; Subject to 'Meet and Confer')<sup>viii</sup>

### 3. RENDERING OR REQUESTING MEDICAL AID

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

**4. REPORTING.**

- A. **DISCHARGE OF FIREARMS.** Except for firearm discharges at an approved range or during lawful recreational activity, an officer who discharges a firearm, either on or off duty, shall report the discharge as required under DGO 8.11, Investigation of Officer Involved Shootings and Discharges. This includes an intentional or unintentional discharge, either within or outside the City and County of San Francisco.
  
- B. **OTHER DEADLY FORCE.** An officer who applies other force that results in death shall report the force to the officer’s supervisor, and it shall be investigated as required under DGO 8.12, In Custody Deaths. An officer who applies other deadly force that results in serious bodily injury shall report the force to the officer’s supervisor. The supervisor shall, regardless whether possible misconduct occurred, immediately report the force to their superior officer and their commanding officer, who shall determine which unit shall be responsible for further investigation. An officer who applies other deadly force that does not result in serious bodily injury shall report the force.

**(SFPOA Requests P.O.S.T’s Use of Force Inserted Here)**

**The following chart illustrates how a suspect’s resistance/actions can correlate to the force applied by the officer.**

<b>Subject’s Actions</b>	<b>Description</b>	<b>Possible Force Option</b>
Compliance	Subject offers no resistance	<ul style="list-style-type: none"> <li>• Mere professional appearance</li> <li>• Nonverbal actions</li> <li>• Verbal requests and commands</li> <li>• Handcuffing and control holds</li> </ul>
Passive non-compliance	Does not respond to verbal commands but also offers no physical form of resistance	<ul style="list-style-type: none"> <li>• Officer’s strength to take physical control, including lifting/carrying</li> <li>• Pain compliance control holds, takedowns and techniques to direct movement or immobilize</li> </ul>

Subject's Actions	Description	Possible Force Option
Active resistance	Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, verbally, or physically signaling an intention to avoid or prevent being taken into or retained in custody	<ul style="list-style-type: none"> <li>• Use of personal body weapons to gain advantage over the subject</li> <li>• Pain compliance control holds, takedowns and techniques to direct movement or immobilize a subject</li> </ul>
Assaultive	Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person	<ul style="list-style-type: none"> <li>• Use of devices and/or techniques to ultimately gain control of the situation</li> <li>• Use of personal body weapons to gain advantage over the subject</li> <li>• Carotid Restraint</li> </ul>
Life-threatening	Any action likely to result in serious bodily injury or death of the officer or another person	<ul style="list-style-type: none"> <li>• Utilizing firearms or any other available weapon or action in defense of self and others to stop the threat</li> <li>• Vehicle intervention (Deflection)</li> </ul>

## VII. USE OF FORCE REPORTING

C. **REPORTABLE USES OF FORCE.** Officers shall report any use of force involving physical controls when the subject is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold. Officers shall also report any use of force involving the use of personal body weapons, chemical agents, impact weapons, ERIWs, vehicle interventions, K-9 bites, and firearms. Additionally, officers shall report the intentional pointing of firearms at a subject.

1. **NOTIFICATION OF USE OF FORCE.** An officer shall notify his/her supervisor immediately or as soon as practical of any reportable use of force.



A supervisor shall be notified if an officer receives an allegation of excessive force.

2. **EVALUATION OF USE OF FORCE.** A supervisor shall conduct a use of force evaluation in all cases involving a reportable use of force.
3. **EXCESSIVE USE OF FORCE.** Every allegation of excessive force shall be subject to the reporting and investigative requirements of this General Order and applicable disciplinary policies.

## **B. PROCEDURES**

1. **OFFICER'S RESPONSIBILITY.** 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.
  - a. When the officer using force is preparing the incident report, the officer shall include the following information:
    - i. The subject's action necessitating the use of force, including the threat presented by the subject;
    - ii. Efforts to de-escalate prior to the use of force; and if not, why not;
    - iii. Any warning given and if not, why not;
    - iv. The type of force used;
    - v. Injury sustained by the subject;
    - vi. Injury sustained by the officer or another person;
    - vii. Information regarding medical assessment or evaluation, including whether the subject refused;
    - viii. The supervisor's name, rank, star number and the time notified.
  - b. In the event that an officer cannot document his/her use of force due to exceptional circumstances, another officer shall document this use of force in an incident report, supplemental incident report or statement form at the direction of a supervisor.
2. **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 officers' 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 officers) 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 officer's incident report, supplemental incident report and written statement at the direction of the superior officer. A supervisor shall not approve an incident report or written statement involving a use of force that does not comply with the requirements as set forth in VI.B.1.a. above;
  - f. If applicable, ensure the supervisor's reason for not responding to the scene is included in the incident report.
  - g. Complete and submit the Supervisory Use of Force Evaluation form, indicating whether the force used appears reasonable, by the end of watch;
  - h. Complete the Use of Force Log (SFPD 128) and attach one copy of the incident report 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.

