

- C. Despite this unintended “targeting” effect of profiling, profiling itself is not necessarily a biased concept. Everyone “profiles,” although some might call it stereotyping. We profile when we make a major purchase, pick our friends, or select a school for our kids. Arguably, profiling can be considered an intrinsic part of the human experience.
- D. A profile is a set of characteristics which we arbitrarily ascribe to human behavior or to a social situation, and by which we judge, evaluate, and categorize people, places, and things. These characteristics are derived from our life experiences, and are applied either consciously or subconsciously.
- E. Profiling, as a criminal investigation tool, is naturally derived from our work experiences as law enforcement officers. We intuitively form insights regarding people we professionally interact with, particularly the criminal element. From these associations, we develop a mental profile of certain characteristics that are habitually associated with specific acts of criminal behavior.
- F. Essentially, MO, or methods of operation, and criminal profiles are closely related concepts. Based on a criminal’s MO, an experienced and insightful investigator, particularly a specialist, can usually formulate a reasonably accurate profile of the perpetrator.
- G. The heart of the subject controversy is whether law enforcement agencies can legitimately use race, either exclusively, or as one of several factors in devising criminal profiles for suppression of street crime, and particularly, for drug courier interdiction on highways.
- H. Law enforcement officials, including some African American police chiefs in big cities, defend such tactics as an effective way to target their limited resources on likely lawbreakers. They maintain that profiling is based not on prejudice, but probabilities—the statistical reality that young minority men are disproportionately likely to commit (and be the victim of) crimes.<sup>1</sup>
- I. Bernard Parks, Chief, Los Angeles, CA PD, argues that racial profiling is rooted in statistical reality, not racism. Chief Parks, who is African American, vigorously defends the idea that police can legitimately factor-in race when building a profile of a criminal suspect.<sup>2</sup>
- J. Reuben Greenberg, Chief, Charleston, SC PD, who is also Black, sees the problem as “...white cops who are so dumb that they can’t make a distinction between a middle-

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<sup>1</sup> Jeffrey Goldberg, “What Cops Talk About When They Talk About Race,” *The New York Time Magazine*, 20 June 1999, p. 50-57, 64-65, 88.

<sup>2</sup> *Ibid.*

3. The Court noted in *Whren*, that the constitutional reasonableness of the stop does not depend on “ulterior motives,” “actual motivations,” or “subjective intentions” of the officer making the stop.
4. In effect, the United States Supreme Court approved the practice of police using a traffic violation to justify a traffic stop, even when the purpose of the police was to conduct an investigation into suspected criminal activity not necessarily related to the traffic violation.
5. The Court, while declaring that such stops do not violate the Fourth Amendment, did allow that allegations of unlawful selective enforcement (stops based solely on race or ethnicity) could be challenged civilly under the equal protection clause of the 14<sup>th</sup> Amendment.

#### C. *Terry v. Ohio*

1. *Terry v. Ohio* was a landmark Supreme Court case that established the Stop & Frisk doctrine, and outlined the Supreme Court’s guidelines for investigative stops.
  2. The Court held that police may, in certain circumstances, approach and stop a person for the purpose of investigating possible criminal behavior, even when there is not enough probable cause to make an arrest.
  3. Under *Terry*, a police officer may stop and briefly detain a person only if the officer has a reasonable suspicion, supported by articulable facts, that the individual may be involved in criminal activity.
  4. The Court also held that under certain circumstances, the person stopped could also be “frisked,” in that the police could conduct a limited search, or “pat down”, of the individual’s outer clothing to discover the presence of any weapons.
- D. These decisions permitted a wide latitude of individual police discretion in stopping and investigating citizens operating motor vehicles, standing on a corner, or walking down the street.
- E. Obviously, discretion is a critical part of the police task and police work grants front-line officers an enormous amount of autonomy in decision-making. In this sense, police discretion can be defined as making judgmental decisions based on several factors, such as:
- Laws and ordinances

reason(s) for the stop, you probably don't have grounds for a legal stop in the first place.

O. Other Significant Cases:

1. *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977) A US Supreme Court decision which allows an officer to order the driver out of a vehicle following a lawful traffic stop. The Court decided this case on the basis of officer safety, and cited a study that revealed 30% of police shootings occurred when officers approached suspects in vehicles.
2. *Maryland v. Wilson*, 117 S.Ct. 882 (1997) This US Supreme Court decision permits officers to order passengers out of a vehicle following a lawful traffic stop pending the completion of the stop.
3. *Graham v. State*, 119 MdApp 444, 705 A.2d 82 (1998) Passenger is "seized" for purposes of the 4<sup>th</sup> Amendment when he is ordered to remain in a car stopped for speeding while officer checks the driver's license and registration. Continued detention of passenger *after* purpose of stop is accomplished is unreasonable, unless there is reasonable, articulable suspicion to justify continuing the detention. (driver's license proved invalid, driver was arrested, yet passenger ordered to remain in the car after driver's arrest to wait 25 minute for a K-9 unit).
4. *Pryor v. State*, 122 Md.App. 671 (1997), *cert. denied* 352 Md. 312, 721 A.2d 990 (1998) (other citations omitted) The 4<sup>th</sup> Amendment permits the warrantless search of an automobile when there is probable cause to believe that the automobile contains contraband or evidence of criminal activity.. Note: there is no separate "exigency requirement" for the automobile exception to apply; probable cause alone satisfies the automobile exception to the 4<sup>th</sup> Amendment's warrant requirement. *Maryland v. Dyson*, 527 U.S. 465, 119 S.Ct. 2013 (1999)(*per curiam*).
5. *Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999) The officer's purpose in an ordinary traffic stop is to enforce the laws of the roadway, and ordinarily to investigate the manner of driving with the intent to issue a citation or warning. Once the initial purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention. Once the underlying basis for the initial traffic stop has concluded, a police-driver encounter which implicates the 4<sup>th</sup> Amendment is constitutionally permissible only if (1) the driver consents to the continuing intrusion; *or* (2) the officer has, at a minimum, a reasonable, articulable suspicion that criminal activity is afoot. *Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999). For example:

susceptible to duress and coercion and the courts will closely examine the voluntariness of any consent given by an arrested person.

4. Numerous officers on the scene may be perceived as a coercive situation to the average person.
5. Similarly, the person consenting to the search must have the legal authority to grant the consent. Again, it is the investigating officer's responsibility to determine authority. From a legal perspective, control and access count for more than ownership.
6. The consent search of a vehicle:
  - a. Will usually include all containers in the vehicle unless the consenting person exempted consent for those specific items or areas.
  - b. The search must be restricted in scope to the area where consent was given. In other words, a person may consent to a search of the passenger area, but not the trunk.
  - c. The request for consent must be in the form of a request, not a command.
  - d. The person must clearly understand what he or she is agreeing to when their consent is requested.
  - e. Police are not constitutionally required to inform citizens that they are free to leave before getting consent to search a motor vehicle, but by not doing so, the constitutional validity of any further investigation would be imperiled. *Ferris v. State*, 335 Md 356, 735 A.2d 491 (1999).
  - f. It is recommended, however, that the driver's license and registration be returned, along with any other documents, including a citation, if one was issued, before consent to search is requested, to dispel any impression on the driver's part that he or she is still detained.
  - g. The consent to search may be withdrawn at any time during the search.
7. Consent Form or Waiver:
  - a. Most law enforcement agencies have a pre-printed form with which a person can sign to indicate that they consented to a search of their vehicle, home, or possessions. Some consent forms are printed in multiple languages.
  - b. It would be very beneficial if officers can persuade the responsible individual to read and sign their agency consent form.
  - c. Note: It is not unusual for suspects to verbally agree to a consent search, but decline to sign a consent form. If incriminating evidence or contraband is later found, they can then deny that they ever verbally consented to a search.

5. Be brief and to the point. Don't detain anyone beyond the time needed to effect the necessary enforcement action or otherwise clarify a situation.
6. Keep your physical, or non-verbal indicators friendly and neutral, such as your:
  - Eye contact
  - Stance
  - Position of hands
  - Facial expression
7. According to studies conducted in several states, the number one citizen complaint about police officers is the officer's *verbal conduct*. By comparison, only about one-fourth of the complaints filed against police officers dealt with excessive force issues.
8. Speak civilly and in a moderate tone. Citizens seem more concerned about *how* officers speak to them, than by what the officer actually says. Citizens are particularly aggrieved by what they perceive as an officer's gruff or condescending tone of voice.
9. Listen actively. Communication is a two-part process and listening is the other half. Regardless of the type of person you're dealing with, stay focused and concentrate on what they're saying (...or not saying).
10. Sgt. Larry E. Capps, of the Missouri City, Texas PD, has coined a police-citizen interaction dynamic, appropriate for this discussion, which he calls CPR, for:
  - a. Civility – A state of affairs characterized by tolerance, kindness, consideration, and understanding. Civility can be expressed by positive action, or even inaction, as when police officers refrain from over-reacting to verbal outbursts from angry citizens.
  - b. Professionalism – In a broad sense, a concept of excellence or a continual striving for excellence. Its core elements include technical knowledge, moral judgements, a client-oriented practice, considerable discretion given to practitioners, and most importantly, an acknowledgement that policing is a “moral call” profession, in which members are duty bound to respond, whenever and wherever called, regardless of who calls them.

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<sup>4</sup> Larry E. Capps, "CPR: Career-Saving Advice for Police Officers," *FBI Law enforcement Bulletin*, July, 1988, Washington, DC, p. 14-18.

