

OFFICE OF CHIEF OF POLICE
OAKLAND POLICE DEPARTMENT

SPECIAL ORDER 9196

TO: All Sworn Personnel

SUBJECT: Documentation of the Use of Force¹

EFFECTIVE DATE: 15 Feb 20

TERMINATION: Upon revision of DGOs K-03, *Use of Force* and K-04, *Reporting and Investigating the Use of Force*

Scope and Purpose

Special Order 9196 immediately changes and supersedes sections of DGOs K-03, Use of Force and K-04, Reporting and Investigating the Use of Force. The major changes explained herein are limited in scope, exclusively covering the expansion of reportable conduct and methods for documenting reporting. SO 9196 furthers the Oakland Police Department's (the "Department") commitment to transparency and accountability.

Major Change Explanation

Pointing of a Firearm

All references to "intention" in reference to an officer pointing a firearm at a subject have been eliminated. Determining whether or not an officer intentionally or un-intentionally pointed a firearm at a person was unnecessarily subjective and did not capture the spirit of the policy: reporting every time that an officer points a firearm at a person.

Additionally, language about the "low-ready" position was deemed too subjective and potentially confusing, and was removed from the policy.

As such, force categorized as Level 4, Type 22 will now be titled "Pointing a Firearm at a Person." Pointing means any time that the line of the muzzle intersects with the body of the subject such that, if the firearm were to discharge, the round would strike that person.

Tracking of Drawing, Exhibiting, or Unholstering a Firearm

Even when officers do not point their firearm at a person (Level 4, Type 22, explained above), the drawing, exhibiting, or unholstering of a firearm by a police officer can be perceived by those involved in or witnessing an incident as threatening or intimidating.

To allow the Department to track these incidents, all members who draw, exhibit, or unholster any firearm during an incident, including when the firearm is pointed at a person (a reportable use of force under DGO K-04), shall use the CAD / radio disposition code "KDE."

The use of the disposition code covers one officer for the entire incident (example: a PRO deploys their rifle from the vehicle and, after a briefing, assists with a building search where no suspects are located. The "KDE" disposition code covers that officer's actions). Each officer

¹ DGO K-03: II C Use of Force (p. 3): Any physical or mechanical intervention used by a member or employee to defend, control, overpower, restrain or overcome the resistance of an individual.

drawing, exhibiting, or unholstering a firearm during an incident shall separately report the “KDE” disposition code, except in the case of officers logged on together as one unit (e.g. an “Adam” two-officer car or a Tango Team) in which case one disposition code shall suffice to document the actions of that unit.

Drawing, exhibiting, or unholstering a firearm includes:

- Drawing the duty handgun in response to a hazardous situation (e.g. high-risk vehicle stop, building search, perimeter post for wanted subject) *whether or not the suspect or any other person is in the presence of the officer*; and
- Removing the duty shotgun or patrol rifle from the patrol vehicle in response to a hazardous situation *whether or not the suspect or any other person is in the presence of the officer*.

Drawing, exhibiting or unholstering a firearm does **not** include administrative or evidentiary possession or movement of firearms such as:

- bringing a duty shotgun from a police station to the police vehicle or vice-versa;
- bringing a patrol rifle from a police station to the police vehicle or vice-versa;
- drawing a firearm to perform an inspection of the firearm;
- drawing a firearm to perform a function check of the firearm;
- drawing a firearm to load a firearm;
- drawing a firearm to store it in a secure area prior to an interview of a suspect in an interview room;
- drawing a firearm to secure it in a patrol vehicle prior to booking a prisoner in a secure facility such as Santa Rita Jail, Juvenile Hall, or John George Pavilion;
- drawing a firearm to store it in a secure area prior to entering OPD YFSD;
- drawing a firearm to store it in a secure area prior to entering a secure area which bars firearms;
- drawing a backup firearm to reposition or better secure the firearm;
- drawing a firearm during training;
- displaying a firearm to a competent authority for inspection or repair;
- collecting a firearm from a citizen for safekeeping; or
- collecting a firearm from a crime scene as evidence.