3. SUPERIOR OFFICER'S RESPONSIBILITY. When a superior officer is notified of unnecessary force or force that results in serious bodily injury or death, the superior officer shall:

- a. Respond to the scene and assume command, as practical;
- b. Notify the commanding officer and ensure all other notifications are made consistent with DGO 1.06, Duties of Superior Officers;
- c. **If unnecessary force, initiate a civilian complaint and notify the Office of Citizen Complaints (SFPOA has technical question regarding DGO 2.04)**
- d. Determine which unit(s) will be responsible for the on-going investigation(s);
- e. Prepare a report containing preliminary findings, conclusions and/or recommendations, if appropriate.

### C. OTHER REQUIREMENTS.

1. USE OF FORCE LOG. The following units shall maintain a Use of Force Log:
  - a. District Stations
  - b. Airport Bureau
  - c. Department Operations Center
2. RECORDING PROCEDURES. Supervisors shall document a reportable use of force for all officers – including those officers assigned to specialized units – in the Use of Force Log at the District Station where the use of force occurred, except as noted below:
  - a. Any use of force occurring outside the city limits, except at the San Francisco International Airport, shall be recorded in the Department Operations Center's Use of Force Log.

- b. Any use of force occurring at the San Francisco International Airport shall be recorded in the Airport Bureau's Use of Force Log.
3. DOCUMENT ROUTING.
    - a. Commanding officers shall forward the original completed Supervisor's Use of Force Evaluation Form(s) to the Commanding Officer of Risk Management and one copy to the Commanding Officer of the Training Division and another to the officer's Bureau Deputy Chief no later than the end of the watch. This information shall be entered into the Use of Force database at Risk Management to generate monthly reports as described in section C (5) below.
    - b. On the Monday of each week, unless a holiday, and then on Tuesday, commanding officers shall sign the Use of Force Log and send it, along with one copy of the incident report, to their respective Bureau Deputy Chief and one copy of the Use of Force Log with copies of the incident reports to the Commanding Officers of the Training Division and Risk Management.
  4. TRAINING DIVISION RESPONSIBILITIES. The Commanding Officer of the Training Division will maintain controls that assure all Use of Force Logs and Supervisor Evaluations are received, and shall perform a non-punitive review to ascertain the number, types, proper application and effectiveness of uses of force. The information developed shall be used to identify training needs.
  5. RISK MANAGEMENT RESPONSIBILITIES. The Commanding Officer of the Risk Management shall general report bi-weekly (1<sup>st</sup> and 15<sup>th</sup>) to the Chief of Police on the use of force by Department members that includes comprehensive use of force statistics consistent with current federal, state and local laws on use of force reporting.
  6. DATA COLLECTION AND ANALYSIS. The Department will collect and analyze its use of force data in the Risk Management Use of Force database. 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. Officer's unit
    - f. District station where the use of force occurred
    - g. Officer's assignment
    - h. Number of officers using force in the incident
    - i. Officer's activity when force was used (ex. Handcuffing, search warrant, pursuit)
    - j. Subject's activity requiring the officer to use force
    - k. Officer's demographics (age, gender, race/ethnicity, rank, number of years with SFPD, number of years as a police officer)
    - l. 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.

The Department will post on a monthly basis on its website comprehensive use of force statistics and analysis and provide a written use of force report to the Police Commission annually.