- c. Restraint – The self-control exercised by officers and their selection of the least intrusive means of accomplishing a legitimate police objective.

11. Some officer best-practices for vehicle stops:

- a. Always inform the driver of the reason for the stop. Speak slowly and clearly.
- b. Describe the violation in terms of what the vehicle is doing, not what the driver did. This non-accusatory approach can often enhance officer-driver rapport.
- c. Ask the driver for the reason for the violation; allow them to vent/offer a stress-reducing explanation.
- d. Provide instructions. After you obtain their license and registration, tell them that you are going back to your police vehicle to review their documents and advise them to remain in their vehicle.
- e. Calm any children in the stopped vehicle that may be visibly apprehensive of the presence of a police officer.

12. Again, it's worth repeating: Proactive traffic enforcement that is race or ethnic-based is neither legal: consistent with democratic ideals, values, and principles of American policing; nor in any way a legitimate and defensible public protection strategy.<sup>4</sup>

13. Use the *but/for* test to determine if a stop was based on racial profiling. Say to yourself, *But for this person's race, ethnic heritage, gender, religious or sexual preference, would this driver have had this encounter with me?* If the answer is that they would not, then this was a profile stop and most likely a violation of the person's Constitutional rights.<sup>5</sup>

V. Proactive Field Stops – Motor Vehicles

- A. You've heard it before; we'll say it again: "There's no such thing as a routine traffic stop." You, the cop, are at a distinct disadvantage during any traffic stop. The driver knows who you are, but you don't know who he is.
- B. All your survival skills and street instincts should be highly focused during a traffic stop, no matter how innocuous or minor it may seem.
- C. Again, you must be able to articulate that a traffic violation or criminal act has occurred in order to stop a vehicle. You cannot stop a car on a whim, or a hunch, or just because you're bored. Discretionary stops are violations of the Fourth

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<sup>4</sup> US Department of Justice, NHTSA, *Strengthening the Citizen and Police Partnership at the Traffic Stop: Professionalism is a Two-Way Street*, (Draft) Washington, DC, Aug.14, 2000, p. 8.

<sup>5</sup> *Ibid.*

following or preceding the vehicle you have stopped. Be very observant of any vehicles that stop on the roadway in front of, or behind the vehicle you have stopped.

## VI. Proactive Field Stops – Street Interviews

- A. Maryland has recently ruled that police accosting a citizen is a viable law enforcement tool, as long as the encounter remains voluntary, i.e., that the citizen feels free to walk away. However, a seizure occurs when police indicate that compliance with their requests is required, such that the reasonable person would no longer feel free to walk away. *Reynolds v. State*, 130 Md.App. 304, 746 A.2d 422 (1999), *cert. denied*. \_\_\_Md.\_\_\_, \_\_\_A.2d\_\_\_ (April 13, 2000) (citizen accosted responded to officer's questions, answers yielded no reasonable articulable suspicion or probable cause; ensuing 5-minute wait - in silence - for results of warrant check was excessive and unreasonable because it was unsupported by reasonable suspicion or probable cause).
- B. The street field interview involves a police officer stopping a person or persons on the street, purposely to question, and sometimes to search them, because the officer has a reasonable suspicion that they may have been engaged in criminal activities.
- C. Like their companion traffic stops, however, street field interviews, particularly in high-crime, disadvantaged neighborhoods, have been the cause of minority-community complaints, alleging that the police are indifferent to, and abusive of the civil rights of minority citizens.
- D. Aggressive field stops and searches, especially by quasi-military, police tactical units in minority communities, have created a highly negative and unfavorable image in the media, as witness the recent NYPD street unit encounters with Amadou Diallo and Patrick Dorismond, which resulted in the shooting deaths of both men, under highly questionable circumstances.
- E. On the plus side, street field interviews are a proven and verifiable anti-crime tactic, in that they:
- Are acceptable to the general public when conducted at moderate levels
  - Deter at-risk individuals from criminal and delinquent behavior
  - Identify and lead to the arrest of known criminal offenders
  - Identify possible witnesses and informants
  - Provide intelligence from both criminal and non-criminal sources
- F. Street field interviews should not be used to harass or intimidate citizens, regardless of their appearance, background, or perceived criminal propensity.
- G. The stop should be reasonably brief to clarify the situation.

- Q. A lawful stop does not alone justify a frisk. The investigating officer must have a reasonable belief that the stopped suspect has a weapon and poses a danger to the officer or to others. You must be able to independently justify the frisk.

## VII. Conducting Effective Vehicle Stops

Note:

The preponderance of the material contained in this section was taken from the National Highway Traffic Safety Administration's manual titled: *Conducting Complete Traffic Stops*. This excellent law enforcement resource is available from the US Department of Transportation, 400 7<sup>th</sup> St. SW, Washington, DC, 20590. It is a highly recommended agency training resource.

### A. Traffic and Criminal Enforcement Mutuality:

1. An aggressive and proactive traffic enforcement program can be a highly effective means to both deter and detect criminal activities.
2. Law enforcement doctrine, in many jurisdictions, traditionally regards traffic enforcement as separate from, and often of lesser importance than criminal enforcement, particularly in regard to allocation and prioritization of agency resources.
3. Recent experience in several jurisdictions, both large and small, however, indicates otherwise. Using a proactive approach, supported by intensive training and effective supervision, traffic enforcement has been found to provide a solid base upon which agencies may increase and enhance their criminal enforcement effort.
4. Traffic enforcement is every patrol officer's responsibility, even when there is a specialized agency traffic unit. Patrol officers who know how to properly conduct investigative stops may account for more arrests than specialized anti-crime units.
5. Traffic enforcement can have a meaningful impact against roadway-related crimes, such as:
  - Car thefts and car jacking offenses
  - Fugitives and wanted persons
  - Drivers under the influence of drugs and alcohol
  - Drug transporters
  - Transporting stolen property and contraband (untaxed cigarettes and alcoholic beverages, pirated videotapes)



### C. Vehicle Exterior Indicators:

1. Car repainted in non-standard colors on specific models and signs of repainting, especially with a different color on a new vehicle.
2. Low rear end. May indicate a heavy cargo in trunk.
3. Windows won't roll down all the way. May indicate contraband secreted in door panels.
4. License plate light inoperable or very dark, tinted plastic covering the license plate.
5. Sticker and logo inconsistencies. School ID or business parking decals, etc. on vehicle don't coincide with occupants' appearance, background, and subsequent explanations.
6. License plates don't appear to go with the vehicle, e.g. clean vehicle, dirty plates. Fingerprints or dirt marks around plate, also, dead bugs on rear license plate, indicating the plate was once used on the front of a vehicle.
7. Pulling camper between 10 PM and 7 AM—they're probably not camping. Be aware of campers with kid's bikes but no kids.
8. Heavy duty air shocks, but no trailer hitch on the vehicle.
9. When approaching the vehicle, especially a van, following a stop, slide your hand along the rear fender to check for any vibration or movement indicative of suspects possibly hiding in the trunk or laying on the floor. Do this routinely on night stops, particularly if you noticed any suspicious or furtive movement in the passenger-area prior to the stop.

### D. Vehicle Interior Indicators:

1. Look for signs of extended, uninterrupted travel and a lived-in appearance—pillows, blankets, fast food wrappers, and paper cups.
2. Observe if the rear seat is out of position or unsecured.
3. Spare tire on back floorboards or on rear seat. Also, loose tools on the floor or seat, such as pry bars, dent pullers, and car jacks.
4. Cover-up odors—using air fresheners, garlic pods, cedar shavings, mustard, or kitchen and bathroom spray deodorizers.

Note: If you ask passengers to identify themselves, they have the right to refuse.

6. Note any lack of movement among passengers, i.e. staying in one body position without change. They may be trying to conceal a weapon or contraband on the seat or floor.
7. Use care when occupants of a stopped vehicle fail to follow directions or appear to make "target glances" looking for escape paths, location of secreted contraband, or ways and means to attack the officer.
8. Look for rental vehicle irregularities i. e., inconsistencies in driver's explanation and the rental contract.

*Note: In any situation with a suspicious person, observe if the suspect conducts concealed weapon movements, such as pulling shirt down or pants up to hide a weapon in his waistband. They will use their hands, forearms and elbows to "check" on a weapon location, usually after exiting from a vehicle or getting up from a sitting position (the same way police do when in plainclothes). Look for protrusions or bulges in clothing that may indicate a weapon.*

# Westover Police Department

## Chapter 19

### USE of Force

Use of Force Core Principals

Definitions

De-escalation

Use of Force

Use of Force Tools

Use of Force Reporting

Use of Force Review

# 8.000 USE OF FORCE CORE PRINCIPLES

Effective Date: 11/15/2017

This section outlines the Westover Police Department's core principles relating to the use of force. These general principles provide the foundation for the more specific policies governing the application, reporting, investigation and review of force. The Department recognizes that officers will face unique and challenging circumstances not specifically addressed in this policy. Officers are expected to apply these core principles reasonably in unanticipated situations.

## **1. Every Member of the Westover Police Department is Committed to Upholding the Constitution and Laws of the United States and the State of West Virginia, and Defending the Civil Rights and Dignity of All Individuals, While Protecting Human Life and Property and Maintaining Civil Order.**

It is the policy of the Westover Police Department to accomplish the police mission with the cooperation of the public and as effectively as possible, and with minimal reliance upon the use of physical force.

