

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Edgardo Garcia

**SUBJECT: OFFICER INVOLVED INCIDENT
TRAINING REVIEW PANEL
REPORT FOR 2017 AND 2018**

DATE: October 10, 2019

Approved



Date

10-11-19

INFORMATION

BACKGROUND

For two decades the San José Police Department has engaged in formal assessments of lethal police incidents with an eye toward better managing those encounters and ultimately reducing harm to the public, offenders, and officers alike. This type of after-action review has evolved over time in pursuit of best practices in policing.

- In 1999, the Police Department established the Officer-Involved Shooting Incident Training Review Panel. The panel reviewed all officer-involved shootings which caused an injury or death, with the objective of minimizing the risk of injury.
- In 2004, the Police Department adopted the Independent Police Auditor's recommendation that the Police Department prepare an annual report to the City Council outlining policies, procedures, training, or other measures generated by the deliberations of the Officer-Involved Shooting Incident Training Review Panel.
- In 2008, the Police Department established the In-Custody Death Training Review Panel (for non-shooting deaths). This panel mirrored the Officer-Involved Shooting Training Review Panel's practices and objectives.
- In 2015, the Police Department combined the two existing panels into one Officer-Involved Incident Training Review Panel. The membership and procedures of the new Officer-Involved Incident Training Review Panel are the same as for the existing panels that it replaced.

The Panel consists of the Chief of Police, a representative of the City Attorney's Office, the Independent Police Auditor, and selected members of the Chief's Command staff; usually

including the Assistant Chief of Police, Deputy Chief for the Bureau of Field Operations, Deputy Chief of the involved Department member's Bureau, Training Unit Commander, Internal Affairs Commander, and the Homicide Unit Commander.

During the panel review, the Homicide Unit Commander presents a factual synopsis of the incident to members of the Panel. The Panel members are free to ask questions and discuss the circumstances surrounding the shooting incident. If the Panel determines that remedial or precautionary measures can be taken, the Panel will make a referral to the Police Department to develop appropriate training or changes in department policies and procedures.

The analysis and deliberations of the Panel when coming to these recommendations are subject to the attorney-client privilege and therefore are confidential. The recommendations and the Police Department's efforts to implement them are the subject of this Officer-Involved Incident year-end report to the City Council.

ANALYSIS

This Officer-Involved Incident report covers the Officer-Involved Incident Training Review Panel's recommendations, and measures taken, for the years 2017 and 2018. Going forward, it is our intention to present this report on an annual basis.

2017 Officer Involved Incident Training Review Panel Report

Summary

From January 1 to December 31, 2017, there were a total of eight officer-involved shootings. There were no in-custody (non-shooting) deaths. These incidences were reviewed by the Santa Clara County District Attorney's Office who determined that each incident was legally justified.

Recommendations

The Panel's recommendations for 2017 were to introduce Tactical Conduct concepts into our ongoing use of force/de-escalation training, continue the process of delivering Crisis Intervention Team training to all sworn personnel, purchase additional Tasers and require all officers to carry one, continue training personnel in the use of projectile impact weapons, and update department policy regarding:

- Tactical Conduct
- Documentation of Use of Force
- Supervisor's responsibilities after a Use of Force incident
- Command Officer's responsibilities after a Use of Force incident

Tactical Conduct/De-Escalation Training

De-escalation techniques are tactics utilized by officers that seek to minimize the likelihood of the need to use force during an incident while increasing the likelihood of voluntary compliance.

Tactical conduct techniques build on the principals of de-escalation and often involve team tactics using time, distance, and shielding in an effort to slow down the situation so that more options and resources are available for incident resolution. The overall goal is to resolve the situation while avoiding harm to all persons involved.

The Police Department continued to expand on its de-escalation curriculum by weaving tactical conduct principals into the de-escalation components of perishable skills training. In-service personnel received ten hours of Force Options/Firearms, Defensive Tactics, and Taser training that included tactical conduct and de-escalation exercises. All Recruits in the Academy were provided eight-hours training in utilizing Tasers while incorporating tactical conduct and de-escalation techniques.

Ongoing Crisis Intervention Training

The Crisis Intervention Team (CIT) was created with the intent of training personnel who are first responders (dispatchers and officers) to more effectively handle calls for service where a subject may be mentally ill, in psychological or emotional crisis, or the subject of a hostage/barricade situation.

To become CIT members, patrol officers and public safety dispatchers attend a 40-hour curriculum under the instructional supervision of mental health professionals, family advocates, and mental health consumer groups. The training enables the officers and dispatchers to understand that mental illness is a disease, not a crime. Most of our staff have received the training.

Instructors were chosen from a variety of sources; Stanford University, San Jose State University, Menlo Park Veteran's Hospital, Santa Clara County Mental Health Department, the Alliance for the Mentally Ill, various community agencies, and those in private practice with experience in the assessment and treatment of the mentally ill.

CIT topics of instruction included schizophrenia, major depression, bipolar disorder, developmental disabilities, and other illnesses. Role-playing exercises and non-violent interventions were also topics addressed during the Basic Police Academy and during professional development training of in-service personnel.

Tasers

The Department continued to evaluate new less-lethal weapons and technology to meet the needs of our community and officers. The Department purchased additional Tasers for use by

department personnel. The entire patrol force has been trained in the use of a Taser and all officers are required to carry the "less-than-lethal" device.

All Recruits in the Academy were provided eight-hours training in utilizing Tasers while incorporating tactical conduct and de-escalation techniques.

Projectile Impact Weapons

Officers continued to utilize the 40mm Projectile Impact Weapon which has proven to be beneficial when confronting violent suspects. All Recruits in the Academy were provided with five-hours of training on utilizing the Stun-Bag shotgun as a less-lethal option.

Policy Updates

Additions and modifications were made to the Duty Manual relating to De-escalation, Reportable Force, and Responsibilities when force is used. These new protocols brought the Department's required reporting in line with best practices. Additionally, the procedures were woven into in-service perishable skills training attended by in-service officers and expanded upon in the police academy. Memorandums reflecting these policy changes are attached to this memorandum, as follows:

- Attachment A: SJPD Memorandum 2016-037 "Tactical Conduct"
- Attachment B: SJPD Memorandum 2017-007 "Documentation of Reportable Force"
- Attachment C: SJPD Memorandum 2017-037 "Supervisor's Responsibility"
- Attachment D: SJPD Memorandum 2017-036 "Command Officer Responsibility by Use of Force Category"

2018 Officer Involved Incident Training Review Panel Report

Summary

From January 1 to December 31, 2018, there were a total of five officer-involved shootings and two in-custody (non-shooting) deaths. These incidences were reviewed by the Santa Clara County District Attorney's Office who determined that each incident was legally justified.