### **VIII. OFFICER'S RESPONSIBILITY AND COMPLIANCE.**

**All officers are responsible for knowing and complying with this policy. As with all General Orders, any violation of this policy may subject the member to disciplinary action. Supervisors shall ensure that all personnel in their command know the content of this policy and operate in compliance with it. Any member who becomes aware of any violation to this policy shall promptly report it in accordance with established procedure.<sup>1</sup>**

**(SFPOA did not address this provision)**

#### References

DGO 1.06, Duties of Superior Officers

DGO 2.04 Citizen Complaints Against Officers

DGO 5.05, Response and Pursuit Driving

DGO 5.17 Policy Prohibiting Biased Policing

DGO 5.18, Prisoner Handling and Transportation

DGO 8.11, Investigation of Officer Involved Shootings And Discharges

DGO 8.12, In Custody Deaths

DGO XX Responding to Behavioral Crisis Calls and The Role of the Crisis Intervention Team

<sup>i</sup> **This SFPOA believes that the Department should include the language of Penal Code 835a, as it has done here.** For reasons unclear to the SFPOA, it has been suggested that the Department remove the language of Penal Code Section 835a. Penal Code Section 835a is California law. All officers and citizens are bound by Section 835a whether it is included in the Department's general orders or not. Because Section 835a gives important guidance on the use of force by police officers, the SFPOA believes that it would be a mistake to exclude it from the Department's general orders.

<sup>ii</sup> **SFPOA'S PROPOSED CHANGE: The requirement that supervisors read a *Miranda*-type admonition over the air each time there is a call or on-view of a suspect with a weapon is absurd, dangerous, and should be eliminated.**

For many reasons, this requirement is dangerous, makes no sense, and will not in any way encourage de-escalation. First, although the proposal has an exception for Code 33 situations, this does not solve the safety problem. In many situations a call that an

<sup>1</sup> See DGO 5.17 (II)(C) for similar language.

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individual has a weapon is not immediately a Code 33 – but it can become a Code 33 in the 10-15 seconds that a supervisor would spend reading this admonition over the air. If this policy is in place, valuable time will be lost during the 10-15 second admonition which could cost civilians and officers their lives. As the DOJ noted, “this will tie up radio communications during a critical incident and could create risk.” (DOJ COPS comment 33.)

Second, this admonition will be ineffective at best, and dangerous at worst, even if it does not interfere with valuable air-time. This proposal requires that, *regardless of the circumstances*, a supervisor who is not on the scene and may know nothing about the situation, must go over the air and give advice to the on-scene officer about how to handle the call. This is inefficient and impractical. Suppose, for example, that an on-scene officer arrives to a weapons call and finds a suspect about to shoot a child: Should that officer heed his supervisor’s canned advice to “build rapport,” or should the officer make an appropriate decision based on what he or she observes based on the totality of circumstances known to him or her? The obvious answer is that the on-scene officer should ignore any advice that does not apply to that particular situation. If the on-scene officer does not ignore the canned advice, however, but treats the admonition as a directive from a supervisor, this could endanger the public and officers. Officers might be taking cover when it is unsafe to do so, maintaining distance when they should be advancing, and trying to establish rapport when they should be quiet – all because they believe they are following a supervisor's orders.

Third, almost none of this advice would apply to the great majority of the routine calls officers receive about individuals armed with weapons. For any of these admonitions to be appropriate, the following circumstances must apply: (1) the call is for an armed suspect; (2) the suspect is sufficiently far away from any possible victims that the officer can maintain distance, build rapport, call for additional resources, take cover, and engage in communications without time restraints and without jeopardizing anyone's safety; and (3) the scene is sufficiently secure and controlled that command of the scene can be transferred from the on-scene officer to the later-arriving supervisor. The only scenario in which this would be applicable is a very rare critical incident situation (such as a barricaded suspect situation), which is addressed by other general orders. Therefore, if this proposal is approved, the Department would be requiring that, regardless of the situation, supervisors must dispense advice that is almost never going to be applicable.

Moreover, the blanket application of these de-escalation principles would turn many routine weapons calls into dangerous critical incidents. Situations that might be resolved merely by the officer ordering a suspect to drop a weapon will now require the officer to retreat, call for backup and obtain cover. For example, in response to our survey, one officer recounted the following scenario: The officer responded to a weapons call and found a mentally unstable woman lying on her bed saying that she wanted to kill herself. The officer approached, the woman moved her leg and revealed a knife under her leg (which she was not holding – yet). Without saying another word, the officers grabbed the woman and moved her away from the knife. The woman struggled, spat, and was held for a 5150. If the officer had instead backed off to establish rapport, called a supervisor, took cover and created a “reaction gap,” this situation could have turned disastrous. The quick action by the officer resolved the situation and probably saved the woman’s life.

