

425 – Policy Governing In-Custody Injuries and Use of Force

Santa Ana Police Department

Departmental Order #425 – Policy Governing In-Custody Injuries and Use of Force

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Purpose

The purpose of this Order is to establish Department policy regarding the use of force and to provide guidelines for reporting, investigating and documenting all incidents involving use of force and in-custody injuries. Nothing in this policy and the attached commentary is intended to create or does create an enforceable legal right to a private right of action.

Background

The Constitution entrusts police officers with special powers not given to ordinary citizens. Police, while engaged in their lawful duties, have a legitimate right to use force to overcome resistance. It is critical that all use of force and in-custody injuries be properly investigated and documented. An unbiased investigation and accurate documentation immediately following a use of force or in-custody injury will help to protect the Department and officers against liability, and identify unacceptable behavior, procedural concerns and training needs. Additionally, the law enforcement services provided by the Department will be recognized by the public as fair, impartial and sensitive to the dignity and worth of each individual.

Policy

The Santa Ana Police Department recognizes and respects the value of human life and personal dignity. Vesting officers with the authority to use force to protect the public's welfare requires a careful balancing of all human interests. Therefore, it is the policy of this department that officers shall use only that amount of force which appears to be objectively reasonable, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control. "Objectively" refers to what other officers, with the similar training and experience as the involved officer, would logically believe or conclude. Reasonableness of the force used must be judged "from the perspective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight" "Moreover, allowances must be made 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." *Graham v. Conner* 490 U.S. 386, 396 (1989)

Definitions

It is important that all reports, investigations, administrative reviews, and internal documentation regarding a use of force incident utilize the same terminology. Inconsistency in term usage will only lead to confusion and may hinder investigations regarding the use of force.

A. Deadly Force

That force, which an officer knows or should know, is likely to cause death or serious bodily injury, or in the manner of its use or intended use is capable of causing a substantial risk of death or serious bodily injury.

B. Deadly Weapon

Any Instrument Used for Lethal Purposes, Including a Firearm Or Other Instrumentality, Which In the Manner of Its Use Could Cause Death Or Serious Bodily Injury.

C. Injury

Refers to any physical harm inflicted by police, or sustained while in police custody and includes any wound, bruise, abrasion, or complaint of pain.

D. Force

Any action taken to control, restrain, overcome or stop a suspect's resistance.

I. Authorized Use of Force

Physical force may be used to effect a lawful arrest or to restore/maintain order when actions of persons reasonably appear to threaten the safety of others. Officers shall use a reasonable amount of force as required by the immediate circumstances. Force used beyond that which is reasonable becomes excessive and is prohibited. 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 effect 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 his/her efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. California Penal Code § 835(a). A peace officer may use reasonable force to make an arrest or detention, to prevent escape, or to overcome resistance. Additionally, if a peace officer has probable cause to believe a public offense will be or is in the process of being committed, a peace officer may use reasonable force to prevent such public offense from occurring and to restore/ maintain order. Given that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining 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 amount of force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. Those factors should include, but are not limited to:

1. The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
2. Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion, number of officers vs. subjects).
3. Influence of drugs/alcohol.
3. Proximity of weapons.
4. Availability of other options (what resources are reasonably available to the officer under the circumstances).
5. Seriousness of the suspected offense or reason for contact with the individual.
6. Training and experience of the officer.

7. Potential for injury to citizens, officers and suspects.
8. Risk of escape.
9. Other exigent circumstances.

Each officer is expected to respond with only that amount of force, which reasonably appears appropriate under the circumstances at the time to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

If feasible, prior to using force, which carries a significant risk of serious injury, officers are recommended to give warning that such force may be used. If a warning is not feasible, officers should document why it was not practical to do so.

II. Authorized Use of Deadly Force

The use of deadly force is authorized:

1. In the defense of the officer from death or serious bodily injury.
2. In the defense of another officer or any other person from death or serious bodily injury.
3. To prevent the escape of a violent felony suspect where the suspect has failed to yield to any type of reasonable warning or physical apprehension, and the officer reasonably believes that the escape will pose an immediate and significant threat of death or serious bodily injury to that officer or other persons.

III. Use of Force Incidents

A. Command of the Scene

1. The officer assigned the original call is in command of the scene until relieved by a supervisor. In incidents where a sergeant has actively participated in the use of force, the Watch Commander will be notified and will assign another sergeant who will assume command of the scene and who will conduct the use of force investigation.
2. In all cases, the Watch Commander will be notified as soon as practical and will be responsible for ensuring that the proper assignments are made.
3. Upon arrival, the assigned sergeant shall assume command of the scene and be responsible for a complete investigation of the incident. The type of force used will determine whether a sergeant or corporal will complete the investigation.

B. Supervisory Responsibilities

1. The assigned supervisor will respond and assume command of the scene unless impractical to do so.
2. Obtain the basic facts from the involved officers.

3. Ensure that any injured parties receive medical treatment – medical treatment shall not be delayed for the purposes of obtaining an interview or photographs.
4. Examine the subject of force for injuries.
5. Notify the Watch Commander.
6. Ensure that photographs are taken of any areas involving visible injury, complaint of pain, as well as overall photographs of uninjured areas.
7. Identify and interview witnesses and parties involved. When the injury resulting from a use of force or an in-custody injury exceeds that of basic medical aid, interviews of all parties involved shall be recorded and downloaded into DIMS. For the purpose of this order, injuries that exceed basic medical aid include, but are not limited to, injuries requiring sutures, broken bones, or admittance to a hospital.
8. Ensure the appropriate reports are completed by necessary personnel.
9. Identify ancillary issues if applicable (shall be documented on a separate memorandum directed to the Department's Legal Advisor via chain of command).
10. Should the supervisor determine that the application of force was not within policy, a separate internal administrative investigation shall be initiated.