Recommendations

The Panel's recommendations for 2018 were to: continue our earlier focus on use of force/de-escalation training, continue training personnel in CIT techniques, assess new less lethal weaponry, acquire additional Stun-Bag shotguns, and to update policy requiring that all Patrol officers carry a less-than-lethal projectile impact weapon.

Use of Force/De-Escalation Training

In 2018 the Police Department continued to expand on its de-escalation curriculum, weaving de-escalation components into all in-service perishable skills training.

All sworn personnel assigned to the Bureau of Field Operations received an additional two-hours of Tactical Communications training to equip them with tools to gain voluntary compliance utilizing the following techniques:

- Verbal persuasion
- Advisements and warnings before administering force when applicable
- Clear instructions
- Techniques to calm agitated subjects
- Avoidance of language that could potentially escalate the situation

Sworn personnel also attended eight hours of Driver Simulator/Force Options Simulator training where officers were provided with various ethical decision-making models and practiced the identification of alternative courses of action, shareholder recognition, and outcomes. The training reiterated the Department's value of the sanctity of human life and the responsibility of our officers to perform their duties lawfully and ethically. This training is renewed every 24-months to maintain Peace Officer Standards and Training (POST) certification.

The Force Options Simulator provided reality-based scenario training ranging from routine patrol stops to complex mental-health crisis and high-risk domestic situations. These were emotionally challenging role-playing/simulation scenarios with branching decision formats. Officers had an opportunity to exercise every facet of their training to include; tone of voice, de-escalation strategies, and force options as necessary. During this scenario training the trainers made adjustments to hone in on the individual aspects of the officers' judgment, situational awareness, and de-escalation skills. Officers and supervisors were required to explain the force option selected during the exercise and justify their decisions as being within policy and law.

Bureau of Field Operations sworn personnel completed an hour-long Active Shooter tabletop exercise focusing on "Rescue Task Force" and minimizing the loss of life. The training cycle also included eight-hours of First Aid Training focusing on blood-loss prevention and introducing new trauma kits to better serve officers and community members in need of medical intervention. Additionally, personnel participated in a two-hour Domestic Violence Update focusing on de-escalating potentially dangerous situations.

Continued Crisis Intervention Training

In 2018 the Police Department continued working toward our goal of having every member of the Department attend the 40 hour CIT academy. The training curriculum remains the same as described earlier in this memorandum.

In addition, we connected with the County Mobile Crisis Team to create a curriculum to provide joint instruction to all sworn personnel with an emphasis on how to manage individuals in crises

New Less-Than-Lethal Weaponry

The Police Department continued to pursue new less-lethal weapons and technology to meet the needs of our community and officers. The Department recently evaluated a less-than-lethal device referred to as "BolaWrap 100," which is a hand-held remote restraint device that discharges an 8-foot bola style tether to entangle a subject at a range of 10-25 feet. The BolaWrap 100 is designed to restrain potentially violent or actively violent individuals. This project is still in progress.

The Police Department purchased additional Tasers for use by department personnel. The entire patrol force has been trained in the use of a Taser and is required to carry the "less-than-lethal" device.

Projectile Impact Weapons

Officers continued to utilize the 40mm Projectile Impact Weapon which has proven to be beneficial when confronting violent suspects.

The Department purchased an additional 100 Projectile Impact Weapons (stun-bag shotguns) making them more available to Beat Patrol Officers so that each on-duty patrol officer who has completed the approved training course would have a projectile impact weapon available while on patrol.

Updated Projectile Impact Weapons Policy

Duty Manual section L2629, "USE OF PROJECTILE IMPACT WEAPONS," was revised to maximize less-lethal weaponry availability to officers in the field by requiring that all officers who have completed the approved training check out a less-lethal weapon at the beginning of their shift. The section reads in part,

All patrol officers, who have completed an approved training course, shall be required to carry a projectile impact weapon (either a stun-bag shotgun or a 40mm Projectile Impact Weapon) while on-duty; officers not permanently assigned a 40mm Projectile Impact Weapon shall check out a projectile impact weapon (stun-bag shotgun or 40mm Projectile Impact Weapon) from Central Supply at the beginning of each assigned shift.

The use of these impact weapons continues to play a critical role in de-escalating violent confrontations. All recruits receive five-hours of less-lethal weaponry training in the Academy.

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Conclusion

The Officer Involved Incident Training Review Panel remains a valuable tool that provides an additional level of evaluation and review of lethal police encounters. Additional tools and training have been designed and implemented because of the Panel's analysis and recommendation process. The Panel's work represents our commitment to the community that we will review the details of all officer involved shootings and in-custody deaths with the goal of reducing the number of these incidents going forward.

/s/

EDGARDO GARCIA
Chief of Police

For questions, please contact Lieutenant Stanly McFadden, Training Unit Commander at (408) 501-0960.

Attachments:

Attachment A: SJPD Memorandum 2016-037 "Tactical Conduct"

Attachment B: SJPD Memorandum 2017-007 "Documentation of Reportable Force"

Attachment C: SJPD Memorandum 2017-037 "Supervisor's Responsibility"

Attachment D: SJPD Memorandum 2017-036 "Command Officer Responsibility by Use of Force Category"



Memorandum

TO: ALL SWORN PERSONNEL

FROM: Edgardo Garcia
Chief of Police

**SUBJECT: DUTY MANUAL ADDITION:
L 2602.5 - TACTICAL
CONDUCT**

DATE: August 15th, 2016

Memo # 2016-037

BACKGROUND

After reviewing the Department's Duty Manual sections pertaining to the use of force, as well as recent case law, it was apparent that an addition was needed to the existing policy to bring it into line with best practices.