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Fourth, if the Department believes that officers should be instructed about de-escalation and the "sanctity" of human life, the worst, most dangerous, and least effective means of achieving this is for supervisors to repeat those words over the air 20 times a day in situations where the admonitions do not apply and officers are responding to a potentially dangerous situation. Instead, the Department should provide additional training and draft appropriate general orders.

Fifth, the Department does not have the resources for a supervisor to be dispatched to every weapons call. For example, the Mission district receives dozens of similar calls a day, but only has a limited number of patrol sergeants at any given time. The SFPOA suggests that if the Department still believes that some variation of this policy is appropriate, it should study the practical effect of this policy before implementation to avoid the possible chaos that might follow.

No police department in the entire country has a policy like this. San Francisco should not be the first. As the DOJ suggests, this proposal is "better accomplished through training and something that should situationally be left up to the supervisor's discretion."

Alternatively, if the Department insists on keeping this requirement, the SFPOA suggests that the Department could have a pre-recorded message, perhaps from the Chief, that could play any time an officer responds to a weapons call. This could be done through DEM or the officer could have a device to play this recording in their vehicles which they could just depress when they respond to a weapons call. This would eliminate the risk of this message taking up valuable air-time. Having a pre-recorded message would also ensure that the message is delivered the same way each time regardless of whether it is appropriate for the circumstance confronting the officer (which appears to be the intent of this requirement), and it would avoid burdening supervisors with having to remember a script.

<sup>iii</sup> See SFPOA's remarks concerning carotid restraint (Section \_\_\_\_\_)

<sup>iv</sup> See SFPOA's remarks concerning carotid restraint, endnote vi

**<sup>v</sup> SFPOA'S PROPOSED CHANGE: The Department should eliminate this entire paragraph because it is contrary to common sense, and inconsistent with the Department's other proposed orders, P.O.S.T., and the case law addressing the issue.**

First, contrary to the statement in this proposed policy, use of physical controls should not be the "last resort," with respect to any population. In fact, as this policy appropriately provides, the use of deadly force is the "last resort." Of course, it is contradictory for a policy to have two "lasts." Moreover, not only shouldn't the use of physical controls be the "last resort," it is the least intrusive means of gaining control of a suspect not following verbal commands. (See P.O.S.T. Learning Domain 20 3-3.) The use of baton, K-9, OC spray, CED, and physical body weapons, all properly come before the use of a control hold in terms of the likelihood of causing injury. And, the Ninth Circuit has held that control holds can properly be used against non-compliant, passive suspects. Eberle v. City of Anaheim, 901 F.2d 814, 820 (9th Cir. 1990) (reasonable as a matter of law to use a "finger control hold" to remove belligerent spectator from arena). As written, under this policy, if a pregnant woman was refusing to obey a lawful order (such as to get out of the street), the



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officer would be required to consider deploying a k-9, using a baton and discharging firearm before escorting the woman out of the street with a firm grip.

Second, the description of “control holds” as being “designed to incapacitate and subdue subjects,” should be removed because that is not their actual purpose. In fact, physical control holds are a critical part of a police officer’s tools to resolve a situation using minimal force. According to P.O.S.T., “control holds” constitute the least amount of force that an officer can use, and can even be used on suspects that are offering no physical resistance of any sort. (See P.O.S.T. Learning Domain 20: 2-6.) Physical controls are not designed to incapacitate or subdue subjects. Frequently, physical control holds are merely intended to help move a non-compliant subject from one location to another. (See Eberle v. City of Anaheim, 901 F.2d 814, 820 (9th Cir. 1990) [reasonable as a matter of law to use a “finger control hold” to remove belligerent spectator from arena].)

If the Department defines all physical control holds to be the equivalent of intermediate force – which is the level of force designed to incapacitate and subdue suspects – then the Department will have left its officers with virtually no means of attempting to control non-compliant suspects. The result is that many suspects that are merely non-compliant will become actively resistant, requiring officers to exert an even greater level of force with which to gain control, which will unnecessarily endanger suspects, civilians, and officers.

Furthermore, this definition of physical control holds is inconsistent with the explanation of when such holds can be used. Below, the Department suggests that an officer may use “physical controls” on an individual who is passively resisting. But, if, as this paragraphs states, physical controls are “designed to incapacitate” suspects, then it would be inappropriate to use such technique on an individual who is merely passively resisting.