Redefinition of “Takedown”

“Takedowns” were deemed to be insufficiently defined, leaving officers, supervisors, and use of force reviewers unsure of whether certain actions were reportable uses of force. To alleviate this problem, “takedown” was re-defined as: “Physical force used by a member to cause a person to go to the ground not under their own control.”

Clarification on Injuries, Sustained During Force Incidents, and Their Effect on Reporting Levels

Ensuring the proper documentation of injuries and the proper investigation of force resulting in injury to the force subject is essential to the accurate evaluation of officers and the Department. The current standard of evaluating the seriousness of a resultant injury – whether the injury

required “emergency medical treatment (beyond first aid) or hospital admittance” – is insufficiently clear. The competent evaluation of injuries is necessary when determining whether Level 3 or Level 4 force should be reported and investigated as Level 2 force (Type 13).

To that end, Level 2, Type 13 will be amended to read “*Any use of force resulting in an injury which requires treatment in a hospital or medical facility beyond what is required by basic first aid.*”

- *Excludes Level 1 force types;*
- *Examples of basic first aid include evaluation by a medical professional to assess a complaint of injury, medical clearance before incarceration, removing Taser® or other ECW probes, bandaging, ice packs, over-the-counter pain medications, observation, or precautionary scans or evaluations (such as x-rays);*
- *Examples of treatments beyond basic first aid include stapling, suturing, setting broken bones, or re-locating dislocated appendages.”*

This **does not** change the requirement set out in DGO K-04 I, E, that “[p]ersonnel shall request medical service without delay when a [force] subject has visible injuries or the subject has a complaint of injury.”

Re-categorization of Certain Force and Force on Restrained Persons

- **Level 2, Type 9** has been re-worded and will now say, “Personal weapon strikes to the head or to a **restrained** subject.”
- **Level 2, Type 30** has been added and will say, “Oleoresin Capsicum (OC / Pepper Spray) or other chemical agent applied to a **restrained**² subject.”
- **Level 2, Type 31** has been added and will say, “An Electronic Control Weapon (ECW) is used against a **restrained** subject.”
- **Level 3, Type 16** has been re-named to “All non-carotid takedowns on a **restrained** subject.” As a Level 3, a supervisor must respond to the scene and evaluate the force. Depending on the totality of the circumstances, this type of force may be lowered to a Level 4, elevated to a Level 2, or kept as a Level 3 investigation.
- **Level 3, Type 16a** has been added and will include “Personal weapon³ strikes other than strikes to the head or to a restrained subject.”
- **Level 4, Type 29⁴** has been added and will say, “All non-carotid takedowns, except on a restrained subject.”

² As defined in DGO K-04 II, B, 7, a, “A restrained subject is a person who has been fully placed in a Department-authorized restraint device such as both hands handcuffed, a WRAP, or a RIP Hobble.”

³ Training Bulletin III I.01 (p. 11): Personal weapons are your hands, knuckles, fingers, elbows, forearms, knees, and feet.

⁴ Like all force, Type 29 force is still subject to policy regarding elevating the reporting of force to a higher level, to include:

- If the force subject incurs an injury which requires treatment in a hospital or medical facility beyond what is required by basic first aid (K-04 II, B, [Type 13]);
- If there is an indication that the force was unreasonable (K-04 I, C); or
- At the direction of a supervisor or commander.

- **Level 4, Type 32** has been added. Issues arose where officers were using “force” as defined in K-03 to overcome resistance, but this force was not adequately documented.

This force included such things as: lifting up and carrying people who had gone limp, holding people down on the ground, restraining people in restraint devices (such as the Hobble or WRAP), pulling people out of cars, pushing people into the back of police cars, removing people who were holding on to fixed objects, forcibly pulling people’s hands behind their back when they were resisting, etc.