In *Hayes v. County of San Diego*, the California Supreme Court held that tactical conduct and decisions preceding an officer's use of deadly force are relevant considerations in determining whether the use of deadly force gives rise to negligence liability. California negligence law, which considers the totality of the circumstances surrounding the use of deadly force, is broader than federal Fourth Amendment law, which tends to focus more narrowly on the moment when deadly force is used. In determining whether an officer exercised reasonable care in using deadly force, the court must consider the totality of the circumstances, including the officer's tactical conduct and decisions before the use of force.

The California Supreme Court affirmed that an officer making the decision to use deadly force is still entitled to rely on the totality of the circumstances as judged by a reasonable officer on scene, rather than with 20/20 hindsight. The Court noted that as long as the officer's conduct falls within the range of conduct that is reasonable under the circumstances, there is no requirement that the officer choose the conduct that is the least likely to cause harm and at the same time the most likely to result in the successful apprehension of a violent suspect, in order to avoid liability for negligence. The Court cautioned that although pre-shooting conduct is included in the totality of circumstances, it did not want to suggest that a particular pre-shooting protocol is always required. While officers have a degree of discretion as to how they choose to address a particular situation, the range of tactics utilized within that discretion must be reasonable under the circumstances.

The decision in *Hayes* stemmed from a 2006 incident where two San Diego County Sheriff's Deputies shot and killed a distraught, suicidal suspect, Shane Hayes, who was armed with a knife. The deputies were called to the home in response to a call from a neighbor who said she had heard screaming. When the deputies arrived, the suspect's girlfriend told them that Mr. Hayes had tried to kill himself earlier in the evening. The deputies entered the house, and the incident that led to the lawsuit transpired. The California Supreme Court's 2013 decision concluded that:

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“Law enforcement personnel’s tactical conduct and decisions preceding the use of deadly force are relevant considerations under California law in determining whether the use of deadly force gives rise to negligence liability. Such liability can arise, for example, if the tactical conduct and decisions show, as part of the totality of circumstances, that the use of deadly force was unreasonable.”

While the Hayes decision does not change the objective reasonableness standard for police use of force that applies under both federal Fourth Amendment law and California negligence law, the analysis of the totality of the circumstances under California negligence law now includes an analysis of the tactical conduct and decisions preceding the application of physical force.

ANALYSIS

Additions to the Department’s Duty Manual involving procedures pertaining to Tactical Conduct are reflected below in italics and underlined.

L 2602.5 **TACTICAL CONDUCT**

Added 8/15/2016

Department members are expected to use tactics that are consistent with San Jose Police Department and California P.O.S.T. Commission training standards. Based on the totality of the circumstances, and allowing for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary in a particular situation, Department members shall consider the following relevant tactical considerations in any situation where an officer reasonably believes that the use of physical force is or may become necessary:

- *CORE TRANSACTION: A core transaction is defined as a lawful detention (justified by reasonable suspicion) or a lawful arrest (justified by reasonable cause). If no core transaction exists, no force is reasonable. Department members shall consider whether the suspect is subject to detention or arrest prior to using physical force.*
- *LEVEL OF URGENCY: Department members shall consider whether the suspect presents an immediate and credible threat of physical harm to any person or if there is an immediate need to use physical force. If the circumstances permit, officers shall consider waiting for an additional officer(s) or a supervisor prior to contacting the suspect.*
- *THREAT ASSESSMENT: Department members shall consider using all reasonable methods to obtain relevant information regarding the parties associated to the call or contact in order to assess any threats and to select tactics and tools (i.e. less-than-lethal force options) appropriate to the threat. Relevant information may include any history of a subject’s propensity for violence or flight, frequency of police contact, a history of mental illness, known weapons, military*

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training, known motivations or ideologies, or any use of intoxicants or medications. Relevant information may also include a known association to a particular identifiable residence or business. If time permits, Department members shall inquire directly with Communications while en-route if this information is neither obtained nor communicated during the dispatch of a call for service.

- COVER, CONCEALMENT, DISTANCE, AND TIME: Department members shall consider tactically advantageous objects and/or positions at their disposal prior to and during a force encounter. The proper use of cover, concealment, distance and the simple passage of time through negotiation and de-escalation are all tactics that may help a Department member avoid and/or minimize the use of physical force. Officers shall consider tactically repositioning themselves if doing so can be accomplished safely and may assist in de-escalating the situation.

- CRISIS INTERVENTION TEAM: Department members shall request that a Crisis Intervention Team member respond to calls where there is information suggesting that the suspect is mentally ill.

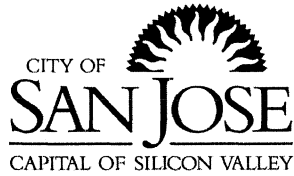
ORDER

Effective immediately, all sworn personnel will adhere to San Jose Police Department Duty Manual Section L 2602.5 – TACTICAL CONDUCT.



Edgardo Garcia,
Chief of Police

EG:JD



Memorandum

TO: ALL SWORN PERSONNEL

FROM: Edgardo Garcia
Chief of Police

**SUBJECT: DUTY MANUAL REVISIONS:
DOCUMENTATION OF
REPORTABLE FORCE**

DATE: February 15, 2017

Memo # 2017-007

BACKGROUND

A review of the Duty Manual sections pertaining to the documentation of reportable force revealed that several changes were necessary to bring the policy in line with best practices. These changes are to ensure the proper reports and forms are completed by the appropriate personnel in any given event involving reportable force.

ANALYSIS

Changes to the Department's Duty Manual involving procedures pertaining to the documentation of reportable force are reflected below. Deletions are denoted with a strike-through and revisions are denoted in italics and underlined:

L 2604 GENERAL RESPONSIBILITY WHEN FORCE IS USED:

Revised 02-15-17

Each situation *involving the use of force* is unique. The Department relies on the officer's judgment and discretion to employ an objectively reasonable level of force under each unique circumstance. Each incident in which force is used shall meet the conditions specified in this chapter.

Officers need not retreat or desist in the reasonable use of force. There is no requirement that officers use a lesser intrusive force option before progressing to a more intrusive one, as long as the force option used is objectively reasonable under the circumstances at that time. When confronted by force or resistance, an officer may use an objectively reasonable higher level of force to overcome that resistance.

