

# TRAINING



# BULLETIN

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Evaluation Coordinator: Training Division

*“Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy.”*

## SPECIALTY IMPACT MUNITIONS

### **Introduction**

The purpose of this Training Bulletin is to provide members with guidelines on the use of Specialty Impact Munitions (SIM). This Training Bulletin does not supersede the training and qualification requirements members shall meet to use and deploy SIM.

This Training Bulletin is a supplemental to Department General Order K-3, USE OF FORCE, which is the master policy regarding the use of force. In addition to this policy, members shall have a complete and thorough understanding of DGO K-3, USE OF FORCE and TB III-H.2, HAND HELD IMPACT WEAPONS which outline, in part, when the use of an impact weapon is appropriate and objectively reasonable, criteria for consideration, definitions, force options and medical requirements.

### **Purpose of Specialty Impact Munitions**

Specialty Impact Munitions (SIM) are pieces of ammunition that are fired from either specifically-designed firearms (such as the 40mm launcher) or from firearms that can be utilized to fire the SIM ammunition (such as the 12 gauge shotgun). SIM are designed as less-lethal weapons; while these may cause injury, when used within the scope of law, policy, and manufacturer recommendations the likelihood of death or great bodily injury, while existent, is minimal.

SIM are impact weapons, and are an intermediate force option. Less-lethal weapons, such as SIM, are used to interrupt an engaged person’s threatening behavior so that officers may take physical control of the engaged person with less risk of injury to the engaged person or officer than posed by other force applications<sup>1</sup>. SIM specifically allow for the application of less-lethal intermediate force at a distance; distance, along with physical cover and other factors, can be used to enhance de-escalation efforts as well as the safety of the engaged person, officers, and the community during an incident. SIM are used when it is not safe for an officer to close on a physically violent person and try to control that person with physical strength and skill, or when a safe, standoff distance is needed. In addition, SIM may be used to further safe resolution of

<sup>1</sup> [DGO K-03](#), Section G-3.



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incidents by hitting or destroying items from a distance (e.g., windows or surveillance cameras) with minimal exposure of officers to dangerous conditions.

## **Authorized Use**

### *General Use Requirements*

Only trained and currently qualified members are authorized to use SIM, and members are only authorized to use the specific SIM for which they have been trained.

### *As a Use of Force*

Except during crowd control (when the use of SIM is severely restricted; reference TB III-G), less-lethal SIM shall only be used as a weapon against an engaged person when objectively reasonable, necessary, and proportional<sup>2</sup>. The use of SIM is an intermediate use of force<sup>3</sup> and is not authorized against persons who are only engaged in **non-compliance** or **passive resistance**. SIM use is intended to overcome **active** and **assaultive resistance**.<sup>4</sup>

“Reasonable force” is defined by law as that amount of force that is objectively reasonable to affect a lawful police purpose and protect the safety of officers or others based upon the totality of the circumstances.

The United States Supreme Court ruled in *Graham v. Connor* that force must be analyzed under the Fourth Amendment’s objectively reasonable test<sup>5</sup>. The application of this test requires an analysis of the totality of circumstances, including these factors to determine if the seizure is reasonable:

1. The severity of the crime at issue;
2. Whether the suspect poses an immediate threat to the safety of law enforcement officers or others; and
3. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

The determination of reasonableness is not based on the 20/20 vision of hindsight.

### *As a Distraction or to Target Objects*

All SIM specified in this policy may be used in non-Crowd Control or Crowd Management Operations as distraction devices or to destroy an object by firing against objects, (e.g., buildings, walls, doors, windows). Verbal notice to members and outside law enforcement agency personnel shall be made before their use as a distraction device or against an object.

<sup>2</sup> [DGO K-03](#), Section D-1.

<sup>3</sup> *Deorle v. Rutherford* 272 F.3d 1272,1279 (9<sup>th</sup> Cir. 2001)

<sup>4</sup> [DGO K-03](#), Section F-03.

<sup>5</sup> 490 U.S. 386 (1989)

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### *Against Animals*

SIM may be used to subdue, distract or chase away vicious animals, but not to dispatch animals (see prohibited uses, below).

### **Lethal vs. Less-lethal**

The distinction between lethal force and less-lethal force is important.

