

DAVIS POLICE DEPARTMENT

USE OF FORCE/USE OF DEADLY FORCE USE OF FORCE & IN-CUSTODY DEATH INVESTIGATIONS Policy and Procedure 3.05-A

DEPARTMENT MANUAL

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I. POLICY

Officers shall use only that amount of force which reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control. “Reasonableness” of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any interpretation 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.

II. GUIDELINES FOR USE OF FORCE

The use of force by law enforcement personnel is a matter of critical concern both to the public and the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and, when warranted, may use force in carrying out their duties, subject to the provisions of this policy.

Officers must have an understanding of, and a true appreciation for, the limitations on their authority, particularly with respect to overcoming resistance from those with whom they come in official contact.

This department recognizes and respects the value of human life and dignity without prejudice to anyone. This policy is not intended to deter officers from using reasonable force when appropriate. Vesting officers with the authority to use reasonable force to protect the public welfare requires a careful balancing of all human interests.

This policy recognizes that the use of force by law enforcement officers requires constant evaluation. Even at its lowest level, the use of force is a serious responsibility.

A. Use of Force

California Penal Code § 835a provides that: any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to affect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose their right to self-defense by the use of reasonable force to affect the arrest or to prevent escape or to overcome resistance.

Given that no policy can realistically predict every possible situation an officer might encounter, each officer must be entrusted with well-reasoned discretion to determine the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying reasonable force.

As noted, any application of force by a member of this department must be judged by a standard of “reasonableness.” When determining whether or not to apply any level of force and when evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. Those factors include, but are not limited to:

- The severity of the suspected crime at issue, or reason for contact with the individual;
- Whether the individual poses an immediate threat to the safety of the officers or others;
- Whether the individual is actively resisting arrest or attempting to evade arrest by flight or whether they are offering passive resistance;
- Availability of alternative methods of capturing or subduing an individual;
- The conduct of the individual being confronted, as reasonably perceived by the officer at the time;
- Officer/subject factors (e.g., age, size, relative strength, skill level, injury/exhaustion, number of officers versus subjects);
- Influence of drugs/alcohol and/or mental capacity of the individual;
- Reasonable proximity of weapons;
- Training and experience of the officer;
- The potential for injury to citizens, officers, and suspects;
- Risk of escape;
- Other exigent circumstances that can be reasonably articulated;

This department recognizes that officers are expected to make split-second decisions and that the amount of time available to evaluate and respond to changing circumstances may impact an officer’s decisions.

While various levels of force exist, each officer is expected to respond with only that level of force which appears reasonably appropriate under the circumstances to successfully accomplish a legitimate law enforcement purpose in accordance with this policy.

B. Non-deadly Force

Any application of force which is not reasonably anticipated to result in death is considered non-deadly force. Each officer is provided with equipment, training, and skills to assist in the apprehension and control of individuals as well as protection of officers and the public. Non-deadly force applications may include, but are not limited to, restraints, baton or other impact devices, Oleoresin Capsicum or other approved chemical agents, and the Taser.

Whether the use of any force was reasonable will involve consideration of the objective factors listed in Section II, A of this policy.

C. Use of Deadly Force

The use of deadly force is in all probability the most serious act in which a law enforcement officer will engage. **Therefore, the use of deadly force is justified in the following circumstances:**

- 1. An officer may use deadly force to protect themselves or others from what they reasonably believe would be an immediate threat of death or serious bodily injury.**
- 2. An officer may use deadly force to affect the arrest or prevent the escape of suspected felon where the officer has probable cause to believe the suspect poses a significant threat of death or serious bodily injury to the officer or others. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.**

The discharge of a firearm at any person is expressly considered deadly force. Other means of force might also constitute deadly force if the level of force used creates a substantial risk of causing death or serious bodily injury to any person.

Whether the use of deadly force was reasonable will involve consideration of the objective factors listed in Section II, A of this policy.

D. Drawing or Exhibiting a Firearm

Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, may result in an unwarranted or accidental discharge of the firearm, and may constitute a threat of the use of deadly force dependant on the present circumstances. An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified. When an officer has determined that the use of deadly force is not necessary, the officer shall, as soon as practical, secure or holster the firearm.