~~Officers~~ *Department members* will notify ~~a supervisor~~ the next rank above them in their chain of command without unnecessary delay, when reportable force is used. This includes instances where department members take enforcement action while off-duty and a use of force occurs.

L 2605 SUPERVISOR'S & COMMAND OFFICER RESPONSIBILITY:

Revised 02-15-17

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A supervisor assigned to the district of occurrence or who is assigned to the incident will personally respond to the scene to evaluate and actively participate in the investigation of the factual circumstances surrounding a subordinate officer's Department member's use of reportable force (For example, if an officer uses force, a sergeant will respond. If a sergeant uses force, a lieutenant will respond, etc.). This includes force that results in an injury, the appearance of an injury or a complaint of pain to an officer a Department member or other person as a result of an enforcement action. The collection and preservation of relevant physical, documentary and testimonial evidence at the scene by available methods and technology, such as photography, video recordings, and the electronically recorded statements of witnesses, shall be the objective of the assigned immediate supervisor who responds to the incident. A supervisor who was involved in the use of force incident or who directed force to be used may not conduct the force investigation. In such situations, an uninvolved supervisor shall respond and conduct the investigation.

The responding supervisor will approve the General Offense Report and confirm the appropriate automated use of force template has been completed by the involved Department member with the following two exceptions:

- If the incident occurs late into the shift and there will likely be an extended period of time until the required reports are completed, the supervisor assigned to the call shall obtain Watch Commander approval if he/she wishes to pass the report review responsibility to a different supervisor at the end of his/her shift. In such cases, the supervisor assigned to the call will provide a briefing of the incident to the incoming supervisor prior to delegating the report review responsibility.
- If the Homicide Unit completes the Force Response portion of the report as part of an Officer-Involved Incident investigation (see below).

In all cases, a supervisor will approve the crime report (General Offense Report) and any Narrative/Supplemental Report (Form 200-3A-AFR) prepared by the officer(s) documenting the use of force.

If the supervisor interviews the suspect(s) in the field or at a hospital or other custodial or medical facility, the supervisor shall advise the suspect(s) of their Miranda rights from the Department-issued card. Before an interview can be conducted, a waiver must be obtained from the suspect(s). The interview shall be recorded digitally with the use of a Body Worn Camera and documented on a Narrative/Supplemental Report (Form 200-3A-AFR), then forwarded with the rest of the documentation to the Records Division. Additionally, the digital audio-video file shall be uploaded to the Department server, consistent with established procedures. In the case of an officer-involved shooting or an Officer-Involved Incident, Homicide Unit members, rather than the supervisor, shall conduct all in-custody interviews.

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The supervisor or command officer conducting the force review will submit a Narrative/Supplemental Report (Form 200-3A-AFR) documenting his/her supervisory actions. Consistent with SJPDM Sections R 1801 and R 1803, ~~sergeants~~ Department members must have their Narrative/Supplemental Report (Form 200-3A-AFR) reviewed and approved by a Lieutenant or above the next rank above them in their chain of command prior to report submission.

In all cases of a reportable use of force, the supervisor will ensure that the Department member(s) using force will complete a ~~"Use of Force Detail Page if needed,~~ the automated use of force template for each suspect in every incident when reportable force is used.

The supervisor/command officer will read and review all reports associated with the incident for completeness as detailed in DM Sections R 1802 (Authority and Responsibility of Supervisors) and L 2643 (Reporting Use of Force). The supervisor/command officer will then approve the reports only if they are properly completed. All forms and reports shall be completed and approved prior to the end of shift.

Exception: When an Officer-Involved Incident occurs, the investigation shall be conducted consistent with the most recently published Santa Clara County Police Chiefs' Association Officer-Involved Incident Guidelines. The Department member will be interviewed by the Homicide Unit and the supplemental report for the Department member's statement as well as the automated use of force template will be completed by the Homicide Detective who conducted the interview.

When required for the purpose of conducting a citizen complaint investigation, a Department Initiated Investigation, or an Officer-Involved Incident that is the subject of a review before the ~~shooting review panel, or an in-custody death review panel~~ Officer-Involved Incident Training Review Panel, the entire investigation report packet will be copied and forwarded to the Internal Affairs Unit.

L 2643

REPORTING USE OF FORCE:

Revised 02-15-17

When force is used by an ~~officer~~ Department member in the course and scope of his/her or her duties as a peace officer, the ~~officer~~ Department member will document the details of such use in a general offense crime report and/or a Narrative/Supplemental Report (Form 200-3A-AFR) which includes the automated use of force template. Details will include:

- The reason for the police response to a call for service, or police initiated detention or arrest
- The behavior of the subject which caused the officer to use force
- Type of force used (verbal and physical tools, techniques and/or tactics used)
- Extent of injuries to any person and the post-force care provided
- Other relevant information regarding the circumstances of the use of force

Exception: When an Officer-Involved Incident occurs, the investigation shall be conducted consistent with the most recently published Santa Clara County Police Chiefs' Association Officer-Involved Incident Guidelines. The Department member will be interviewed by the Homicide Unit and the supplemental report for the Department member's statement as well as the **automated use of force template** will be completed by the Homicide Detective who conducted the interview.

L 2645

REPORTABLE FORCE BY DEPARTMENT MEMBERS- REQUIRED DOCUMENTATION REPORTS BY OFFICERS:

Revised 02-15-17

A. Documentation of Reportable Force for Enforcement Situations

Enforcement Situation Defined: Any situation where an officer ~~Department member~~ is taking enforcement action within the course and scope of his/her duties as a peace officer.

1. Documentation for Involved Department member in Officer-Involved Incidents:

Investigations of Officer-Involved Incidents shall be conducted consistent with the most recently published Santa Clara County Police Chiefs' Association Officer-Involved Incident Guidelines. See Duty Manual Chapter L 4700 (Officer Involved Shootings) for further reference.