The community expects and the Westover Police Department requires that officers use only the force necessary to perform their duties and that such force be proportional to the threat or resistance of the subject under the circumstances.

An officer's commitment to public safety includes the welfare of members of the public, the officer, and fellow officers, with an emphasis on respect, professionalism, and protection of human life, even when force is necessary.

Officers who violate those values by using objectively unreasonable force degrade the confidence of the community, violate the rights of individuals upon whom unreasonable force is used, and may expose the Department and fellow officers to legal and physical hazards.

Conversely, officers who fail to use timely and adequate force when it is necessary may endanger themselves, the community and fellow officers.

## **2. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force**

Additional guidance on how to reduce the need to use force may be found in Section 8.100.

## **3. Sometimes the Use-of-Force Is Unavoidable, and an Officer Must Exercise Physical Control of a Violent, Assaultive, or Resisting Individual to Make an Arrest, or to Protect Members of the Public and Officers from Risk of Harm**

In doing so:

- \* Officers should recognize that their conduct prior to the use of force, including the display of a weapon, may be a factor which can influence the level of force necessary in a given situation.
- \* Officers should take reasonable care that their actions do not precipitate an unnecessary, unreasonable, or disproportionate use of force, by placing themselves or others in jeopardy, or by not following policy or training.
- \* Officers should continually assess the situation and changing circumstances, and modulate the use- of-force appropriately.

## **4. An Officer Shall Use Only the Degree of Force That Is Objectively Reasonable, Necessary Under the Circumstances, and Proportional to the Threat or Resistance of a Subject**

Objectively reasonable: The reasonableness of a particular use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against the rights of the subject, in light of the circumstances surrounding the event. It must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight

The calculus of reasonableness must allow for the fact that police officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, dynamic and rapidly evolving—about the amount of force that is necessary in a particular situation.

The reasonableness inquiry in an excessive-force case is an objective one: whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.

Necessary: Officers will use physical force only when no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to affect a lawful purpose.

Proportional: The level of force applied must reflect the totality of circumstances surrounding the situation, including the presence of imminent danger to officers or others. Proportional force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be objectively reasonable and necessary to counter it.

Guidance on when force is authorized may be found in Section 8.200.

### **5. Each Officer Is Responsible for Explaining and Articulating the Specific Facts, and Reasonable Inferences from Those Facts, Which Justify the Officer's Use of Force**

The officer's justification will be reviewed to determine whether or not the force used was in or out of policy.

Failure to adequately document and explain the facts, circumstances, and inferences when reporting force may lead to the conclusion that the force used was out of policy.

Additional guidance on reporting force may be found in Section 8.400.

### **6. The Department Is Committed to Upholding Lawful, Professional, and Ethical Standards Through Assertive Leadership and Supervision Before, During, and After Every Force Incident**

The Westover Police Department recognizes the magnitude of the responsibility that comes with the constitutional authority to use force. This responsibility includes maintaining vigorous standards and transparent oversight systems to ensure accountability to the community in order to maintain their trust. This includes:

- \* Force prevention efforts,
- \* Effective tactics, and
- \* Objective review and analysis of all incidents of reportable force

Additional guidance on the Department's review of force may be found in Section 8.500.

### **7. A Strong Partnership Between the Department and the Community Is Essential for Effective Law Enforcement and Public Safety**

Uses of force, even if lawful and proper, can have a damaging effect on the public's perception of the Department and the Department's relationship with the community.

Both the Department and individual officers need to be aware of the negative effects of use-of-force incidents and be empowered to take appropriate action to mitigate these effects, such as:

- \* Explaining actions to subjects or members of the public
- \* Offering reasonable aid to those affected by a use-of- force
- \* Treating subjects, witnesses, and bystanders with professionalism and courtesy
- \* Department follow-up with neighbors or family to explain police actions and hear concerns and feedback

# 8.050 - USE OF FORCE DEFINITIONS

Effective Date: 11/15/2017

**Deadly Force:** The application of force through the use of firearms or any other means reasonably likely to cause death, Great Bodily Harm, or serious physical injury.

When reasonably likely to cause death or serious physical injury, Deadly Force includes:

- \* Shooting a firearm at a person
- \* A hard strike to a person's head, neck, or throat with an impact weapon
- \* Striking a person's head into a hard, fixed object (examples include but are not limited to concrete objects or surfaces, or solid metal structures such as bars or guardrails.)
- \* Shooting a person in the head or neck with a beanbag shotgun round
- \* Using stop-sticks on a moving motorcycle

Neck and carotid restraints may only be used when deadly force is authorized. See Section 8.200 POL 10. See Section 8.200 #4 and #5 for guidance on when deadly force is authorized.

**De-escalation:** Taking action to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources are available to resolve the situation. The goal of de-escalation is to gain the voluntary compliance of subjects, when feasible, and thereby reduce or eliminate the necessity to use physical force. See Section 8.100 for further guidance.

**De-escalation Techniques:** Actions used by officers, when safe and without compromising law-enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident, and increase the likelihood of gaining voluntary compliance from a subject. See Section 8.100 for examples of de-escalation tactics and techniques.

**Force:** Force means any physical coercion by an officer in performance of official duties, including the following types of force.

\* **De Minimis Force** – Physical interaction meant to separate, guide, and/or control without the use of control techniques that are intended to or are reasonably likely to cause any pain or injury. Includes:

- Use of control holds or joint manipulation techniques in a manner that does not cause any pain, and are not reasonably likely to cause any pain.
- Using hands or equipment to stop, push back, separate, or escort a person without causing any pain, or in a manner that would reasonably not cause any pain.

\* **Type I** – Force that causes transitory pain, the complaint of transitory pain, disorientation, or intentionally pointing a firearm or bean bag shotgun at a person.

\* **Type II** – Force that causes or is reasonably expected to cause physical injury greater than transitory pain but less than great or substantial bodily harm, and/or the use of any of the following weapons or instruments: CEW, OC spray, impact weapon, bean bag shotgun, deployment of K-9 with injury or complaint of injury causing less than Type III injury, vehicle, hobble restraint.

\* **Type III** – Force that causes or is reasonably expected to cause, great bodily harm, substantial bodily harm, loss of consciousness, or death, and/or the use of neck and carotid holds, stop sticks for motorcycles, impact weapon strikes to the head.

Additional guidance on reporting force may be found in Section 8.400.

**FIT (Force Investigation Team):** The Department personnel tasked with conducting Type III use-of-force investigations, to include investigations of officer-involved shootings.

### **Injury Classifications:**

\* **Physical or Bodily Injury (also "Injury"):** Physical pain or injury, illness, or an impairment of physical condition greater than transitory pain but less than great or substantial bodily harm.

\* **Serious Physical Injury:** Physical injury which creates a substantial risk of death or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ or structure or involves serious concussive impact to the head.

\* **Substantial Bodily Harm :** Bodily injury which involves:

- *Temporary* but substantial disfigurement
- *Temporary* but substantial loss or impairment of the function of any bodily part or organ
- Fracture of any bodily part

\* **Great Bodily Harm :** Bodily injury which either:

- Creates a probability of death
- Causes significant serious permanent disfigurement
- Causes a significant permanent loss or impairment of the function of any bodily part or organ

**Less-Lethal Devices:** Devices designed and intended to apply force not intended nor likely to cause the death of the subject or Great Bodily Harm. For the intended purpose of Less Lethal Tools see: Section 8.200 #2. Includes: TASER, Impact weapons, Beanbag shotgun, OC spray.

**Necessary Force:** "Necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.

**Objectively Reasonable Force:** Objectively reasonable force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against the rights of the subject, in light of the circumstances surrounding the event. It must be judged from the perspective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight. See Sections 8.000 and 8.100 for further guidance on objectively reasonable force.

**Reportable Force:** All uses of force other than de minimis are reportable. Reportable force includes the intentional pointing of a firearm at a subject. (Please see "force" above and 8.500-POL-6.)

**Use of Force:** See "Force."

### **Weapons:**

\* **Approved Weapon:** A tool used to apply force that is both specified and authorized by the Department

\* **Approved Use of a Weapon:** Use of an approved weapon by an officer who has been properly trained and certified in the use of that weapon

\* **Impact Weapon:** Any authorized intermediate weapon or object used to strike a subject and inflict pain or injury through blunt force.

\* **Improvised Weapon:** An object used to apply force other than those approved and authorized by the Department. Also, any Department-approved weapon used by an officer who has not received required training or certification to use the weapon.

# 8.100 - DE-ESCALATION

Effective Date: 11/15/2017

## **1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force**

De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance. (See Section 8.050.)

When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.

When time and circumstances reasonably permit, officers shall consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:

- \* Medical conditions
- \* Mental impairment
- \* Developmental disability
- \* Physical limitation
- \* Language barrier
- \* Drug interaction
- \* Behavioral crisis

An officer's awareness of these possibilities, when time and circumstances reasonably permit, shall then be balanced against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.

Mitigating the immediacy of threat gives officers time to utilize extra resources, and increases time available to call more officers or specialty units.

The number of officers on scene may increase the available force options and may increase the ability to reduce the overall force used.