E. Pain Compliance Techniques

Pain compliance techniques may be very effective in controlling a passive or actively resisting individual. Officers may only use those pain compliance techniques for which they have received departmentally approved training, which includes training received from POST certified courses, and only when the officer reasonably believes the use of such a technique appears necessary to further a legitimate law enforcement purpose. Officers utilizing any pain compliance technique should consider the totality of the circumstances including, but not limited to:

1. The potential for injury to the officer(s) or others if the techniques is not used
2. The potential risk of serious injury to the individual being controlled
3. The degree to which the pain compliance technique may be controlled in application according to the level of resistance
4. The nature of the offense involved
5. The level of resistance from the individual(s) involved
6. The need for prompt resolution of the situation
7. If time permits (e.g. passive demonstrators), other reasonable alternatives

The application of pain compliance technique shall be discontinued once the officer has determined that compliance had been achieved.

F. Baton

The police baton is authorized for use when, based upon the circumstances perceived by the officer, lesser force or restraint would not reasonably appear to result in the safe control of the suspect, as determined by using the factors in Section II, A above.

1. Uniformed Patrol Personnel

An authorized baton shall be worn in an authorized pouch or holder on the duty belt at all times.

2. Plain Clothes Officers

Under normal conditions carrying a baton is optional for plain-clothes officers. If the officer anticipates or becomes involved in a planned enforcement role, the officer must wear the authorized baton in an authorized pouch or holder.

3. Authorized batons are:

- a. Monadnock Model PR24STS, one-piece polycarbonate plastic with integral trumbell stop, 24" length, 1.25" diameter, 24 ounce weight, black color.
- b. Aetco one-piece aluminum frame, 24" length, 27 ounce weight, black color.
- c. Monadnock Model PR-24FX, expandable police baton, aircraft aluminum frame, 14" length closed, 24" length extended, 29 ounce weight, black color.
- d. Winchester expandable police baton, 26", black zinc finish.
- e. PeaceKeeper International's Rapid Containment Baton (RCB), expandable, 26", black zinc finish.
- f. Wood non-expandable police baton.
- g. A supervisor or manager may, on a case-by-case basis, authorize the use of batons not listed above.

G. Oleoresin Capsicum (O.C.) or Chemical Agents

1. Use of O.C. or Chemical Agents

- a. O.C.: Only authorized trained personnel may possess and maintain department-issued O.C. O.C. is used to minimize the potential of injury to officers, citizens, or offenders. O.C. can be used in those situations where such use reasonably appears justified and necessary, using the factors described in Section II, A above. Persons who have been affected by the use of O.C. should be promptly provided with the proper solution to cleanse the affected areas.
- b. Chemical Agents: Chemical agents are used to minimize the potential for injury to officers, citizens, or offenders because of actual violence or the threat of immediate violence if law enforcement action is not immediately taken. They should be used only in situations where such force reasonably appears justified and necessary, using the factors described in Section II, A above. Persons who have been affected by the use

chemical agents should be promptly provided with the proper solution to cleanse the affected areas if they make themselves available for treatment. Any such treatment shall be fully documented in the accompanying crime report.

Trained personnel may deploy C.N., C.S., or other authorized chemical agents at the direction of a command officer only.

- c. Use on Demonstrators: The use of O.C. or chemical agents on demonstrators shall be authorized only after a supervisor determines whether the use of O.C. or other chemical agents are reasonable and necessary under the existing circumstances. Non-violent, passively resisting, or peaceful demonstrations generally do not require the use of O.C. or chemical agents as a pain compliance device.

2. Uniformed Sworn Personnel

The department provides personnel with a department-authorized brand and size canister of O.C. An O.C. canister shall be worn in an authorized pouch or holder on the duty belt or carried at all times.

3. Plain Clothes Officers and Civilian Employees

Under normal duty conditions the carrying of O.C. canisters is optional for plain-clothes officers and civilian employees. If the officer or civilian employee anticipates, or becomes, involved in a planned enforcement role, a department-approved brand and size canister of O.C. should be worn in an authorized pouch or belt clip on the officer's or the employee's belt.

H. Carotid Control Hold

The proper application of the carotid control hold by a trained officer may be effective in quickly restraining a violent individual. However, due to the potential for injury, the carotid control hold may only be applied under the following conditions;

1. The officer shall have received department approved training in the use and application of the carotid control hold.
2. The carotid control hold may only be used when the officer reasonably believes that such a hold appears necessary to prevent serious injury or death to an officer or others.
3. Any individual who has been rendered unconscious by the carotid control hold shall receive prompt on-scene medical attention. Prisoners shall be continuously monitored until medical treatment is provided. Careful consideration shall be given to not place the prisoner in a position that would restrict breathing.
4. The officer shall inform the person receiving custody, or any person placed in a position of providing care, that the person has been subjected to the carotid control hold and whether the person lost consciousness or not.
5. Any use, or attempted use, of the carotid control hold shall be immediately reported to the on-duty Watch Commander.
6. Any use, or attempted use, of the carotid control hold shall be thoroughly documented in the accompanying crime report.