- A Department member who that occurs in the City of San Jose, uses deadly force, or who discharges *including the discharge of* a firearm, *resulting in injury or death*, will be interviewed by the Homicide Unit, and the interview will be recorded.
- A Department member whose intentional action, including but not limited to the use of any other deadly or dangerous weapon, such as a projectile impact weapon or Taser (Taser probes contact the subject's body or clothing and/or a "drive stun" is used to effect compliance), *proximately causing injury likely to produce death to another*, will be interviewed by the Homicide Unit, and the interview will be recorded. will document the circumstances in a General Offense Report (Form 200-2-APR) or other appropriate investigative report.
- A Department member involved in the in-custody death of a person, (i.e., the death of a person who has been arrested or detained by a San Jose police officer), will be interviewed by the Homicide Unit, and the interview will be recorded.
- When an Officer-Involved Incident occurs, it shall be conducted consistent with the most recently published Santa Clara County Police Chiefs' Association Officer-Involved Incident Guidelines. The Department member will be interviewed by the Homicide Unit and the supplemental report for the Department member's statement as well as the **automated use of force template** will be completed by the Homicide Detective who conducted the interview.

2. Documentation of Reportable Force for Involved Department member in Non-Officer-Involved Incidents:

In all other enforcement situations where a Department member uses reportable force, he/she will document the circumstances in a General Offense Report (Form 200-2-AFR), to include the automated use of force template, and/or any other appropriate investigative or supplemental reports as required. The district supervisor or assigned supervisor (or command officer if a sergeant uses force) will ensure all proper reports are completed, reviewed and approved.

B. Documentation of Reportable Force for Non-Enforcement Situations:

Non-enforcement Situation Defined: Any situation where ~~an officer~~ a Department member is not taking an enforcement action but is acting within the course and scope of his/her duties as a peace officer.

1. Documentation for Involved Department member in an Officer Involved Incident:

When non-enforcement action occurs and a Department member kills or injures a person as a result of the discharge of a firearm, or a Department member's intentional act, including but not limited to the use of any other deadly or dangerous weapon by a Department member, proximately causes injury likely to produce death to another, the involved Department member(s) will be interviewed by the Homicide Unit, and the interview will be recorded.

2. Documentation of Reportable Force for Involved Department member for Non- Officer-Involved Incidents:

a. In non-enforcement situations where reportable force is used for an incident that does not rise to the level of an Officer-Involved Incident and the discharge of a projectile impact weapon or Taser or use of any weapon that results in injury to any person or damage to property, or use of a Taser results in an Electro-Muscular Disruption being applied to another person, the incident will be documented in a General Offense Report (Form 200-2-AFR), to include the automated use of force template, and/or any other appropriate investigative or supplemental reports as required.

b. If any weapon~~the~~ discharge occurs during a non-enforcement situation and there is no injury or Electro-Muscular Disruption applied, only a Department Memorandum is used to document the circumstances in the following events:

- The discharge is accidental, and
- The discharge is not at on an approved range, or
- The discharge occurs into an authorized clearing barrel

c. Euthanasia of Animals:

The discharge of a firearm for the humane destruction (euthanasia) of a seriously injured animal is documented on a Memorandum and routed through the chain of command. The discharge of a firearm to dispatch an animal during any other action is documented in a General Offense Report (Form 200-2-AFR).

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d. Other Reporting Considerations

Any member performing a function pertaining to a reportable force incident, *shall* submit all *required* reports (including Memorandums) by the end of the shift. This includes traffic or crowd control and protection of the scene or evidence.

~~When a non-enforcement action occurs where the discharge of a firearm, projectile impact weapon or Taser results in the injury of any person or damage to property, or use of a Taser results in an Electro-Muscular Disruption being applied to a subject, the incident is documented in a General Offense Report (Form 200-2 AFR).~~

L 4700 OFFICER INVOLVED SHOOTINGS:

Revised 02-15-17

The Department maintains procedures to ensure that a neutral, impartial and thorough investigation of an officer-involved shooting is conducted whenever such a shooting occurs involves any enforcement action. The purpose of such an investigation is to reconstruct and determine the circumstances surrounding the incident. The San Jose Police Department will investigate shootings involving other law enforcement agencies that occur inside the city limits of San Jose regarding any enforcement action. Officer-Involved Incident investigations shall be conducted consistent with the most recently published Santa Clara County Police Chiefs' Association Officer-Involved Incident Guidelines.

L 4706 REPORTS BY DEPARTMENT MEMBERS:

Revised 02-15-17

Any member involved in, or performing any function pertaining to, an officer involved shooting will submit reports detailing such involvement. Reports will be completed and submitted prior to securing from the tour of duty during which the incident occurred.

Exception: When an Officer-Involved Incident occurs, the investigation shall be conducted consistent with the most recently published Santa Clara County Police Chiefs' Association Officer-Involved Incident Guidelines. The Department member will be interviewed by the Homicide Unit and the supplemental report for the Department member's statement as well as the automated use of force template will be completed by the Homicide Detective who conducted the interview.

R 1500 PURPOSE AND USE OF - SPECIFIC REPORTS:

Revised 02-15-17

The Department utilizes various report forms to communicate specific information about a criminal act or other incident. An officer working in a secondary employment capacity, shall still utilize hard copy General Offense Reports (Form 200-2) with the exception of the Force Response report, which must be automated, shall be utilized only when an officer is working in a secondary employment capacity. Therefore, department members will familiarize themselves with such forms and use them for the appropriate purpose intended.

R 1574 FORCE RESPONSE REPORT FORM (FORM FRS-001):

AUTOMATED USE OF FORCE TEMPLATE:

Revised 02-15-17

~~This form~~ The automated use of force template will be completed by an each officer Department member using any reportable force as defined in DM Section L 2644 (Definition of Reportable Force). ~~primary reporting officer, or the~~ The assigned supervisor/command officer who responded to the incident supervisor of the district where the force response occurred if the primary reporting officer is not available, to will ensure this form the automated use of force template is completed by the Department member(s) using the reportable force. The automated use of force template shall be completed for every suspect that has force used upon them. The assigned supervisor/command officer who has the responsibility of signing off the report per L 2605 (Supervisor and Command Officer Responsibility) must read and approve the form completed automated use of force report(s) after completing the final portion of the Force Response Report titled Supervisor Review section and Summary" and prior to submitting turning the report(s) ~~in~~ to OSSD.

Officer(s) will also complete an automated use of force template in the event the suspect inflicts or attempts to inflict physical force upon the officer(s) and the officer(s) did not use force back. The automated use of force template is completed by the officer(s) whether or not the identity of the suspect is known.