Other examples include:

- \* Placing barriers between an uncooperative subject and an officer
- \* Containing a threat
- \* Moving from a position that exposes officers to potential threats to a safer position
- \* Decreasing the exposure to potential threat by using
  - Distance
  - Cover
  - Concealment
- \* Communication from a safe position intended to gain the subject's compliance, using:
  - Verbal persuasion
  - Advisements



- Warnings

\* Avoidance of physical confrontation, unless immediately necessary (for example, to protect someone, or stop dangerous behavior)

\* Using verbal techniques, such as Listen and Explain along with Non-violent Crisis Intervention techniques, to calm an agitated subject and promote rational decision making

\* Calling extra resources to assist or officers to assist:

- More officers

- Officers equipped with less-lethal tools

\* Any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject

# 8.200 – USING FORCE

## 1. Use of Force: When Authorized

An officer shall use only the force reasonable, necessary, and proportionate to effectively bring an incident or person under control, while protecting the lives of the officer or others.

In other words, Officers shall only use objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective. The force used must comply with federal and state law and Westover Police Department policies, training, and rules for specific instruments and devices. Once it is safe to do so and the threat is contained, the force must stop.

When determining if the force was objectively reasonable, necessary and proportionate, and therefore authorized, the following guidelines will be applied:

**Reasonable:** The reasonableness of a particular use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against the rights of the subject, in light of the circumstances surrounding the event. It must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. Factors to be considered in determining the objective reasonableness of force include, but are not limited to:

- \* The seriousness of the crime or suspected offense;
- \* The level of threat or resistance presented by the subject;
- \* Whether the subject was posing an immediate threat to officers or a danger to the community;
- \* The potential for injury to citizens, officers or subjects;
- \* The risk or apparent attempt by the subject to escape;
- \* The conduct of the subject being confronted (as reasonably perceived by the officer at the time);
- \* The time available to an officer to make a decision;
- \* The availability of other resources;
- \* The training and experience of the officer;
- \* The proximity or access of weapons to the subject;
- \* Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus subjects; and
- \* The environmental factors and/or other exigent circumstances.
- \* Whether the subject has any physical disability.

The assessment of reasonableness must allow for the fact that police officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

The reasonableness inquiry in an excessive-force case is an objective one: whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.

**Necessary**: Officers will use physical force only when no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.

**Proportional**: To be proportional, the level of force applied must reflect the totality of circumstances surrounding the situation at hand, including the nature and immediacy of any threats posed to officers and others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed. Proportional force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it.

## **2. Use of Force: When Prohibited**

An officer may **not** use physical force:

- \* To punish or retaliate
- \* Against individuals who only verbally confront them unless the vocalization impedes a legitimate law enforcement function
- \* On restrained subjects (e.g. including handcuffed or contained in a police vehicle) except in exceptional circumstances when the subject's actions must be immediately stopped to prevent injury, or escape, destruction of property. All such force shall be closely and critically reviewed

**Exception**: Subjects who are refusing to get out of a Department vehicle may be removed from the vehicle after reasonable attempts to gain voluntary compliance have failed, the force must be reasonable with the intent to safely remove the combative subject.

- \* To stop a subject from swallowing a substance that is already in their mouth:
  - Officers may use reasonable force, not including hands to the neck or insertion of any objects or hands into a subject's mouth, to prevent a suspect from putting a substance in their mouth.
  - In the event that some suspect swallows a harmful substance, officers shall summon medical assistance.
- \* To extract a substance or item from inside the body of a suspect without a warrant

## **3. Officers Should Assess and Modulate the Use-Of-Force as Resistance Changes**

For example, as resistance decreases, the use of force may decrease.

## **4. Use of Deadly Force**

Deadly force may only be used in circumstances where threat of death or serious physical injury to the officer or others is imminent. A danger is imminent when an objectively reasonable officer would believe that:

- \* A suspect is acting or threatening to cause death or serious physical injury to the officer or others, and
- \* The suspect has the means or instrumentalities to do so, and
- \* The suspect has the opportunity and ability to use the means or instrumentalities to cause death or serious physical injury.

## **5. Deadly Force May Be Used to Prevent the Escape of a Fleeing Suspect Only When an Objectively Reasonable Officer Would Believe That it Is Necessary and That There is Probable Cause That:**

- \* The suspect has committed or is in the process of committing a felony involving the infliction or threatened infliction of serious physical injury or death; and

\* The escape of the suspect would pose an imminent danger of death or serious physical injury to the officer or to another person unless the suspect is apprehended without delay; and

\* The officer has given a verbal warning to the suspect, if time, safety, and circumstances permit.

#### **6. Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested By Anyone, as Soon as Reasonably Possible**

Following a use-of-force, officers will request a medical aid response, if necessary, for suspects and others and will closely monitor subjects taken into custody.

If medical aid is refused, document and request paperwork on the refusal.

Absent exigent circumstances, prone subjects will be placed on their side in a recovery position. Officers shall not restrain subjects who are in custody and under control in a manner that compromises the subject's ability to breathe.

#### **7. Officers Shall Automatically Request Medical Aid in Certain Situations**

Every Type III use-of-force, specifically including, but not limited to:

- \* Impact weapon strikes to the head
- \* Impact of the head against a hard, fixed object

The following less-lethal incidents:

- \* CEW applications where "darts" are deployed.
- \* OC spray applications, when a subject is in custody.

After any use-of-force, greater than De Minimis force on subjects who are reasonably believed or known to be:

- \* Pregnant
- \* Pre-adolescent children
- \* Elderly
- \* Physically frail
- \* Mentally unstable

#### **8. Consistent With the Timelines, Officers and Supervisors Shall Ensure That the Incident Is Accurately and Properly Reported, Documented, and Investigated.**

# 8.300 - USE OF FORCE TOOLS

Effective Date: 11/15/2017

This policy addresses the use and deployment of all force tools that are available to sworn Department employees. The following force options are governed by this policy:

- \* CEW/Conducted Electrical Weapons (TASER)
- \* Firearms
- \* Impact weapons
- \* Oleoresin Capsicum (OC) spray
- \* Vehicle-related force tactics
- \* Specialty unit weaponry
- \* Hobble restraint
- \* Neck and carotid restraint

The policies addressing and governing the use of specific force tools are 8.300-POL-1 through 8.300-POL-10, which are contained in the "Use of Force Tools Policy Manual." Those policies and that manual have the full force and effect of WPD policy.

## **The Intended Purpose of Less-Lethal Devices**

Less-lethal devices are used to interrupt a subject's threatening behavior so that officers may take physical control of the subject with less risk of injury to the subject or officer than posed by greater force applications. Less-lethal devices alone cannot be expected to render a suspect harmless.

Support officers should be prepared to take immediate action to exploit the brief opportunity created by the less-lethal device and take control of the subject if safe to do so.

### **1. Officers Will Only Carry and Use Weapons That Have Been Approved by the Department and That the Officer has Been Properly Trained and Certified to Use, Except Under Exigent Circumstances**

Intentional or reckless violations of policy or training standards will result in discipline. Negligent violations of policy or training standards may result in discipline.

The use of Improvised Weapons will be subject to the same standards as Approved Weapons set forth in Section 8.200 - Using Force.

### **2. Uniformed Officers Are Required to Carry at Least One Less Lethal Tool**

Uniformed officers who have been issued a CEW shall carry it.

### **3. Sergeants and Lieutenants Will Ensure That Each Officer in Their Command is Trained and Certified on the Tools They Carry, as Required**

### **4. Officers Are Prohibited From Using Less-Lethal Tools as a Form of Punishment or for Retaliation**

### **5. Officers Shall Not Use Less-Lethal Tools to Prod or Jab Individuals, to Awaken Unconscious or Intoxicated Individuals, or to Prevent the Destruction of Evidence**

## **6. Officers Shall Consider Risks to the Subject and Third Parties When Determining Whether to Deploy any Less-Lethal Tools**

Officers may only use less-lethal force on suspects who are visibly pregnant, elderly, apparently pre-adolescent, or visibly frail when there is an exigency or an immediate threat to officers or third parties.

## **7. Use of Less-Lethal Tools in the Following Circumstances is Only Permitted in Situations Where There is a Risk of Death, Great Bodily Harm, or Serious Physical Injury to the Officer or Third Parties**

- \* When the suspect is in an elevated position where a fall is likely to cause substantial injury or death
- \* When the suspect is in a location where the suspect could drown
- \* When the suspect is operating a motor vehicle or motorcycle and the engine is running or is on a bicycle or scooter in motion
- \* When an individual is handcuffed or otherwise restrained
- \* When an individual is fully contained in a police vehicle

## **8. Officers Must Use Less-Lethal Tools in Accordance with the Tool-Specific Policies**

The policies addressing and governing the use of specific force tools are

### **8.300-POL-3 Use of Force – CEW/CONDUCTED ELECTRICAL WEAPONS (TASER)**

This policy applies to the use of conducted electrical weapons (CEW) by all sworn Department employees.

A CEW in probe deployment is designed to stimulate a portion of the nervous system with sufficient pulsed electrical energy to bring about uncontrolled muscle contractions which override an individual's voluntary motor function. Drive stun mode occurs when the CEW makes direct contact with the subject's body and does not override an individual's motor responses. It is intended to cause significant pain. Use of the CEW in probe deployment is preferred in some circumstances over use in drive stun mode, which can only be used at close range and may cause marks and scarring.

#### **1. Education & Training Section (ETS) Manages the CEW Program**

ETS will maintain the CEW operator's manual.

#### **2. ETS Will Train and Certify Operators Annually**

Only officers who have been trained and certified are allowed to use CEW.

#### **3. Officers Who Have Been Trained and Certified to Carry a CEW and Have Been Issued One Must Carry It During Their Shift**

Officers must carry their CEW in a holster on their support side.