“Less-lethal” force is defined as:

Any use of force, other than lethal force, which by design and application is less likely to cause great bodily injury or death. The possibility of an unintended lethal outcome, although very rare, still exists. SIM are less-lethal weapons. Refer to DGO K-3 for additional less-lethal force options.


### **Use of Direct Fired Specialty Impact Munitions (SIM)**

1. Direct Fired SIM are less-lethal specialty impact weapons that are designed to be direct fired at a specific target including but not limited to Drag Stabilized Flexible Batons (DSFB), often referred to as a "bean bags".
2. A member and/or supervisor on the scene, absent exigent circumstances, shall take reasonable steps to have the engaged person submit to police authority and issue a verbal warning before the use of SIM
3. Members shall, absent exigent circumstances, avoid intentionally targeting the upper chest. Impacts to center mass have the highest potential for immediate incapacitation, but also have the highest potential to cause serious internal injury or in some very rare instances, death.
4. Lethal force backup shall be in place prior to SIM usage, absent exigent circumstances.
5. Any person struck by SIM shall be transported to a hospital for observation and any necessary treatment. Ambulance service, if required, shall be ordered per Department General Order I-4, AMBULANCE SERVICE. First aid, when necessary, shall be administered per Training Bulletin III-K, FIRST AID. Members shall, absent exigent circumstances summon medical personnel to stage near the scene when they reasonably believe the use of SIM is imminent.

### **Prohibited Uses**

1. Direct Fired SIM shall not be used against a person who is under restraint<sup>6</sup>.

<sup>6</sup> See DGO K-03, Section B-24 for definition.

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2. Members shall not intentionally target and fire specialty impact munitions at an engaged person's head, neck, spleen, liver, kidneys, throat, spine, left arm pit, or groin due to the increased likelihood of serious bodily injury or death. Absent the engaged person presenting a lethal threat or engaging in life-threatening resistance, members shall not target these areas.
  3. Absent the engaged person presenting a lethal threat or engaging in life-threatening resistance, direct fired drag-stabilized beanbag (DSFB) shall not be used against a person within 7 yards (21 feet).
  4. Direct Fired SIM shall not be used indiscriminately against a person, a crowd, or group of people even if some members of the crowd or group are violent or disruptive.
  5. Members shall not use SIM to dispatch animals.
  6. Members shall not use SIM against persons who are only engaged in non-compliance or passive resistance.
  7. SIM shall not be "skip-fired" (i.e., intentionally fired such that the round impacts another surface first before striking the intended target).

### **Crowd Control and Crowd Management Usage**

All use of SIM during Crowd Control and Crowd Management is controlled by OPD's Crowd Control Policy ([Training Bulletin III-G](#)). *Kinetic energy projectiles (SIM) shall not be used by any member to disperse any assembly, protest, or demonstration.*

### **Deployment Considerations**

1. Members shall, absent exigent circumstances, reasonably evaluate the intended person for the following Special Conditions before using SIM:
  - a. Pregnant People: Members shall not use SIM against a person who is known, or should reasonably be known, by a member to be pregnant, unless the member believes it is objectively reasonable that his/her life, or life of another, is in immediate danger of death or serious bodily injury, and alternative arrest and control techniques would pose a greater safety or injury risk to the engaged person, third parties or members.
  - b. Pre-Teen Children/Elderly people: Members shall not use SIM against a person known, or should reasonably be known, by the member to be the age of ten (10) or younger or over the age of seventy (70), unless the member believes it is objectively reasonable that his/her life, or life of another, is in immediate danger of death or serious bodily injury, and alternative arrest and control techniques would pose a greater safety or injury risk to the engaged person, third parties or members.