III. MEDICAL ATTENTION

A. Primary Considerations

1. As soon as reasonably practical following the application of force, medical assistance shall be obtained for any person(s) who has sustained visible injury, expressed a complaint of pain, or who has been rendered unconscious. If any such person refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practical, should be witnessed by another officer, preferably a supervisor if one is available, and/or qualified medical personnel.
2. An officer may request ambulance transport for any injured prisoner. Restraints can be used when necessary and in those situations where the patient is exhibiting or has exhibited behavior deemed to present a danger to medical personnel or others. If the patient is to be transported in metal handcuffs, a law enforcement officer must ride along in the patient compartment of the ambulance, should the ambulance crew make the request.
3. Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond physical characteristics, unusually high tolerance to pain, or require a protracted physical encounter to bring them under control may be at an increased risk for sudden death. Medical personnel shall be summoned to the scene as soon as possible for patient evaluation and/or treatment. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking, placing them in the Temporary Holding Facility, or prior to transport to the Yolo County Jail.

IV. REPORTING PROCEDURES

A. Reporting the Use of Non-Deadly Force

1. As soon as practical following the incident, the Watch Commander shall be notified of the application of physical force under any of the following circumstances:
 - a. The application of force appears to have caused physical injury
 - b. The individual has expressed a complaint of pain
 - c. Any application of O.C., chemical agents, or any control device
 - d. The person has been rendered unconscious
2. Personnel on scene shall take all reasonable steps to obtain emergency medical attention for all apparently injured persons.
3. If they are capable, and with regards to legal considerations, any involved officer will submit a detailed crime report and narrative describing the use of force and events leading to it.
4. The Watch Commander shall:
 - a. Respond to the scene and review the situation.
 - b. If necessary, the supervisor may administratively order any officer from this department to immediately provide public safety information necessary to secure the scene and pursue suspects. Public safety information shall be limited to such things as outstanding

suspect information, type of force used, parameters of the incident scene, identity of known witnesses, and similar information.

- c. Interview any witnesses to the use of force or ensure that witnesses are identified for later interviews.
 - d. The Watch Commander shall take all reasonable steps to obtain emergency medical attention for all apparently injured persons.
 - e. Document any injuries received by anyone present and include any medical reports and/or photographs with the crime report. Check the area for audio or video surveillance and secure it as evidence for the crime report.
 - f. When appropriate, and subject to legal considerations, interview the person upon whom the force was used. It is the intent of this provision the Watch Commander, or other supervisor, be responsible for receiving a full statement from the subject regarding the underlying offense and the use of force. Any statement relating to the criminal charges shall be attached to the crime report. Any statement received solely regarding the use of force shall be forwarded to the Division Commander for review under section 5 below.
 - g. Fill out a Department "Use of Force" form and attach the original to the crime report that describes the incident and use of force. The form and accompanying report shall be forwarded to the Division Commander for the officer who used the force for review as soon as possible and no later than 3 days from the date the force was used.
5. The Division Commander shall:
- a. Conduct an administrative review of the use of force and whether it was in compliance with this order. The Division Commander may consult with the appropriate Bureau Commander, who can direct any additional internal investigation pursuant to PP 1.07-A, Internal Investigations.
 - b. Forward a copy of the "Use of Force" form and crime to the Police Chief, via the Chain-of-Command. Final reports shall be forwarded to the Professional Standards Unit, who shall be responsible for maintaining them.
- B. Reporting the Use of Deadly Force: Procedure Following Discharge of Firearm or In-Custody Death Investigation.
1. The Watch Commander shall be notified as soon as practical following:
 - a. The use or attempted use of deadly force.
 - b. When a person dies in the process of being arrested.
 - c. When a person dies in the temporary holding facility, as defined in PP 3.15-A.
 - d. Whenever a peace officer discharges a firearm at a person.
 2. Duties of Watch Commander or Scene Supervisor
 - a. The Watch Commander shall take all reasonable steps to obtain emergency medical attention for all apparently injured persons.
 - b. Attempt to obtain a brief overview of the situation from any uninvolved officer. In the event there are no uninvolved officers present during the actual event leading to the use

of force or death, the supervisor should attempt to obtain a brief overview from one involved officer.