Third, this policy inappropriately lumps physical controls and personal body weapons into the same category even though they are significantly different. Under section II., G, this proposed general order defines “personal body weapons” as “[a]n officer’s use of his/her 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.” A physical control hold can be anything from a finger hold (Eberle v. City of Anaheim, 901 F.2d 814, 820 (9th Cir. 1990)) to an arm bar (Tatum v. City and County of San Francisco, 441 F.3d 1090, 1092-93 (9th Cir. 2006)).

Fourth, this proposed policy is internally inconsistent. In the title and the first sentence, it discusses physical controls and other “weaponless techniques.” In the next sentence it references “physical control techniques and equipment.” It is inconsistent for the Department to propose a policy that on one hand concerns only “weaponless techniques,” and in the very next sentence make reference to “techniques and equipment.” As a result, unless modified – or eliminated – officers will have no idea what this proposed policy means.

Fifth, the inclusion of “people with limited English proficiency,” as a category of individuals against whom physical control should be a “last resort” is ridiculous. Officers confront many violent criminals every day with limited English proficiency. To essentially prohibit officers from using the lowest level of force against a suspect merely because they have limited English proficiency makes no sense and will needlessly endanger officers.

Sixth, the phrase “and others,” stuck on the very end of the list of “vulnerable populations” makes the entire paragraph meaningless. If the Department is attempting to define a subset of citizens for whom none of the normal rules related to use of force applies, to add the phrase “and others” to the end of the list undoes any value to the list because “and others” can include everyone else. While the SFPOA believes that including a list of populations against whom physical controls should only be used as a “last resort,” is unnecessary, confusing, and dangerous, having an open ended list does not provide officers with any guidance as to which populations are included in the list.

Lastly, this policy, when read together with some of the other policies proposed by the Department, leads to absurd results. For example, if an officer sees a non-English speaking suspect strangling a civilian with handcuffs, the officer is precluded from using any impact weapon or any physical control technique (except as a last resort), or the carotid restraint, but the officer would be permitted to shoot the individual. But, if the individual could speak English and was strangling another individual with a rope instead of handcuffs, the officer would have the full range of force options available (except the carotid restraint).

**vi SFPOA’s PROPOSED CHANGE: Consistent with P.O.S.T., the SFPOA believes that the carotid restraint should be authorized and considered intermediate force.**

The carotid restraint is not a choke-hold and should not be treated as such. The carotid restraint is an intermediate level of force, which can be used to subdue an actively resisting suspect without any injury to the suspect or the officer. (See Exhibit B, P.O.S.T. Learning Domain 20: 2-6, 2-9.)

The SFPD has successfully used the carotid restraint for years without incident. As with other non-lethal force options, the more such options are at an officer's disposal, the greater the chance the officer will not have to resort to lethal force. Limiting the use of the carotid restraint to only those situations in which lethal force can be used will effectively eliminate this valuable tool from an officer's arsenal, making the use of deadly force more likely. Limiting the use of the carotid restraint to lethal force situations helps no one, and endangers the public and officers. In response to our survey, one of our officers wrote the following:

“I am a 5'4" female that has rarely used force in my 28 years of law enforcement: however, in the moments where I have been attacked the Carotid Restraint has saved my life. It has saved my life 3 times because the person that attacked me was huge and extremely violent. The carotid restraint was applied correctly (due to training), was perfectly effective, and caused no injury to the suspect. It is a tool that call he effectively used by all officers - small/large/male/female -- to safely manage a violent suspect.”



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Regardless, if the Department wishes to ban this otherwise approved technique, it should not do so categorically. The Department should, at minimum, be allow to use this technique in the same situations where using lethal force is justified. The SFPOA cannot conceive of a reason why an officer could be in a situation in which he or she was justified in using lethal force, but should be prohibited from using this non-lethal technique.

**vii SFPOA'S PROPOSED CHANGE: Officers should not be required to reassess the danger before each individual shot is fired.**

If this proposed policy is meant to require officers to reassess, after each individual shot, this would be contrary to all officer training, P.O.S.T., Supreme Court precedent, as well as inconsistent with every other police department in the country and exceedingly dangerous for officers and civilians. When officers are engaged in a potentially lethal situation, where the use of a firearm is appropriate, they are trained to shoot until the threat is over. Sometimes, depending on the situation, an officer may be able to fire one shot and reassess the situation. Often, however, that is impracticable. Including such a requirement will get officers killed. For example, suppose a suspect who just robbed a bank emerges from the bank with a shotgun and aims it at an officer. If after a shot is fired, the officer is required to determine if the suspect has been incapacitated before firing again, the officer will likely be killed. While this proposal states that the officer should only reassess when feasible, the Department should make it clear that it is not requiring that an officer reassess between every shot unless it is safe and appropriate to do so.