- c. Physically Disabled: Members shall not use SIM against a person known, or should reasonably be known, by the member to be physically disabled unless the member believes it is objectively reasonable that his/her life, or life of another, is in immediate danger of death or serious bodily injury, and alternative arrest and control techniques would pose a greater safety or injury risk to the engaged person, third parties or members.
2. Members shall, absent exigent circumstances, consider, as applicable to the incident, the following factors which may have a direct effect on the engaged person, members or third parties which would influence the decision to use SIM, or whether to use force at all. At all times, members shall be guided by the Department's Mission, Purpose, and Core Principles (DGO K-03, Section A) and the Department's Policy Requirement Regarding De-escalation (DGO K-03, Section C-3). The factors specific to SIM that officers shall consider include, but are not limited to:
    - Is the engaged person armed and, if so, with what type of weapon? If the engaged person is armed with a firearm, will the firing of "less-lethal" SIM cause the engaged person to fire his/her firearm?
    - Is the level of force by the officer appropriate for the level of resistance or aggression exhibited by the engaged person?
    - What is the type of situation? Is the engaged person holding a hostage or are there other bystanders in the immediate area?
    - Are the officers on the Dedicated Arrest Team (DAT), the inner perimeter, and other surrounding areas aware that less-lethal SIM may be deployed? Has notification been made or will it be made to the surrounding officers? Will the firing of less-lethal SIM cause other officers to initiate sympathetic fire?

**Absent exigent circumstances, notification before and after the use of a SIM shall be made over the radio and/or in person when radio volume may be turned down for tactical reasons, radio communication problems are occurring or the incident involves outside agency personnel who may not have radio contact with the OPD.**

**Absent exigent circumstances, members shall ensure that personnel from other public safety agencies involved in the incident acknowledge receipt of the information prior to the use of SIM. This is to ensure the employment of SIM is not mistaken for lethal force.**

- Are other tactics in place, (e.g., O.C., TASERS, K-9's, multiple less-lethal SIM shooters, and arrest teams) as an alternate or contingency plan should less-lethal SIM not create the desired results?

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- What is the distance of the threat in relation to the less-lethal SIM shooter? The farther the threat, the less accurate the munitions and the less kinetic energy delivered. As the threat gets closer to the less-lethal SIM shooter, the shooter must lower the point of aim, (i.e., to the legs, buttocks, etc.)
  - What is the distance of the threat in relation to the arrest team? The further away the arrest team, the longer the threat has to recover from the effects of the SIM.
  - Follow up shots: because the first round may miss or not be effective, always be prepared to fire multiple rounds at the engaged person.
  - What is the availability of spare less-lethal SIM?
  - Are there any language or hearing barriers that affect the engaged person's ability to comprehend clear and articulate communication/directions from members?
  - Is the engaged person under the influence of medication, illegal drugs, or an intoxicant?
  - Are there any potential secondary injury possibilities to the engaged person (e.g. falling off of a building, running into traffic, etc.)?
  - Does the engaged person have any mental or psychological impairment?
  - What is the age of the engaged person? Does their age factor into the level of resistance the engaged person is posing or the immediacy of the threat they present?
  - What was the success or resilience to the use of previous SIM?
  - What is the probability of success in achieving the intended results with the SIM and a engaged person's defenses (e.g. engaged person swinging a jacket, body protection, etc.)?
  - Are alternative plans of action in place should the SIM not have the intended results?

### **Training**

Sworn members shall receive training on SIM during every continued professional training (CPT) cycle. This training shall include, but is not limited to, the following:

- Live fire of SIM at practice targets with emphasis on proper target selection;
- Overview of the provisions of this SIM policy;
- Information on situations in which SIM may be used for tactical purposes other than as a weapon; and
- Information on SIM prohibitions during crowd control.

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Staff conducting training shall keep a running count of how many SIM are expended during training and report it quarterly to the Department's Military Equipment Coordinator or designee.

All training/qualification records and lesson plans shall be maintained by the Training Section. The records shall not be purged once training and qualification have been updated or renewed. The records shall represent the entire history of the member's training, qualifications and the curriculum utilized for each training session.

### **Non-flexible vs. Flexible Projectiles**

There are two categories of SIM projectiles: non-flexible and flexible.

Non-flexible projectiles are composed of rigid or semi-rigid materials such as hard rubber or wood. Non-flexible projectiles DO NOT conform to the contour of the surface they strike.

Flexible projectiles are generally composed of lead or silica filled cloth bags, or a softer substance such as foam. Flexible projectiles conform to the contour of the surface they strike.

### **Single Projectile vs. Multiple Projectiles**

Generally, single projectile munitions (e.g. Drag stabilized flexible baton round, 40 mm sponge round) are rounds that launch one projectile with an expectation of point of aim – point of impact accuracy. Generally, these munitions are intended to be direct-fired munitions.