#### **4. Officers Shall Only Deploy CEW When Objectively Reasonable. See Section 8.000**

Officers may use CEWs in the following circumstances:

- \* When a subject causes an immediate threat of harm to the officer or others; or
- \* When public safety interests dictate that a subject needs to be taken into custody and the level of resistance presented by the subject is likely to cause injury to the officer or to the subject if hands-on control tactics are used

When a CEW is used against a subject, either in probe or drive stun mode, it shall be for one standard discharge cycle of operation and the officer using the CEW must reassess the situation. Only the minimum number of operational cycles necessary to place the subject in custody shall be used.

Officers should assume that if they have used the CEW three times against a subject but the subject continues to actively resist or aggress, the CEW may not be effective against that person; the officer shall reassess and consider other options.

Officers shall not deploy multiple CEWs at the same subject, unless the first deployed device fails.

When using CEW in the drive stun mode, officers shall wait a reasonable amount of time between applications to discern if compliance has been gained.

#### **5. CEWs Shall Not Be Used In any Environment Where an Officer Knows That a Potentially Flammable, Volatile, or Explosive Material is Present**

Officers aware of environmental hazards shall alert fellow officers as soon as possible.

#### **6. Officers Shall Issue a Verbal Warning to the Subject and Fellow Officers Prior to Deploying the CEW**

Officers shall issue a verbal warning to the subject, other officers, and other individuals present, that a CEW will be used and defer using the CEW a reasonable amount of time to allow the subject to comply with the warning.

**Exception:** A verbal warning is not required if giving the warning would compromise the safety of the officer or others. In such circumstances, the deploying officer should document his/her reason for believing his/her safety would have been compromised in his/her use of force statement.

#### **7. The Preferred Target for CEW is Center Mass**

Absent an immediate threat to officer or third-party safety that can not be reasonably dealt with in any other fashion, CEW users will not target a subject's head, neck, or genital area. The center mass of the back to the buttocks is a viable target. Targeting the chest and heart area should be avoided if possible. Officers shall target below the ribcage down to the upper thigh, splitting the beltline, if possible. When encountering subjects wearing heavy or loose clothing on the upper body, the legs should be considered as targets.

#### **8. As With the Initial CEW Application, Each Subsequent Application of a CEW Must Be Individually Justified**

a. Officers are Required to Report the Use of a CEW, Regardless of Whether a Subject is Struck.

See Section 8.400-POL-1 #5.

#### **9. Officers Shall Summon Medical Aid Whenever a Subject Has Sustained a CEW Application**

a. Officers Shall Not Remove CEW Barbs That are Embedded in Flesh

CEW probes that are embedded in flesh shall only be removed by fire department personnel or healthcare professionals. Probes embedded in clothing may be removed by an officer. Officers shall collect and submit into evidence all primary components of the CEW cartridge: probes, wires and cartridge.

#### **10. Officers Shall Monitor All Subjects Who Have Sustained a CEW Application While They Are in Police Custody**

11. When Restraining a Subject That Has Been Struck With a CEW, Officers Shall Use a Technique That Does Not Impair Respiration

Once a subject is under control, officers shall place him or her in a recovery position until such time as medical aid arrives.

## **12. CEWs May be Used to Stop a Dangerous Animal**

**13. Officers Shall Conduct CEW Inspections on a Biannual Basis to Ensure That All CEWs are Operable, to Conduct Information Downloads, and Perform Any Necessary Maintenance or Repairs**

## **8.300-POL-4 Use of Force – FIREARMS**

**1. Officers Shall Only Shoot Firearms in Situations Where Deadly Force is Permitted. See Section 8.000**

**a. Firearms May Be Used Against a Dangerous Animal to Deter an Attack or to Prevent Injury to Persons Present**

**2. Officers Shall Only Carry and Use Department-Approved Firearms, Except in Exigent circumstances.**

**3. Officers Must Pass an Annual Firearms Qualification**

All officers are required to qualify with their on-duty, back- up/off-duty firearms as directed by the Education & Training Section supervisor. See Section 9.100.

**4. Officers Shall Not Use Firearms as Impact Weapons, Except When a Suspect is Attempting to Take the Firearm or Lethal Force Is Permitted**

**5. An Officer May Draw or Exhibit a Firearm in the Line of Duty When the Officer has Reasonable Cause to Believe It May Be Necessary for His or Her Own Safety or for the Safety of Others**

When an officer determines that the threat is over, the officer shall holster his or her firearm.

Unnecessarily or prematurely drawing or exhibiting a firearm may limit an officer's alternatives in controlling a situation, may create unnecessary anxiety on the part of the public, and may result in an unwarranted or unintentional discharge of the firearm.

Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm in conformance with this policy on the use of firearms.

**6. Officers Shall Not Fire Warning Shots**

**7. Officers Shall Issue a Verbal Warning to the Subject and Fellow Officers Prior to Shooting a Firearm**

Officers shall issue a verbal warning to the subject, other officers, and other individuals present, that a firearm will be shot and defer shooting the firearm a reasonable amount of time to allow the subject to comply with the warning.

**Exception:** A verbal warning is not required if giving the warning would compromise the safety of the officer or others. In such circumstances, the deploying officer should document his/her reason for believing his/her safety would have been compromised in his/her use of force statement.

**8. Officers Shall Not Fire at or From a Moving Vehicle**

Firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle. The moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force.



An officer threatened by an oncoming vehicle shall, if feasible, move out of its path instead of discharging a firearm at it or any of its occupants.

Officers shall not discharge a firearm from a moving vehicle unless a person is immediately threatening the officer or another person with deadly force.

**Note:** It is understood that the policy in regards to discharging a firearm at or from a moving vehicle may not cover every situation that may arise. In all situations, Department members are expected to act with intelligence and exercise sound judgment, attending to the spirit of this policy and to the Department's use-of-force principles. Any deviations from the provisions of this policy shall be examined rigorously on a case-by-case basis. The involved officers must be able to articulate clearly the reasons for the use of deadly force.

Factors that may be considered include:

- \* Whether the officer's life or the lives of others were in immediate peril
- \* And if there was no reasonable or apparent mean of escape

### **9. Pointing a Firearm at a Person is Type I Reportable Force**

Officers shall document all incidents where they point a firearm at a person. See Section 8.400.

Unholstering or displaying a firearm – including in a low-ready position – without pointing it at a person is not reportable force.

### **10. All Firearms Discharges are Investigated and Reviewed**

Intentional discharges (including discharges against people and against animals) and unintentional discharges are investigated and reviewed by the Force Review Board.

**Exception:** This does not apply to discharges during legal recreational shooting, range training, hunting, or military activity.

## **8.300-POL-5 Use of Force – IMPACT WEAPONS**

This policy applies to the use of Department-approved and exigent (improvised) impact weapons, by all sworn Department employees. An impact weapon is any object that is used to forcefully strike a subject in a manner that is reasonably likely to cause injury. The baton is capable of delivering powerful blows to interrupt or incapacitate an aggressive subject. It is also capable of delivering lethal or permanently disabling blows.

Using any implement to forcefully strike a subject is a reportable use of force governed by this policy.

*See Manual Section 8.300 for information on approved impact weapons.*

### **1. Education & Training Section (ETS) Will Train and Certify Officers on Department-Approved Impact Weapons Every Two Years**

Officers will be trained and certified to use Department-approved impact weapons before being authorized to carry these weapons.

### **2. Officers Shall Only Use Impact Weapons When Objectively Reasonable. See Manual Section 8.000.**

### **3. Officers Will Not Use Impact Weapons on Subjects Who Are Restrained and Under Control, or Complying With Police Direction**

### **4. A Hard Strike to the Head With Any Impact Weapon, Including a Baton, Is Prohibited Unless Deadly Force is Justified**

The head, throat, neck, spine, groin, or kidneys shall not be targeted unless deadly force is justified. Unintentional or mistaken blows to these areas must be reported to ensure that all reasonable care was taken to avoid them.

Preferred target areas include arms, legs and torso.

#### **5. Officers Shall Not Use Flashlights as Impact Weapons, Except in Exigent Circumstances**

The improvised use of weapons, such as flashlights, may present a greater risk of injury than batons. Use of another object in place of the baton, including flashlights, is prohibited unless there is an immediate need to strike and an officer is precluded from using or cannot feasibly use the CEW, baton, or OC spray.

The failure to carry a baton, in and of itself, does not justify the regular use of a flashlight as an impact weapon. Routine reliance on flashlights as an impact weapon is prohibited.

#### **6. Officers Must Justify Each Separate Impact Weapon Application in Their Use-of-Force Report**

a. Officers are Required to Report the Use of an Impact Weapon to their "CAD", Regardless of Whether a Subject is Struck.

### **8.300-POL-6 Use of Force – OLEORESIN CAPSICUM (OC) SPRAY**

This policy applies to the use of OC spray by all sworn Department employees.

Oleoresin Capsicum spray (OC spray) is an inflammatory agent that causes an intense burning sensation of the skin, eyes, and mucous membranes. A one second burst applied directly to the face (direct exposure), even with glasses, will usually result in the immediate closing of the eyes. The individual's eyes will likely close, tear, and swell as a result. When inhaled (secondary exposure), the respiratory tract will likely become inflamed and temporarily restrict breathing to short, shallow breaths. The individual may experience choking, gagging, gasping for breath, or, on rare occasion, unconsciousness. The individual may experience nausea, lung pain, or temporarily impaired thought processes. The individual may become disoriented or lose his or her balance.