Exception: When an Officer-Involved Incident occurs, the investigation shall be conducted consistent with the most recently published Santa Clara County Police Chiefs' Association Officer-Involved Incident Guidelines. The Department member will be interviewed by the Homicide Unit and the supplemental report for the Department member's statement as well as the automated use of force template will be completed by the Homicide Detective who conducted the interview.

R 1574.5 FORCE RESPONSE REPORT FORM SUPPLEMENTAL (FORM FRS-001a):

Deleted 02-15-17

~~This form will be completed if more than two officers use reportable force (as defined in DM Section L 2644) on a single suspect. It shall be the responsibility of the primary reporting officer to ensure this form is completed if necessary.~~

C 1557 CRIME REPORT RESPONSIBILITY WHILE EMPLOYED OFF-DUTY:

Revised 02-15-17

Officers working law enforcement related to secondary employment will initiate, complete and submit a crime report whenever an incident is directly related to the scope of their assignment. Officers will only utilize hard copy crime reports (ex. Paper G.O forms) when documenting an incident related to their secondary employment assignment with the exception of when an officer uses reportable force in the course and scope of his/her duties; when reportable force is used, the officer shall complete the automated use of force template. Department overtime shall be authorized at the conclusion of the officer's secondary employment assignment in

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accordance with C 1559 SECONDARY EMPLOYMENT OVERTIME to complete the automated use of force template.

Communications will assign an on-duty officer to assist when it becomes necessary to process evidence, book a prisoner, conduct follow-up, or engage in any other police activity that would require the off-duty officer to leave the secondary employment site.

If staffing does not permit on-duty officers from assisting with the follow-up, the district supervisor shall authorize the off-duty officer to work Department overtime at the conclusion of his/her secondary employment assignment. See DM Section C1559 (Secondary Employment Overtime).

When an on-duty officer is called to an event that was originally handled by an officer working in a secondary employment capacity in which a crime report was not completed and a report needs to be completed, or when an officer is asked to complete a crime report, the following steps shall occur:

- The district supervisor or an available supervisor, not affiliated with the secondary employment assignment shall be notified of the event;
- The original investigating off-duty officer, when possible, will be contacted by the field supervisor and directed to complete the report or provide information necessary for the new investigating officer to do so;
- At the direction of the field supervisor, the on-duty officer who is assigned to complete the report shall contact and interview all of the involved parties before completing and submitting the report.

Once the officer has completed his/her crime report, the officer shall obtain approval of the crime report from a supervisor. The officer will submit all forms related to the incident to the Police Department at the conclusion of the secondary employment shift. If the automated use of force template is required, the officer shall electronically submit the report after his/her secondary assignment in accordance with C 1559 SECONDARY EMPLOYMENT OVERTIME. The assigned supervisor/command officer who has the responsibility of approving the report must read and approve the completed automated use of force report(s) prior to submitting the report(s) to OSSD.

ORDER

Effective immediately, all sworn personnel will adhere to the revised San Jose Police Department Duty Manual Sections pertaining to the documentation of reportable force:

- L 2604 - General Responsibility When Force is Used
- L 2605 - Supervisor and Command Officer Responsibility
- L 2643 - Reporting Use of Force
- L 2645 - Reportable Force by Officers – Required Documentation
- L 4700 - Officer Involved Shootings
- L 4706 - Reports by Department Members
- R 1500 - Purpose and Use Of – Specific Reports
- R 1574 - Automated Use of Force Template
- C 1557 - Crime Report Responsibility while Employed Off-Duty

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A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a stylized representation of the name Edgardo Garcia.

EDGARDO GARCIA
Chief of Police

EG:EW:MK:JD:GT



Memorandum

TO: ALL SWORN PERSONNEL

FROM: Edgardo Garcia
Chief of Police

**SUBJECT: DUTY MANUAL REVISION:
L 2605 - SUPERVISOR'S
RESPONSIBILITY**

DATE: October 18, 2017

Memo# 2017-037

BACKGROUND

A review of the Department's Duty Manual revealed revisions and additions were necessary to bring the supervisory response to a use of force incident in line with established best practices. Specific changes include the requirement that sergeants or command officers investigating a reportable use of force complete a supervisors' automated use of force template, similar to the one already being completed by officers. Additionally, sergeants shall now be required to attempt to obtain a statement from a suspect who has had force used upon them.

ANALYSIS

Changes to the San Jose Police Duty Manual Section L 2605 – SUPERVISOR'S RESPONSIBILITY are reflected below. Additions are shown in italics and underlined. Deletions are noted in 'strikethrough' form.

L 2605 SUPERVISOR'S RESPONSIBILITY: *Revised 10-18-17*

A supervisor assigned to the district of occurrence or who is assigned to the incident shall ~~will~~ personally respond to the scene to evaluate and actively participate in the investigation of the factual circumstances surrounding a subordinate Department member's use of reportable force (For example, if an officer uses force, a sergeant shall ~~will~~ respond. If a sergeant uses force, a lieutenant shall ~~will~~ respond, etc.). This includes force that results in an injury, the appearance of an injury or a complaint of pain to a Department member or other person as a result of an enforcement action. The collection and preservation of relevant physical, documentary and testimonial evidence at the scene by available methods and technology, such as photography, video recordings, and the electronically recorded statements of witnesses, shall be the objective of the assigned supervisor who responds to the incident. A supervisor who was physically involved in the use of force incident (*e.g. initiated the incident in which force was used, physically chased the suspect, used reportable force, used a*

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SUBJECT: DUTY MANUAL REVISION: L 2605 - SUPERVISOR'S RESPONSIBILITY

October 18, 2017

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non-reportable firm grip control, helped handcuff the suspect, etc.) or who directed force to be used ~~may~~ shall not conduct the force investigation.

The responding supervisor ~~will~~ shall approve the General Offense Report and confirm the appropriate automated use of force template has been completed by the involved Department member with the following two exceptions:

- If the incident occurs late into the shift and there will likely be an extended period of time until the required reports are completed, the supervisor assigned to the call shall obtain Watch Commander approval if he/she wishes to pass the report review responsibility to a different supervisor at the end of his/her shift. In such cases, the supervisor assigned to the call will provide a briefing of the incident to the incoming supervisor prior to delegating the report review responsibility.
- The Homicide Unit completes the Force Response portion of the report as part of an Officer-Involved Incident investigation (see below).