Multiple projectile munitions (e.g. Wooden dowels, 40mm foam baton round) are rounds launching more than one–or multiple–projectiles at the same time. Generally, these rounds are “skip-fired”. Indirect or skip fire munitions are prohibited.

### **Direct Fired vs. Indirect Fired/Skip Fired**

There are two methods in which less-lethal SIM are deployed onto a target: direct fired and indirect or skipped fired.

Direct fired munitions are intended to be fired directly at an engaged person while reasonably attempting to avoid prohibited areas, as specified in parts 5 and 6 of the *Use of Direct Fire Specialty Impact Munitions (SIM)* section, above.

Indirect or skipped fired munitions are intended to be fired so that the projectile impacts the ground first and then “skips” into the intended target. Indirect or skip fire munitions are prohibited.

### **Psychological (Mental) Effects**

Impact munitions have a tremendous mental effect on an individual. In many cases, the mental effects far outweigh the physical effects and may be the determining factor in the engaged person's response to the munitions.

Possible effects in engaged persons who have SIM deployed against them are fear, anxiety, and panic:

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Fear: Impact munitions may cause a powerful mental distraction. If the engaged person has prior knowledge of the effects of impact munitions and realizes that he/she is about to be targeted, this realization may be enough to cause the engaged person to comply or, at least, be distracted long enough for a plan of action to be implemented. The engaged person must also mentally cope with the physical pain that he/she feels after being struck with impact munitions.

Anxiety: The action of pointing a firearm directly at an individual and/or firing a projectile at him or her arouses fear in the individual of being shot with a firearm. The pain and, sometimes, the appearance of the injury may reinforce this belief.

Panic: Because it may create the “fight or flight” response, panic may not be the most desired effect.

Members shall consider and prepare contingencies for a panic response. Should it induce a “fight” response, a reliable secondary plan for incapacitation is needed. Should it induce the “flight” response, a secure perimeter along with other available assets should overcome any eluding actions.

### **Physiological (Physical) Effects**

There are two types of injuries caused by projectiles: penetrating and non-penetrating.

Penetrating injuries are caused from low mass, high velocity projectiles, such as bullets and some SIM if used at a close distance, or low velocity sharp objects such as knives.

Non-penetrating injuries are caused when blunt objects impact the surface of the body at moderate speeds causing blunt trauma but do not penetrate the body.

In simple terms, blunt trauma is the primary desired physical effect of less-lethal impact munitions.

The flexible baton inflicts enough pain to get most individuals to comply yet, when used properly, has a low probability of causing serious physical harm. Generally, the impact of the projectile along with the associated pain works to deter the individual from unwanted aggressive behavior.

The possibility of physical injury always exists whenever impact weapons are used. Inappropriate use of a SIM significantly increases the risk of injury or death to a suspect. Abrasions, lacerations, contusions, and fractures may result and need to be addressed by trained medical personnel (See DGO K-3, TB III- K, and DGO I-4 regarding first aid and emergency medical treatment.)



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The human body can withstand high levels of force for very short durations of time if the force is distributed on the strong parts of the skeleton. The soft body tissues are responsible for absorbing and dissipating a great deal of force without producing a large amount of compression. However, if the amount and speed of blunt trauma is greater than can be absorbed, soft tissues can be damaged by tearing or rupturing, causing lacerations, cuts, and bruises.

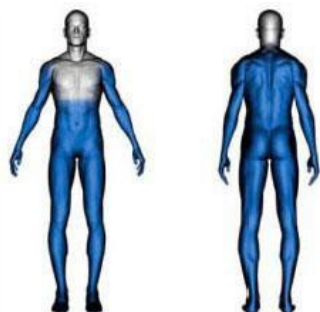
Impacts to the abdomen can cause injury to the liver and spleen causing crushing deformation. Chest impacts can displace internal organs and possibly lacerate major vessels by crushing or stretching.

Although rare, penetration into the body has occurred and is always a possibility, especially when improperly used, as a result of a combination of kinetic energy (weight, size, shape, and velocity); target distance; the engaged person's weight, mass, clothing, or other material coverings; and the area of the body at which the engaged person is impacted. Members shall use SIM within training guidelines and Department policy.