To that end, one additional category of force was added to the Level 4 reporting scheme as Type 32 as follows:

Type 32: Any use of force, as defined in DGO K-03, used to

- Overcome resistance of a person during an arrest or a detention; or
- Defend oneself or another from combative action by another person.

And which is not categorized in reporting types 1-31.

Details of Changes to Policies

DGO K-03

- Section IV, A, 1 will now read, “The pointing of a firearm at another person is a use of force.”
- Section IV, A, 2 will now read, “A member may point a firearm only when the member has reasonable cause to believe it may be reasonable for his/her safety or for the safety of others. The pointing of a firearm at another person is a use of force. The drawing, exhibiting or unholstering of a firearm by law enforcement officers can be perceived as threatening and intimidating and, when unwarranted, may cast a negative impression on members. Members may draw, exhibit, or unholster their firearms only when justified by appropriate circumstances, and the drawing, exhibiting, and unholstering of firearms will be tracked by the Department.”

DGO K-04

- Section II, A will now read as follows:

II. FORCE LEVELS

Force options enumerated in DGO K-03 are grouped in the following force levels for reporting and investigating purposes only.

A. Level 1

- ❖ [Type 1] A lethal firearm discharge at a person;
- ❖ [Type 2] Any force resulting in death;
- ❖ [Type 3] Any force creating a substantial risk of causing death;

- ❖ **[Type 4]** Intentional strikes to the head with an impact or impromptu impact weapon, regardless of injury;
- ❖ **[Type 5]** Any unintentional firearm discharge with injury or as directed by the CID Commander;
- ❖ **[Type 6]** Any force which results in Great Bodily Injury other than the Carotid Restraint;
- ❖ **[Type 7]** The use of the Carotid Restraint, including a Carotid Takedown, with loss of consciousness;
- ❖ **[Type 8]** Other. Used for non-enumerated lethal force such as intentionally striking a person with a vehicle, or to denote when Level 2-4 force has been elevated to Level 1 for purposes of investigation.
 - The use of a vehicle by a member to intentionally strike a suspect shall be considered deadly force, reported and investigated as a Level 1 UOF under this section. This includes at any vehicle speed, with or without injury, when the act was intentional, and contact was made.

B. Level 2

- ❖ **[Type 9]** Personal Weapon strikes to the head or to a **restrained** subject;
 - A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP, or a RIP Hobble;
 - A subject with one handcuff on is not considered restrained.
- ❖ **[Type 10]** Use of the Carotid Restraint, or Carotid Takedown, without loss of consciousness;
- ❖ **[Type 12]** Impact or impromptu impact weapon strike with contact, regardless of injury;
 - Includes Specialty Impact Munitions (SIM) or any other object;
 - Excludes intentional impact or impromptu impact weapon strikes to the head.
- ❖ **[Type 13]** Any use of force resulting in an injury which requires treatment in a hospital or medical facility beyond what is required by basic first aid.
 - Excludes Level 1 force types;
 - Examples of basic first aid include evaluation by a medical professional to assess a complaint of injury, medical clearance before incarceration, bandaging, ice packs, over-the-counter pain medications, observation, or precautionary scans or evaluations (such as x-rays).
 - Examples of treatments beyond basic first aid include stapling, suturing, setting broken bones, or re-locating dislocated appendages.

- ❖ **[Type 14]** Police canine bites a person's clothing or skin, or causes an injury which requires treatment in a hospital or medical facility beyond what is required by basic first aid;
- ❖ **[Type 27]** Any unintentional firearms discharge that does not result in injury;
- ❖ **[Type 30]** Oleoresin Capsicum (OC / Pepper Spray) or other chemical agent applied to a **restrained** subject;
 - A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP, or a RIP Hobble;
 - A subject with one handcuff on is not considered restrained.
- ❖ **[Type 31]** An Electronic Control Weapon (ECW) is used against a **restrained** subject;
 - Includes probe mode and drive-stun mode;
 - A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP, or a RIP Hobble;
 - A subject with one handcuff on is not considered restrained.
- ❖ **[Type 15]** Other. Used for non-enumerated less-lethal force investigated at a Level 2, or to denote when any Level 3-4 force has been raised to Level 2 for purpose of investigation.