IV. Reporting Procedures

It is the intent of this policy to outline the circumstances by which force is reported. All situations that require the application of force to effect an arrest or restore order, shall be properly documented (officer's report, supervisor's use of force investigation report, administrative report, etc.). For example, if an officer applies a control hold to gain or maintain control of subject, and there is neither injury nor complaint of pain, the officer shall document the use of force in his/her report. No other documentation is required. The specific type of documentation required is generally based upon the type of force utilized and the type of injury sustained by the suspect. All use of force incidents and in-custody injuries shall be reported, investigated, and the appropriate notifications made in compliance with this Departmental Order. The purpose of this section is to delineate the appropriate type of report necessary to document a use of force incident, in-custody injury, complaint of excessive force, or any situation wherein a suspect in custody has received an injury prior to police contact.

A. Incidents Requiring a Supervisory Log:

1. Whenever a suspect has received an obviously recent injury, and it has been clearly determined the injury occurred solely as a result of an incident prior to police contact (accidents, injuries inflicted by other parties, etc.).
2. Whenever a suspect has received an injury while in police custody and it is not a result of the application of force. This would include suspects whose injuries are a result of tripping, falling, resistance to handcuffs, restraints, or who injure themselves during resistive behavior while confined within police vehicles or interview rooms.

3. Any maximal application of the RIPP Restraint (refer to Departmental Order Number 420).

B. Incidents Requiring a Supervisor's Use of Force Investigation Report – Taser Form.

Supervisors may document Taser deployments on the Supervisor's Use of Force Investigation Report – Taser Form, except under the following conditions:

1. If the Taser deployment results in any injury to the officer, suspect or any involved party that requires treatment at a medical facility or any other “serious” injury or medical condition. Serious is defined as any injury other than a minor abrasion, bruise, lump or complaint of pain without visible injury.
2. The facts and circumstances surrounding the deployment of the TASER do not lend themselves to the completion of the standardized Supervisor's Use of Force TASER form.
3. When directed by a Commander or higher authority.

C. Incidents Requiring a Supervisor's Use of Force Investigation Report

1. Whenever a suspect has received an injury as a result of the application of hand-applied force such as finger/joint manipulation techniques, come-along holds, pressure point control, or take-downs, and the only known injury is a complaint of pain without visible injury, or when the only known injury is a minor abrasion, bruise, or lump.
2. Any deployment of O.C. spray, whether or not the suspect was affected.
3. Any use of force incident which causes more than a complaint of pain or superficial injuries (abrasions, bumps, lumps).
4. Whenever an officer utilizes personal weapon techniques (fist/elbow/knee/kick-strikes), Taser (with the exception of DO 425 Section B), K-9, carotid restraint holds (whether or not unconsciousness results) and use of baton or any other impact weapon to temporarily incapacitate a subject.
5. Any deployment of Less Lethal munitions, regardless of injuries received (**Refer to Departmental Order No. 440**).
6. If during the investigation the supervisor reasonably believes excessive force was used, a sergeant shall investigate and document the allegations in an administrative report in accordance with Departmental Order 120. If during the initial investigation a complaint of excessive force is made, a sergeant shall investigate the allegations. If it is determined by the investigating sergeant that the force used was not excessive, the sergeant shall document their investigation in the supervisor's use of force investigation report.
 - a. Complaints of excessive force made after the initial investigating supervisor has completed a use of force investigation shall be handled by Professional Standards.

7. Officer involved shootings, and incidents involving the death of the suspect or expected death, shall be handled by the Professional Standards and Crimes Against Persons Sections, and do not require completion of a supervisor's use of force investigation report by the initial investigating sergeant.

D. Assignment of Corporals to Use of Force Investigations

With a Sergeant's approval, a Corporal may investigate and document incidents requiring a supervisor's use of force report identified under Reporting Procedures Sections IV- A subsection 1 through 3, Section B and Section C subsection 1 through 2.

E. Reporting Requirements

All use of force investigations and reports of injury sustained prior to police contact as identified in Section IV A subsection 1-3 of this order shall be completed by the end of the supervisor's shift unless approved by the Watch Commander. All other use of force incidents shall be completed within thirty days of the incident unless a delay is approved by a Commander or above. All use of force investigations shall be routed the appropriate chain of command to the Professional Standards Division.

V. Officers' Duties

In any use of force incident the involved officer will document the type and amount of force used in a crime report, information report, or supplemental report. Whenever an officer utilizes OC spray, personal weapon techniques (fist/elbow/knee/kick-strikes) Taser, K-9, carotid restraint holds (whether or not unconsciousness results), baton or other impact weapons, the officer has a duty to report the incident to a sergeant regardless of whether or not injury was sustained. In an incident involving Deadly Force, the officer will generally not make a written statement, as he/she will be interviewed by a supervisor in accordance with Departmental Order 120. It is the involved officer's responsibility to determine if an injury was sustained and to promptly notify a sergeant if an injury occurred. "Determine" means to visually inspect the individual upon whom force was used and to specifically ask if they were injured.

It is the responsibility of the involved officer to obtain medical attention for an individual injured while in his/her custody. The extent of the treatment shall be thoroughly documented in their report and a supervisor shall be notified.

The involved officer shall immediately notify a sergeant if an individual who is in police custody sustains an injury that is not a result of a use of force.

VI. Jail

Use of force and in-custody incidents occurring within the Santa Ana Jail shall be handled in accordance with this Departmental Order and the Santa Ana Jail Policy and Procedures Manual.

A. Report of Injury

Reports of injury/use of force will be forwarded to the Professional Standards Division for further processing.