In all cases, a supervisor ~~will~~ shall approve the crime report (General Offense Report) and any Narrative/Supplemental Report (Form 200-3A-AFR) prepared by the officer(s) documenting the use of force.

~~If~~ ~~†~~ The supervisor shall attempt to interviews the suspect(s), during his/her use of force investigation. ~~†~~ The supervisor shall advise the suspect(s) of their Miranda rights from the Department-issued card. Before an interview can be conducted, a waiver must be obtained from the suspect(s). The interview shall be recorded with the use of a Body Worn Camera and documented on a Narrative/Supplemental Report (Form 200-3A-AFR), then forwarded with the rest of the documentation to the Records Division. Additionally, the video file shall be uploaded to the Department server, consistent with established procedures. In the case of an officer-involved shooting or an Officer-Involved Incident, Homicide Unit members, rather than the supervisor, shall conduct all in-custody interviews.

The supervisor or command officer conducting the force review ~~will~~ shall submit a Narrative/Supplemental Report (Form 200-3A-AFR) as well as the supervisors' automated use of force template documenting his/her supervisory actions. Consistent with SJPDM Sections R 1801 and R 1803, Department members must have their Narrative/Supplemental Report (Form 200-3A-AFR) reviewed and approved by the next rank above them in their chain of command prior to report submission.

In all cases of a reportable use of force, the supervisor ~~will~~ shall ensure that the Department member(s) using force complete the automated use of force template for each suspect in every incident when reportable force is used. Sergeants or command officers must only complete one supervisor's automated use of force template per incident (e.g., if force is used on multiple suspects in a single incident, the sergeant or command officer shall only complete one supervisor's automated use of force template).

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The supervisor/command officer ~~will~~ shall read and review all reports associated with the incident for completeness as detailed in DM Sections R 1802 (Authority and Responsibility of Supervisors) and L 2643 (Reporting Use of Force). The supervisor/command officer shall ~~will~~ then approve the reports only if they are properly completed. All forms and reports shall be completed and approved prior to the end of shift.

Exception: When an Officer-Involved Incident occurs, the investigation shall be conducted consistent with the most recently published Santa Clara County Police Chiefs' Association Officer-Involved Incident Guidelines. The Department member will be interviewed by the Homicide Unit and the supplemental report for the Department member's statement as well as the automated use of force template shall ~~will~~ be completed by the Homicide Detective who conducted the interview.

When required for the purpose of conducting a citizen complaint investigation, a Department Initiated Investigation, or an Officer-Involved Incident that is the subject of a review before the Officer-Involved Incident Training Review Panel, the entire investigation report packet shall ~~will~~ be copied and forwarded to the Internal Affairs Unit.

ORDER

Effective immediately, all sworn personnel will adhere to the procedures in Duty Manual sections L 2605 – SUPERVISOR'S RESPONSIBILITIES.



EDGARDO GARCIA
Chief of Police

EG:JD:GT



Memorandum

TO: ALL SWORN PERSONNEL

FROM: Edgardo Garcia
Chief of Police

**SUBJECT: DUTY MANUAL ADDITION:
L 2605.5 - COMMAND OFFICER
RESPONSIBILITY BY USE OF
FORCE CATEGORY**

DATE: October 18, 2017

Memo# 2017-036

BACKGROUND

The Department is creating a more comprehensive use of force review process to aid in strengthening the culture of professionalism and accountability. Command officers will now be directly involved in the investigation and review of incidents where certain force options are utilized or when a Department member's use of force produces significant injury. Additionally, specified categories of force will be reviewed by the Department member's chain of command. This review process is already in place for canine apprehensions involving a dog bite.

ANALYSIS

Changes to San Jose Police Duty Manual involving the addition of Section L 2605.5 - COMMAND OFFICER'S RESPONSIBILITIES are reflected below. Additions are shown in italics and underlined.

L 2605.5 COMMAND OFFICER'S RESPONSIBILITY BY USE OF FORCE

CATEGORY:

Added 10-18-17

In order to provide a standardized and comprehensive force review process, the Department has categorized its use of force. A Department member's use of force falls into one of four categories. Each category of force requires a different level of review based on the level of force utilized or the seriousness of the injuries sustained as a result of the force. The process of Command Review **may** be utilized for Category (II) uses of force and **shall** be utilized for the Category (III) uses of force.

For the purposes of Command Review, the Department's Use of Force categorization is as follows:

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SUBJECT: DUTY MANUAL ADDITION: L 2605.5 - COMMAND OFFICER RESPONSIBILITY BY USE OF FORCE CATEGORY

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<u>CATEGORY (I) USE OF FORCE</u>
1. <u>Any use of force not listed in Categories II, III, or IV, that causes a minor injury or a complaint of pain</u>
<u>CATEGORY (II) USE OF FORCE</u>
1. <u>TASER Deployments (probe & drive stun)</u> 2. <u>Impact weapons (not to the head)</u> 3. <u>OC Spray</u> 4. <u>Projectile impact weapons (where up to 4 rounds strike the suspect)</u>
<u>CATEGORY (III) USE OF FORCE</u>
1. <u>Impact weapon or Projectile Impact Weapon strikes to the head (intentional and accidental)</u> 2. <u>Projectile impact weapon (where more than 4 rounds strike the suspect)</u> 3. <u>Kicks to the head</u> 4. <u>Two or more officers deploy less-than-lethal force (O.C., Projectile Impact Weapons, or TASER) on one suspect</u> 5. <u>Four or more officers use reportable force on one suspect</u> 6. <u>Force resulting in bone fracture</u> 7. <u>Canine apprehension (dog bite)</u> 8. <u>Carotid restraint applied</u> 9. <u>Force resulting in suspect's loss of consciousness</u> 10. <u>Hospital admission as a direct result of the force.</u>
<u>CATEGORY (IV) USE OF FORCE</u>
1. <u>Deadly force – That force which the user knows would pose a substantial risk of death or serious bodily injury</u>

CATEGORY (I) USE OF FORCE

Supervisors shall investigate a Department member's Category (I) use of force in accordance with Duty Manual Section L 2605 – Supervisor's Responsibility. Command officers are not required to respond to Category (I) uses of force unless their response is required in accordance with Duty Manual Section L 2605 – Supervisor's Responsibility (e.g., a sergeant uses reportable force and the supervising command officer is required to conduct the force investigation).