C. **Level 3**

- ❖ **[Type 11]** ECW probes impact a subject's clothing or penetrate the skin, or the ECW is used in drive-stun mode where the arc touches the subject's clothes or skin;
- ❖ **[Type 18]** ECW probes are fired at a subject but miss;
- ❖ **[Type 16]** All non-carotid takedowns on a **restrained** subject;
 - A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP, or a RIP Hobble;
 - A subject with one handcuff on is not considered restrained.
- ❖ **[Type 16a]** Personal Weapon strikes other than strikes to the head or to a restrained subject;
- ❖ **[Type 17]** OC is applied to an unrestrained person;
- ❖ **[Type 17a]** A chemical agent (other than OC) is deployed against or applied to an unrestrained person;
- ❖ **[Type 19]** Non-striking use of the baton against a person (e.g. prying limbs, moving or controlling a person);

- ❖ **[Type 20]** Attempted impact weapon strikes, including SIM, which miss where **no contact is made**;
- ❖ **[Type 21]** On-duty lethal firearm discharge at an animal, other than dispatching an injured animal.

D. Level 4

- ❖ **[Type 22]** Pointing a firearm at a person;
 - Includes pointing a firearm loaded with less-lethal ammunition at a person, except during Crowd Control Operations.
- ❖ **[Type 23]** Weaponless defense technique applied to a vulnerable area for the purpose of inducing pain, excluding strikes (e.g. hair grab, pressure to mastoid, trapezius grab);
- ❖ **[Type 24]** On-duty firearm discharge to dispatch an injured animal;
- ❖ **[Type 25]** A weaponless defense technique control hold is applied, for the purpose of inducing pain, including the Twist Lock, Arm-bar, Bent-wrist, or Arm-bar Hammerlock;
 - Handcuffing and escorting techniques which incorporate elements common to control holds and are not used to overcome resistance or inflict pain are **NOT** reportable uses of force⁵.
- ❖ **[Type 26]** Any Level 3 force incident meeting the criteria to be reported as a Level 4 AND reviewed and approved by a supervisor or commander;
- ❖ **[Type 28]** A canine deployment where the subject is located by the canine but no bite occurs OR the canine makes non-biting physical contact with the subject with no injury beyond basic first aid;
 - Includes alert or detaining behavior such as barking at, growling at, or circling the subject;
 - Excludes canine deployments where the subject is located by means other than the canine or if no subject is located during the search.
- ❖ **[Type 29]** All non-carotid takedowns, except on a restrained subject;
- ❖ **[Type 32]** Any use of force, as defined in DGO K-03, to
 - Overcome resistance of a person during an arrest or a detention; or
 - Defend any individual from combative action by another person;And which is not categorized in reporting types 1-31.

E. Drawing, Exhibiting, or Unholstering a Firearm

⁵ See e.g. “Applying Handcuffs in Standing Handcuffing”, 302.14.3(a), OPD Procedure 302 *Handcuffing and Restraints* (p. 14) or “Raising the Subject to His or Her Feet for High-Risk Kneeling Position Handcuffing”, 302.15.4(a), *ibid.* (p. 20).

- ❖ All members who draw, exhibit, or unholster any firearm during an incident shall use the CAD and/or radio disposition code “KDE” to document such actions.
- ❖ Members who are logged on as one unit (e.g. an “adam” unit) and who all draw, exhibit, or unholster any firearm during an incident will substitute the code “KDE2” for “KDE”.
- Section VI, A, 4 is stricken from the policy. Sections VI, A, 5 and 6 will be re-numbered as 4 and 5, respectively.

The above changes go into effect immediately and this Special Order will stay in effect until cancelled or until the revision of DGOs K-03 and K-04.

By order of



Anne E. Kirkpatrick
Chief of Police