OC spray may reduce or eliminate the need for substantial physical force to make an arrest or gain custody. It may reduce the potential for injuries to officers and suspects.

#### **1. Education & Training Section (ETS) Will Train and Certify Officers in the Use of OC Spray Every Two Years**

The OC spray policy and training will incorporate the evolving guidance contained within the Basic Law Enforcement Academy course on less-lethal force as well as guidance from the medical community.

#### **2. Officers Shall Only Use Department-Issued or Approved OC Spray**

#### **3. Officers Will Use OC Spray, Including for Crowd Dispersal or Protection, Only When Such Force is Objectively Reasonable. See Manual Section 8.000.**

For use of OC spray in the context of crowd management, look to any special orders or verbal directives with regards to the environment .

a. OC Spray May Be Used Against a Dangerous Animal to Deter an Attack or to Prevent Injury to Persons Present

b. OC Spray Shall Not Be Used Unless the Use of Physical Force Is Necessary

#### **4. Officers Shall Issue a Verbal Warning to the Subject, Fellow Officers and Other Individuals Present Prior to Using OC Spray**

Officers shall issue a verbal warning to the subject, other officers, and other individuals present, that OC spray will be used and defer using OC spray a reasonable amount of time to allow the subject to comply with the warning.

**Exception:** A verbal warning is required if feasible and unless giving the warning would compromise the safety of the officer or others.

#### **5. Officers Must Justify Each Separate Application of OC Spray**

After the initial application of OC spray, each subsequent spray must also be reasonable and the employee should reevaluate the situation accordingly.

#### **6. Officers are Required to Report the Use of OC Spray, Regardless of the Effect, as Well as the Decontamination Procedures That Followed**

See Use of Force Reporting..

#### **7. The Application of OC Spray on Persons in Restraints Such As Handcuffs Must Be to Protect an Officer or Member of the Public from Physical Injury**

#### **8. Officers Shall Direct OC Spray at the Specific Subject(s) Who are Posing a Threat**

Officers deploying OC will attempt to minimize exposure to non- targeted parties.

#### **9. Officers Shall Assist Exposed Subjects with Decontamination and Water- Flushing of Exposed Areas as Soon as Feasible**

If the subject was exposed inside or in a confined space, officers will remove the subject as soon as possible from the contaminated area and expose the individual to fresh air.

Officers shall request medical response or assistance for subjects exposed to chemical spray when they complain of continued effects after having been decontaminated, or they indicate that they have a pre-existing condition (such as asthma, emphysema, bronchitis, or heart ailment) that may be aggravated by chemical spray.

Officers shall monitor exposed subjects for changes in their condition while in police custody and request medical evaluation as needed.

### **8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS**

Authorized vehicle-related force tactics include the PIT (Pursuit Intervention Technique) and stop sticks. In certain circumstances, vehicle-related force tactics may be considered deadly force.

#### **1. Only Officers Who are Trained and Certified in the Use of These Tactics are Permitted to Use Them**

#### **2. The Use of Stop Sticks Against a Motorcycle is Considered Deadly Force**

#### **3. Officers Will Use Vehicle-Related Force Tactics Only When Objectively Reasonable. See Section 8.000.**

#### **4. Officers Shall Consider Secondary Risks to the Subject and Third Parties When Determining Whether to Deploy Vehicle-Related Force Tactics**

Secondary risks to pedestrians and other vehicles include, but are not limited to, the dangers presented by a spun-out vehicle and loose tires on the road.

#### **5. Officers Will Report the Use of Stop Sticks as a Use-of-Force**

#### **8. See Section 8.300-POL-4 for Guidance on Shooting at or From a Moving Vehicle**

## **8.300-POL-9 Use of Force – HOBBLE RESTRAINT**

### **1. Officers May Use the Hobble Restraint to Temporarily Control Violently Combative Subjects**

A hobble restraint is a strap designed to restrain a subject's feet.

Officers may use the hobble restraint when objectively reasonable. See Section 8.000.

The hobble restraint may not be connected to handcuffs or other restraints (i.e., "hog tie.")

### **2. Officers Must Place Subjects in the Hobble Restraint Either in an Upright, Seated Position or on Their Side and Not Face Down, Including During Transport**

### **3. Officers Must Closely Monitor Subjects Who Have Been Placed in the Hobble Restraint**

Officers shall monitor for signs, such as labored breathing or sweating, of serious medical conditions and provide for immediate medical treatment as necessary.

### **4. Officers Shall Report any Use of the Hobble Restraint in conjunction with Use of Force.**

## **8.300-POL-10 Use of Force – NECK AND CAROTID RESTRAINTS**

Neck and carotid restraints are strongly disfavored by the Department due to the high risk of injury or death when improperly applied. Any use of a neck or carotid restraint is a Type III use-of-force, will result in a investigation, and will be subject to strict scrutiny by the Force Review Board.

### **1. Officers Are Prohibited From Using Neck and Carotid Restraints Except When Deadly Force is Justified**

### **2. Officers Must Place the Subject in the Recovery Position and Summon First Aid Immediately Following the Application of Neck and Carotid Restraints, if at all Possible**

### **3. Officers Shall Monitor All Subjects Who Have Been Subjected to Neck and Carotid Restraints While They Are in Police Custody**

# 8.400 - USE OF FORCE REPORTING

## 8.400 - Use of Force Reporting and Investigation

Effective Date: 2.10.18

### 8.400-POL-1 Use of Force – REPORTING AND INVESTIGATION

The Westover Police Department recognizes the magnitude of the responsibility that comes with the constitutional authority to use force. This responsibility includes maintaining vigorous and transparent oversight systems to ensure accountability to the community and maintain their trust. In order to ensure transparency and accountability officers must clearly and reliably report and thoroughly document each time they use force defined as Type I, II, or III.

All uses of force are reportable except de minimis force.

Supervisors must clearly and reliably document the steps they have taken to investigate and review the actions of the officer and any additional steps taken or recommendations for further review and action.

The requirements for reporting, investigating, and reviewing use-of-force incidents are separated into three types, based on the nature of the incident. The goal is to focus police resources on the most serious cases, while also requiring that all reportable uses of force are reported and not under-classified. The categorization of the uses of force is based on the following factors: degree of injury caused, potential of the technique or weapon to cause injury, degree of pain experienced, degree of disability experienced by the subject, complaint by the subject, degree of restraint of the subject, impairment of the functioning of any organ, duration of the force, and physical vulnerability of the subject.

Force	Threshold	Examples	Components of Reporting & Investigation
De Minimis	Physical interaction meant to separate, guide, and/or control that does not cause pain or injury	Using hands or equipment to stop, push back, separate or escort, the use of compliance holds without the use of sufficient force to cause pain, and compliant handcuffing	No investigation or reporting required
Type I	Transient Pain Disorientation Distraction	“Soft” takedowns (controlled placement)  Strike with sufficient force to cause pain or complaint of pain	Supervisor Screening In-person (Unless Impractical)  Chief Review

Force	Threshold	Examples	Components of Reporting & Investigation
		Open hand technique with sufficient force to cause pain or indication of pain	
Type II	Physical Injury (Greater than temporary pain) Reasonably expected to cause physical injury Complaint of injury Use of CEW (TASER) Use of OC Spray Use of Impact Weapon causing less than a Type III injury. K9 Deployment with Less Than Type III Injury or Complaint of Less Than a Type III injury Vehicle Tactics Pursuit Intervention Technique Hobble Restraint	Abrasion Bruising "Hard strike" Hard takedown Kick Soft Tissue injury (face, eyes w/OC) (Area of Dart impact w/TASER)	Supervisor Screening at the Scene Use-of-Force Officer Statement. Collection of Evidence Review of Video Chief review
Type III	Great Bodily Harm Substantial Bodily Harm Deadly Force Loss of Consciousness Neck and Carotid holds Criminal Conduct by Officer(s) Serious Misconduct by Officer(s) Impact Weapon Strike to the Head	Broken arm Closed head injury Discharging a firearm at a person	Supervisor Screening at the Scene Use-of-Force officer statement Collection of Evidence Review of Video Chief review

1. Officers Shall Report All Uses of Force Except De Minimis Force

Officers shall thoroughly document all reportable uses of force to the best of their ability, including a description of each force application.

The Department recognizes the inherent limitations on perception and recall following tense and rapidly evolving circumstances.

2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force

a. Officers Who Use Reportable Force While On-Duty Shall Call for an On-Duty Supervisor

b. Officers Who Use Reportable Force While Exercising Police Authority in all Other Circumstances Shall Call and Request to be Contacted by a Duty Supervisor.

c. Officers Who Discharge a Firearm at a Person While Off Duty, Except During Military Activity, Shall Call and Request to be Contacted by an Duty Supervisor.

\* When an officer is involved in an incident while working off-duty, contact an "on-duty" supervisor (or a senior officer assigned to the same off-duty detail, when there is one) will conduct the investigation and then submit it to the involved officer's chain of command for approval.

d. Animal Shootings and Unintentional Discharges not Resulting in Injury are not Considered Force, but can be Investigated Under the Same Mechanisms Prescribed in This Policy

3. The Sergeant Will Review the Incident and Do One of the Following:

\* Classify the investigation as Type I Use of low-level physical force that:

- Causes transient pain or disorientation, but does not cause, and would not reasonably cause, injury or otherwise require a Type II investigation

- Intentionally pointing a firearm or shotgun at a person

\* Un-holstering or displaying a firearm without intentionally pointing it at a person – including the high and low-ready positions – or simply displaying any weapon, is not a reportable use-of-force

\* Classify the investigation as Type II Use of physical force that:

- Causes physical injury greater than temporary pain, or

- Could reasonably be expected to cause such an injury, or

- Results in a complaint of such an injury, and does not rise to the level of a Type III investigation

\* Call the Chief of Police to provide details & make them aware of the situation.