CATEGORY (II) USE OF FORCE

Upon being notified of a Category (II) use of force, the command officer shall respond to the scene and ensure the use of force investigation is handled in accordance with Duty Manual Section L 2605 – Supervisor's Responsibility. The command officer shall then document his/her observations and any actions taken in a supplemental report (Form 200-3A-AFR). The command officer **may** direct the responding supervisor to submit documentation of the incident (to include the General Offense Report, the CAD printout, photos, and any other pertinent documentation), along with a Transmittal Form (Form 216-1) up the chain of command for Command Review by the Chief of Police or Assistant Chief of Police; if directed to do so, the responding supervisor shall submit the documentation up the chain of command within 7 calendar days, or as otherwise

ALL SWORN PERSONNEL**SUBJECT: DUTY MANUAL ADDITION: L 2605.5 - COMMAND OFFICER RESPONSIBILITY BY USE OF FORCE CATEGORY**

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directed by the Office of the Chief. Upon receiving the supervisor's Transmittal and documentation, the command officer shall complete and submit a Command Review memorandum (available on the intranet) up the chain of command; this Command Review memorandum shall document his/her findings as to whether the force was within Department policy and shall be submitted within 14 calendar days, or as otherwise directed by the Office of the Chief.

CATEGORY (III) USE OF FORCE

Upon being notified of a Category (III) use of force, the command officer shall respond to the scene and ensure that the use of force is handled in accordance with Duty Manual Section L 2605 – Supervisor's Responsibility. The command officer shall document his/her observations and any actions taken in a supplemental report (Form 200-3A-AFR). The command officer shall direct the responding supervisor to submit documentation of the incident (to include the General Offense Report, the CAD printout, photos, and any other pertinent documentation), along with a Transmittal Form (Form 216-1) up the chain of command for Command Review by the Chief of Police or Assistant Chief of Police; the responding supervisor shall submit the documentation up the chain of command within 7 calendar days, or as otherwise directed by the Office of the Chief. Upon receiving the supervisor's Transmittal and documentation, the command officer shall complete and submit a Command Review memorandum (available on the intranet) up the chain of command; this Command Review memorandum shall document his/her findings as to whether the force was within Department policy and shall be submitted within 14 calendar days, or as otherwise directed by the Office of the Chief.

NOTE: Canine officers involved in a canine apprehension (dog bite) shall utilize their canine chain of command for Command Review.

CATEGORY (IV) USE OF FORCE

Upon being notified of a Category (IV) use of force, the command officer shall ensure the incident is handled in accordance with the Santa Clara County Police Chiefs' Association Officer-Involved Incident Guidelines. Command Review of Category (IV) uses of force shall be conducted in accordance with Duty Manual Section L 2646 – Post Incident Review Procedure for Officer-Involved Incidents.

DISPOSITION OF COMMAND REVIEW DOCUMENTS

Once a command review has been completed, the memorandums and supporting documentation shall be routed to the Internal Affairs Unit for logging and retention. The documents shall be logged as official Department correspondence and shall not be placed into a Department member's Internal Affairs file or Personnel file, absent a Department-Initiated Investigation or a formal citizen complaint.

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SUBJECT: DUTY MANUAL ADDITION: L 2605.5 - COMMAND OFFICER RESPONSIBILITY BY USE OF FORCE CATEGORY

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ORDER

Effective immediately, all sworn personnel shall adhere to Duty Manual Section L 2605.5 - COMMAND OFFICER'S RESPONSIBILITIES. Command officers responsible for completing a Command Review Memorandum shall refer to the attached sample Use of Force Command Review Memorandum. The template is available on the intranet in the BFO document library under Use of Force Command Review Template.



EDGARDO GARCIA
Chief of Police

EG:JD:GT

Attachment

ALL SWORN PERSONNEL
SUBJECT: DUTY MANUAL ADDITION: L 2605.5 - COMMAND OFFICER RESPONSIBILTY BY USE
OF FORCE CATEGORY
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Memorandum

TO: EDGARDO GARCIA
CHIEF OF POLICE

FROM: (Rank and Name)

SUBJECT: USE OF FORCE COMMAND
REVIEW
CASE #XX-XXX-XXXX

DATE: XX/XX/201X

Approved:

Date:

BACKGROUND

(Provide a brief synopsis of the incident.)

INVESTIGATION

On (date), I was assigned as (assignment and call sign) when I responded to (location) to conduct a use of force investigation in accordance with Duty Manual Section L 2605.5. I took the following investigative actions:

- I responded to the scene and arrived at approximately (time) hours.
- I contacted the on-scene supervisor, (Supervisor's name), and received a briefing on the incident.
- I ensured that a canvass had been/was being conducted.
- I ensured photos had been/were being obtained.
- I reviewed the following documentation of this incident:
 - General Offense Report
 - Scene photos
 - Body Worn Camera footage
 - Etc.
- Etc. (Add any other pertinent steps taken or important investigative information).

STATEMENTS:

(Include the statement of the suspect(s), if obtained per SJPDM Section L 2605.)

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APPLICABLE AUTHORITIES

(The Duty Manual section below is used as an example. Please put in the appropriate DM section(s).)

San Jose Police Duty Manual

- L 2602 Objectively Reasonable Force
- L XXXX XXXX (List any other applicable DM sections here)

ANALYSIS

(The "Analysis" section is the focus of the use of force review.)

The following is a synopsis of the facts and circumstances that have been compiled during the course of the investigation that directly relate to the above listed SJPD Use of Force policies:

(Write a narrative, noting the applicable Duty Manual sections for each force application, and provide a preliminary assessment as to whether the use of force was within Department policy and why.)

COMMAND REVIEW

In accordance with Duty Manual Section L 2605.5, this memorandum and the attached supporting documentation are being submitted for Command Review. Based on my initial review of this incident, I find the use of force to be (within or out of) SJPD policy.

(Command officers do not recommend discipline as part of the command review process.)

Respectfully submitted,

(Rank and name)
(Division)
(Bureau)