**viii SFPOA'S PROPOSED CHANGE:**

**1. The blanket prohibition against officers shooting at occupants of vehicles who are using their vehicles as weapons should be removed.**

It is beyond dispute that individuals can and do use their vehicle as a lethal weapon. It is also beyond dispute that officers can and have successfully saved lives by shooting at the operator of the vehicle to prevent them from killing officers or others.

In the past, there has been a concern that officers were unnecessarily shooting at drivers when the officer could have instead gotten out of the way. The previous general order, which was revised in 2011, directly addressed that concern, providing that officers could only shoot at the driver if there was an imminent threat of serious bodily injury or death *and* the officer had no reasonable or apparent means of retreat. This proposed order eliminates that language, and thus prevents an officer from shooting at the driver of a vehicle, even if there is no means of retreat, and where the officer or a bystander will likely be killed if the officer cannot shoot. In addition, this categorical ban prevents an officer from shooting at a driver of a vehicle to prevent their escape, even where there is a substantial risk that the driver will cause death or serious injury to others if allowed to escape.

Three examples illustrate the dangers of the proposed provision: First, if an individual were driving around San Francisco in an SUV, and running over pedestrians for

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fun, this policy would prevent an officer from shooting the driver to prevent that driver from killing a family of four in a cross-walk, even if the officer had a clear shot and there was little risk of injury to anyone else. Under the proposed policy, the officer would be required to hold his or her fire and watch the driver run over the family. This is not an abstract hypothetical. On August 30, 2006, Omeed Aziz Popal, struck 18 pedestrians, killing one in San Francisco with his Honda Pilot SUV.

Second, under the proposed policy, where a suspect is driving his or her vehicle straight at an officer, who has no means of escape or retreat, the officer would have to choose between his or her life and violating the policy. Officers risking their lives for the citizens of San Francisco should never be forced to make that choice when it can be avoided by a carefully drafted, restrictive policy, such as the one that currently exists.

Third, under the proposed policy, if a terrorist was escaping after killing numerous civilians, an officer would be justified in using lethal force to stop the terrorist, but only as long as the terrorist was fleeing on foot. Once the terrorist got into a car, the officer would be precluded from stopping the terrorist, even if the car was barely moving at the time the officer had a clear shot. This proposal turns a vehicle into a safety zone for violent felons to facilitate their escape.

The United States Supreme Court and the Ninth Circuit have repeatedly found that it can be reasonable for an officer to shoot at a suspect who is using his or her vehicle as a weapon. The dangers of an overly permissive policy can be, and have been, addressed by the Department's current policy. There have been no incidents in which the current policy failed to achieve the goal of protecting civilians and officers alike to warrant any re-evaluation of the existing policy. Other cities, such as Oakland, Portland, New Orleans, and Milwaukee, which have been held up as examples for San Francisco, have policies very similar to San Francisco's current policy, which allows for a narrow exception to the prohibition against officers shooting at drivers who are using their vehicle as a weapon.

One may wish that threats caused by moving vehicles will end. But in the real world confronting police officers, there will be cases involving violent suspects seeking to harm innocent people using their vehicles. The only question remaining is if the Department and Police Commission will enable officers to make reasonable choices in dangerous, rapidly-evolving situations to save lives. This proposed policy change precludes that.

The DOJ also recommended that the Department "allow this [shooting at drivers of vehicles] under extremely limited circumstances when other options are unavailable and the life of the officer or member of the public is at risk." (DOJ COPS comment 27.)

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**2. The Department's proposed blanket prohibition against shooting from a moving vehicle should be removed.**

Similar to the blanket prohibition on officers shooting *at* suspects using their vehicle as a weapon, the Department should allow some latitude for situations in which it might be appropriate for an officer to fire *from* a moving vehicle. For example, if the officer's vehicle is moving slowly to a stop, but has not quite stopped, it would be inappropriate to require the passenger officer who is being fired at by suspects to hold his or her fire until the vehicle has come to a complete halt, assuming that the officer can fire without unnecessarily endangering other people. An effective policy can be crafted using very restrictive language that would allow for an officer to fire in that circumstance.

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