- Use-of-force that results in, or could reasonably be expected to result in, great bodily harm or substantial bodily harm, to include broken bones and an admission to the hospital for treatment, or

- Use of deadly force, including those incidents involving the discharge of a firearm, or

- Use-of-force that results in a subject's loss of consciousness as the result of the force, or

- Use-of-force that potentially involves criminal conduct or serious misconduct on the part of the officer, or

- Application of a neck strike/hold that goes beyond the intention of a properly applied strike/hold.

- Hard strike to the head or neck with an impact weapon (flashlight, baton or other object)

4. The Sergeant, Will Either Initiate a Type III Investigation or Suggest Another Type of Investigation

5. When Multiple Officers are Involved in a Use-of-Force Incident, the Entire Incident Will be Reported and Reviewed at the Highest Level Reached by any Single Officer During the Incident

If one officer uses Type I force while another officer uses Type II force, in the same incident, both involved officers will be required to report in accordance with Type II investigation requirements.

6. Sergeants May Request a Higher Level of Investigation for a Given Force Incident

Factors to consider when determining whether a higher level of investigation is appropriate include, but are not limited to, the following:

\* The nature of the resistance encountered

\* Force used against a handcuffed, or otherwise restrained, under- control, or in-custody subject

\* Force used against a pregnant or vulnerable subject (e.g., age or infirmity)

\* Incidents resulting from faulty information or unintentional error

\* When it is unclear whether the officer's actions were consistent with policy or law

7. No Supervisor Who Used, Participated in, or Ordered Reportable Force, Will Conduct the Investigation of the Incident, Unless it is Impractical Under the Circumstances

When a sergeant uses, participates in, or orders reportable force, a lieutenant shall determine who will conduct the investigation.

8. Officers are Required to Report the Use of OC Spray, TASER, Regardless of the Effect

Reporting is required whether or not the subject is struck, affected, or taken into custody.

9. Once a Subject is Free to Leave, Officers Will Not Detain for Screening Purposes

10. The first line supervisor Will Make Appropriate Notifications of Serious Officer Misconduct or Criminal Liability

The first line supervisor will notify the Chief if information is obtained at any step in the investigation that suggests either serious officer misconduct or criminal conduct.

If the situation warrants, the first line supervisor may relieve the officer from duty, upon prior approval from Chief of Police, for up to 24 hours pursuant to an investigation..

11. Whenever the Department Investigates the Discharge of a Firearm by an Officer, the Firearm Must be Inspected by Department firearms coordinator Prior to Being Returned to the Involved Officer



\* The firearms coordinator will verify:

- The firearm is approved by the Department for use by the officer
- The ammunition is approved by the Department for use by the officer. Neither the firearm nor the ammunition has been modified to be out of compliance with Department policy
- Provide to the Chief a memorandum identifying:

\* The firearm evaluated

\* The name and serial number of the officer to whom it is assigned

\* The type of tests performed on the firearm

\* The results of those tests

\* The individual who conducted the test.

\* Conclusion whether the firearm is functioning properly

\* Any malfunctions discovered with the firearm

\* Any other information relevant to the functioning of the firearm inspected

#### **8.400-POL-2 Use of Force – TYPE I INVESTIGATIONS**

1. First line supervisors Must Screen Uses of Reportable Force In-Person With the Involved Officer and the Subject, Unless Impractical, Prior to the Subject Being Booked or Released

If the subject is free to leave, the detention will not be extended to facilitate the screening process; however, the subject may choose to remain at the scene to speak with the senior officer. Involved Officers' Responsibilities During a Type I Investigation.

If there is any uncertainty or concern about the reason or nature of the force used, or the existence of any injury, the sergeant will immediately respond to the scene, unless impractical in the circumstances.

2. Officers Shall Document All Uses of Reportable Force

Type I reporting is not intended to be comprehensive or burdensome. In nearly all Type I use-of-force cases, it should be sufficient to complete the departmental form and write a brief narrative entry describing what occurred.

Additional guidance on how to report Type 1 force may be determined by the Chief of Police.

When complaint of pain from handcuffing is the only reportable force used in an incident, officers shall complete a brief narrative in their CAD, noting handcuffs were applied, that the subject complained of pain from the handcuffs, what steps the officer took to ensure proper fit and address the complaint of pain, and that no injury was apparent. No other statement is required. A supervisor must inspect the suspect to confirm there is no visible injury, with the caveat that officers may not extend a detention solely to await the arrival of a supervisor.

Witness officer statements are not required for a Type I use-of-force. Only the involved officer and the screening sergeant fill out statements.

3. The Officer's Immediate Supervisor Will Review the Documentation as Soon as Practicable and Will Direct the Officer to Provide More Information, if Needed.

Sergeants shall give a brief summary of their review of the incident and give their approval [or disapproval] in the comments section of report.

Body Cam video review is required of the sergeant or chain of command.

Additional guidance on how to investigate "Use of Force" will be provided by Chain of Command.

#### **8.400-POL-3 Use of Force – TYPE II INVESTIGATIONS**

1. In Conducting a Type II Investigation, a Sergeant Will Respond to the Scene and Thoroughly Investigate the Event, Unless Officer or Public Safety Will be Compromised as a Result.

The sergeant retains the discretion to refer any use of force to department Chain of Command for their determination of whether to take investigatory responsibility over the matter.

2. The Sergeant Will Conduct the Investigation as an Impartial Fact-Finder and Shall Not Draw Conclusions About Whether the Force was Within Policy or Law

3. The Sergeant Will Make Appropriate Notifications When He or She Believes that Criminal Conduct or Serious Misconduct May Have Occurred

When a sergeant believes that there may have been criminal conduct or serious officer misconduct, the sergeant will consult with the next level chain of command to determine that Chief of Police is notified.

4. Sergeants Will Complete Their Review Within 3 Days of Learning of the Use-of-Force

Exception: The lieutenant may approve an extension.

Sergeants shall give an appropriate summary of their review of the incident and give their approval [or disapproval] in the comments section.

a. Each Reviewer in the Chain Will Review the Report Within a Reasonable Period of Time to Ensure it is Thorough and Complete

Every reviewer in the chain of command is responsible to ensure the accuracy and completeness of the Use-of-Force Reports completed by sergeants. Lieutenants and captains shall assess the quality of the sergeant's review and document their own review in the comments section. The lieutenant's and captain's review shall indicate why the approval or disapproval of the force is warranted.

If any investigative deficiencies exist, the reviewer will initiate corrective action where appropriate.

\* When it appears to a reviewer that there is additional relevant and material evidence that may assist in resolving inconsistencies or improving the reliability or credibility of the findings, that supervisor should ensure that additional investigation is completed.

\* When it appears to a reviewer that the findings are not supported by a preponderance of the evidence, that reviewer will modify the findings after consultation with the investigating supervisor and previous reviewers, and document the reasons for this modification, including the specifics evidence or analysis supporting the modification.

5. An Investigation May Be Re-Assigned

At the discretion of the officer's chain of command, a use-of-force investigation may be assigned or re-assigned to another supervisor, either within or outside of the shift in which the incident occurred, or may be returned to the unit for further investigation or analysis.

6. Where, After Investigation, a Use-of-Force is Found to be Out of Policy, or the Investigation of the Incident is Lacking, the Chief or Designee Will Direct and Ensure Appropriate Corrective Action, if Warranted, Including in the Case of Misconduct

7. When the Use-of-Force Indicates Policy, Training, Tactical or Equipment Concerns, the Chief or Designee Will Ensure That Necessary Training is Delivered and That Policy, Tactical or Equipment Concerns are Resolved

8. After the Chief of Police has Reviewed the Use-of-Force Packet and Finds the Investigation Complete and Supported by the Evidence, the chief will make formal notice on actions that need to be taken.

**8.400-POL-4 Use of Force – TYPE III INVESTIGATIONS**

1. The Chief of Police, or their designee's, Will Conduct All Type III Investigations, With Assistance from the On-Scene Supervisor.

2. Responses Will Be Tailored to the Circumstances, But Will Normally Include One investigator, one officer and the Chief of Police or their designee.

3. The first line supervisor shall be available to brief the Chief on the initial case for "Use of Force"

4. The Chief Shall Staff the investigation with Employees Who Have the Appropriate Expertise and Investigative Skills

Any investigations should be staffed with individuals with appropriate expertise and investigative skills to ensure that uses of force that are contrary to law or policy are identified and appropriately resolved; and that its investigations allow any review board to identify trends or patterns of policy, training, equipment, or tactical deficiencies, or positive lessons related to the use-of-force.

5. Training Advisor Will Have Certain Responsibilities During a Type III Investigation

The Training representative will not have investigative roles at the scene of a use-of-force, but will attempt to identify any policy or training issues

6. An investigator shall be assigned and will present information to Chief of Police under his directives.

7. For Type III Investigations, All Involved Officers Will Provide a Recorded Statement as Directed by the first line supervisor.