- c. If necessary, the supervisor may administratively order any officer from this department to immediately provide public safety information necessary to secure the scene and pursue suspects. Public safety information shall be limited to such things as outstanding suspect information, number and direction of shots fired, parameters of the incident scene, identity of known witnesses, and similar information.
- d. Absent a voluntary statement from any involved officer(s), the initial scene supervisor should not attempt to compel or order an officer to provide any information, except for pertinent public safety information as specified above.
- e. The Watch Commander should take command and secure the scene with additional personnel until relieved as specified in this policy. In all cases the scene shall be secured by at least two law enforcement personnel.
- f. The Watch Commander shall notify the Patrol Operations Bureau Commander as soon as reasonably possible. The Commander shall notify all administrative staff.
- g. The Watch Commander should safely remove the involved officer(s) from the scene and take possession of any discharged firearms and any expended or unexpended ammunition when it is reasonable to do so. A replacement weapon will be provided, by the department, as soon as possible. If the Watch Commander discharges their firearm they shall be removed from the scene as soon as an OIC, supervisor or manager arrives at the scene and assumes command.

3. Involved Personnel

The Watch Commander or other supervisor shall direct each officer not to discuss the incident except with authorized personnel.

- a. Investigations will be conducted in accordance with the officers' rights under the Peace Officers' Bill of Rights Act (Gov't Code §§ 3300 et seq.).
- b. In the event the suspect(s) remain outstanding or are subject to prosecution for related offenses, an involved officer may be required to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals.

The involved officer may write their own report or an assigned investigator may interview the involved officer as a victim/witness. Statements of involved officers should focus on evidence to establish the elements of criminal activities by involved suspects. Involved officers may consult with legal counsel prior to completing any such criminal report or prior to any interview.

- c. In the event any person is injured, and as soon as practical after the incident, any involved officers will be placed on paid administrative leave. No officer shall be returned to normal duty until cleared by the Police Chief; and only after a minimum of 72 hours has elapsed. In the event a firearm is fired at a person, and no person is injured, any involved officer will be placed on a minimum of 12 hours paid administration leave.

4. Investigation

- a. The Investigations Lieutenant will contact the on-call Yolo County District Attorney Investigator and the on-call Yolo County District Attorney. The District Attorney's Office will investigate where any injury or death occurs to any person as a result of the use of firearm by a peace officer or when a firearm is fired at a person by a peace officer, whether or not injury or death resulted.
- b. The Patrol Commander may summon additional patrol officers to duty as needed.
- c. The Investigations Lieutenant will notify a Sergeant assigned to Investigations, who shall report to duty. The Investigations Sergeant shall be primarily responsible for the investigation of the crime leading to the discharge of firearm and any related crime reports. The Investigations Sergeant may call appropriate personnel to assist in the investigation and crime scene work. The Investigations Division shall be responsible for the origination of a crime report(s), arrest report(s) and all other investigative narratives and reports. The Investigations Sergeant shall approve any document prior to it being included with the original report.
- d. The Commander charged with oversight of the Professional Standards Unit shall be responsible for coordinating an internal investigation into the discharge of the firearm and use of force. The internal investigation shall be conducted pursuant to PP 1-07-A, Internal Investigations, and with regard to current law.
- e. Complete copies of the criminal investigation and internal investigation will be forwarded to the Police Chief upon completion.
- f. If the event occurs in another jurisdiction, the Assistant Police Chief shall consult with personnel of the other jurisdiction to determine which agency shall have investigative responsibility. Regardless, the Davis Police Department will conduct an administrative investigation pursuant to this policy and PP 1.07-A.

C. Procedure Following Discharge of Firearm by Accident or Other

1. An officer who discharges their firearm without causing injury shall notify the Watch Commander as soon as practical.
2. The Watch Commander shall notify a Patrol Commander who should notify the Police Chief via the Chain-of-Command.
3. The Commander charged with oversight of the Professional Standards Unit shall assign a supervisor to investigate the circumstances surrounding the discharge of the firearm.
4. Upon completion of the investigation, a copy shall be forwarded to the Police Chief via the Chain-of-Command.
5. At the discretion of the Police Chief, any involved officers may be placed on paid administrative leave pending the outcome of the investigation.

Landy Black
Police Chief

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2/01: added O.P.N. to III C, added III D 3.

10/01: additions to III F.

9/03: additions to III C, mandatory carry of baton & straight baton added.

01/03: revisions to investigative procedure

12/05: Nunchaku no longer approved force option.

1/06: Changes to reflect recent case law. III.C.4.e. modified to include 29 inch wood baton.

06/08: changes to wording on authorization to use deadly force and watch commander duties following use of non-deadly force

06/09: Sections II amended, Section III medical attention added, former Section III changed to Section IV.

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