Typically, the first line supervisor will direct officers who used Type I or Type II force to complete a use-of-force statement and officers who used Type III force to participate in an audio-taped interview.

Exception: If information suggests possible criminal conduct by an officer, that officer will not be compelled to provide any statement or interview prior to the conclusion of any criminal investigation.

8. Within 30 Days (90 Days for Firearm Discharge Cases), the first line supervisor will present the Completed Investigation to the Chief for Review as to Completeness of Investigation

The Chief's review will normally be completed within three business days. The review will then be forwarded to the involved officers supervisor with guidance on remediation, training and/or any further actions required.

9 . Any Officers Who had Significant Involvement in any Lethal Force Incident may be required to See a Department-Approved MHP for a Post-Incident Debrief

Significant involvement includes, but is not limited to:

- \* Serving as a cover officer
- \* Administering any medical aid to the suspect or a victim
- \* Being the victim of violence from the suspect
- \* Using any reportable force during the incident prior to the shooting

The above examples are a sampling of officer roles that will be considered significant involvement; however, any officers may be subject to a mandatory MHP debrief on a case-by-case basis at the discretion of the Chief of Police.

All officers referred to an MHP for a mandatory debrief will be given direction as to the "When & Where" with reference to meeting with the MHP.

If desired, witness officers who witnessed any portion of a lethal force incident may contact a Department approved mental health professional (MHP) for a psychological post-incident debrief. (Department-approved MHPs are specially-trained in debriefing law enforcement incidents.

10. The Investigator assigned to this incident Will Notify the Chief of Police if Information is Obtained at any Stage of the Investigation That Suggests Either Serious Officer Misconduct or Criminal Liability

The assigned investigator will continue to complete the use-of- force investigation.

a. They Will Take the Following Actions When Possible Criminal Conduct is Revealed

\* Screen all information through a screening, who will see to it that no information that would compromise the criminal investigation is passed on to the investigator who is supervising the criminal investigation.

- Additionally, any compelled interview of the subject officer(s) will be delayed until the end of the investigation.

\* Consult with a representative of the County Prosecutor's Office or the City Attorney's Office when necessary.

- The criminal investigation will have priority access to witnesses and evidence.

b. The investigator Will Take the Following Actions When Possible Serious Officer Misconduct is Revealed:

Upon being involved in a use-of-force that will be investigated at Type I, the involved officer (any officer who used the reportable force):

1. Notifies an on-duty sergeant
2. Uploads and flags any video (body cam) with the incident number before going off shift
3. Documents the incident, as appropriate
4. Completes a Type I Use-of-Force Report by the conclusion of the current shift, unless the sergeant approves an extension

The report will include the following elements:

- \* Brief summary of the incident
- \* Description of the Type I force
- \* Why the force was necessary
- \* Who screened the incident
- \* Where the screening occurred
- \* Anything else noteworthy

#### **Use of Force – RESPONSIBILITIES OF THE SERGEANT DURING A TYPE I INVESTIGATION**

When conducting a Type I investigation, the sergeant:

1. Screens the incident in-person with the involved officer
  - \* If there is any uncertainty or concern about the reason or nature of the force used, or the existence of any injury, the sergeant will immediately respond to the scene, unless impractical in the circumstances.
  - \* If the sergeant responds to a scene in which there is allegation of injury or pain, the sergeant will photograph the bodily area of the alleged injury or pain and an overall photo of the subject.
  - When a subject is not in custody, the sergeant will request permission before taking photographs.
  - When a subject is in custody, the sergeant will take photographs unless the subject refuses and safety dictates, after voluntary and non-coercive attempts fail
2. Determines if the use-of-force is appropriately classified as a Type I incident
  - \* If unable to make that determination, the sergeant will consult with the lieutenant to assist in the determination.

3. Evaluates the incident for any concerns (tactical, threat assessment, etc.)

\* If it appears that serious misconduct may have been involved with the use-of-force, the sergeant will ensure that Chief is contacted and consult the investigator regarding reclassification of the incident as Type II or Type III.

4. Addresses any concerns with the involved officer and initiates corrective action, as necessary

5. Directs the involved officer to complete a Type I Use-of-Force Report.

6. Reviews all statements with reference to the incident.

7. Orders the officer to provide additional information or clarification if the other statements are unclear

8. Completes a brief summary of their review of the incident to the investigator.

9. Forwards the reports to the Chief of Police.

#### Use of Force –INVOLVED OFFICERS' RESPONSIBILITIES DURING A TYPE II INVESTIGATION

Upon being involved in a use-of-force that will be investigated at Type II (physical injury [greater than temporary pain], reasonably expected to cause physical injury, complaint of injury, use of CEW, use of OC spray, use of impact weapon, vehicle-to-vehicle contact to end a pursuit, full- restraint position), the involved officer (any officer who used the reportable force):

1. Requests medical attention for any injured persons

2. Notifies an on-duty supervisor. If none on duty contact officer's first line supervisor.

3. Uploads and flags all video (body cam) with the incident number before going off shift

4. Completes a complete of incident with senior officer on duty.

5. Completes a Type II Use-of-Force Report by the conclusion of the current shift, unless exigent circumstances require an extension

The statement will include the following elements:

\* The name and unit number of the officer who used force

\* The names of other officers, whether or not they used force, and identified witnesses present

\* A detailed description of the circumstances, and the valid law enforcement objective, that led up to the contact with the subject

\* A detailed description of the words, actions or behaviors of the subject that precipitated the need for force

\* A detailed description of any force and non-force actions used, how those actions furthered the intended law enforcement objective, and the observed results

\* A detailed description of any force clearly observed being used by other officers during this incident

\* A detailed description of any apparent injury to the subject, any complaint of injury, or the lack of injury, including information regarding any medical aid or medical evaluation provided

\* The name and serial number of the sergeant who screened the incident

**Use of Force –RESPONSIBILITIES OF WITNESS OFFICERS DURING A TYPE II OR TYPE III INVESTIGATION (NOT A FIREARMS DISCHARGE)**

A witness officer (any officer who was on-scene at the time the force was used and who did not use reportable force):

1. Protects the scene and related evidence
2. Stands by at the scene until released by the sergeant or first line supervisor (for a Type II investigation) or the first line supervisor (for a Type III investigation)
3. Uploads and flags all video (body cam) with the incident number before going off shift
4. Provides a Use-of-Force Witness Officer Statement, as directed by the on- duty supervisor (for a Type II investigation) or the first line supervisor (for a Type III investigation). If a witness officer is aware that reportable force was used but not reported, the witness officer shall provide the witness statement to his or her supervisor.

**Use of Force –RESPONSIBILITIES OF WITNESS OFFICERS DURING A TYPE III INVESTIGATION (FIREARMS DISCHARGE)**

A witness officer (any non-shooting officer who was on-scene at the time the force was used):

1. Protects the scene and related evidence
2. Answers questions posed by a supervisor without being compelled
3. Conducts a scene walkthrough and briefings with the first line supervisor if directed
4. Remains at the scene until directed by the first line supervisor.
5. Completes a written statement prior to the end of shift, as directed by first line supervisor.

Exception: Officers who witness the firearms discharge but use Type III force will participate in an recorded use of force interview with the investigating sergeant and detectives, if requested to do so, by the conclusion of the current shift, unless exigent circumstances require an extension.

6. If desired, witness officers who witnessed any portion of the firearms discharge may contact a Department-approved mental health professional (MHP) for a psychological post-incident debrief. (Department-approved MHPs are specially-trained in debriefing law enforcement incidents.

\* The witness officer may bring a family member along at no extra charge to any or all covered visits.

**Use of Force –RESPONSIBILITIES OF THE SERGEANT DURING A TYPE II INVESTIGATION**

When conducting a Type II investigation, the sergeant:

1. Responds to the scene

2. Examines the subject of the force for injury

\* When feasible, the sergeant will assess the subject's injuries and determine whether the subject's injuries are consistent with the force reported by the officer(s).

3. Interviews the subject for complaints of injury

4. Confirms that appropriate medical aid is rendered to any injured party

5. Obtains basic information and determines if the incident requires screening with an investigator

6. Identifies and secures evidence to enable him or her to summarize the use of force and the facts and circumstances surrounding it, including:

\* Physical evidence

\* Audio and video recordings

\* Photographs

\* Documentation of the presence or absence of injuries

7. Attempts to locate relevant civilian witnesses and arranges for witnesses to be interviewed

\* An officer who was involved in, or witnessed, the use of force shall not conduct witness interviews.

\* If witnesses do not want to be interviewed, the sergeant shall record their contact information.

\* Where practicable and warranted in the circumstances, the sergeant will arrange for all interviews with civilian witnesses to be audio recorded. Civilian witnesses shall be interviewed separately, unless unreasonable under the circumstances.

- Interviews of the subject, or the subject's refusal to be interviewed, will be audio or video recorded, if feasible.

\* Documents all efforts to locate and interview civilian witnesses;

\* If no civilian witnesses were located, documents that none were found.

8. Reviews CAD to make sure that all officers at the scene are contacted to determine if they used or observed force

Conducts separate interviews of officers involved in a use of force incident, unless unreasonable under the circumstances and the sergeant documents the circumstances.

Exception: Whenever there is an indication of possible criminal conduct by an officer, the officer will not be compelled to provide a statement.

9. Directs the involved officer(s) to complete a Type II Use-of-Force Report.

Exception: Whenever there is an indication of possible criminal conduct by an officer, the officer will not be compelled to provide a statement.