### **Viable Target Areas**

The authorized target areas for SIM are the same as for hand held impact weapons.

The primary target areas are areas consisting of large muscle groups such as the buttocks and thighs. Other target areas are the shoulder, upper arms, elbows, lower arms, lower abdomen area, knees, and lower legs. Skeletal target areas include the wrists, hands, ankles, and feet. It should be noted that impacting skeletal target areas may result in fractures.



Preferred Target Areas in Blue

Center mass shots provide for the highest probability of immediate incapacitation but also have the highest potential to cause serious injury or, in rare instances, death (See part 6 of Use of Direct Fire Specialty Impact Munitions (SIM) section above.)

Factors an officer shall consider when selecting a target area to strike are the following:

- Clothing – In colder climates, heavier clothing and jackets reduce the amount of blunt trauma the engaged person receives. Exposed target areas such as the legs should be considered. In hotter climates, where lighter clothing is worn, factors to

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consider are shot placement and engagement distance. Engaged persons may also wear “armor” to defeat/lessen the effects of impact munitions.

- Physical stature and condition – Is the engaged person heavy and muscular or is the engaged person thin and skeletal? How old is the engaged person? Most likely, a 250-pound person will be less physically affected than a 100-pound person when both are struck in the same target area. The blunt trauma effects and the potential for injury are much greater for the smaller stature engaged person.
- Immediate surroundings – Be aware of what or who is in the background. Are there any persons in the immediate area that might be struck from a deflected or missed shot?

### **Non-Target Areas**

Department policy prohibits intentionally targeting and firing SIM at vulnerable body parts. Members shall avoid striking an engaged person’s head, neck, spleen, liver, kidneys, throat, spine, left arm pit, or groin with any type of specialty impact weapon. Unless your intent is to use LETHAL FORCE, all reasonable attempts shall be made to avoid striking these areas. It should be noted that, when an engaged person is moving or attempting to shield him/herself, avoiding these target areas may be difficult. Given the inherent risk of striking vulnerable body parts, members and supervisors should weigh the risk vs. benefit of using SIM against a moving person.

Members shall, absent exigent circumstances, avoid intentionally targeting the upper chest.

### **12 Gauge Specialty Impact Munitions**

Safariland Drag Stabilized Bean Bag rounds (both marking #3028 and non-marking #3027), and the CTS Super-Sock (both marking #2581G and non-marking #2581) are the only authorized 12 gauge SIMs. These rounds are hereafter referred to as Drag Stabilized Flexible Baton, or DSFB, rounds.

All authorized 12 gauge SIMs share a common design and function in the same manner. These SIM rounds employ a tail design to improve accuracy and a conforming projectile to deliver blunt-force-trauma.

The Safariland rounds are single, tear-shaped, heavy-cotton and ballistic material projectiles with four stabilizer tails. The CTS rounds are single, tear shaped, heavy-cotton and ballistic material projectiles with a single cone shaped stabilizer tail. All authorized DSFB rounds are filled with 40 grams (1.43 oz.) of #9 lead shot loaded into a translucent 12 gauge shell. The rounds use smokeless gunpowder as a propellant. When fired, the projectile travels at about 280 feet per second. Because it is tear-shaped with a stabilizer tail(s), it is very aerodynamic and has a high degree of accuracy. The tear shape also creates a blunt impacting surface, which causes fewer injuries than the discontinued flat flexible baton round.





The 12 gauge DSFB round has an optimal energy range of 20-75 feet and is intended to be a direct fired munition. The user shall be thoroughly trained, qualified and maintain the Department standard of annual qualification to maintain certification in its use.

Some encounters may require two or more shots placed on an engaged person to gain compliance and shall be justified as required by DGO K-3. Each application is a use of force. Alternate plans of action should be in place should the desired results not be achieved.



## **The Remington 870 Pump Action Shotgun**

The 12 gauge Drag Stabilized Flexible Baton Round shall be fired from a barrel with a choke rating of "Cylinder Bore." A "Cylinder Bore" choke is required to ensure that the SIM exits the barrel of the weapon system completely and does not become lodged inside. The only shotgun deployed by the Department that has this choke rating is the Remington, Model 870, 12 gauge pump-action shotgun.

Other factors adversely impacting a flexible baton projectile's ability to exit the barrel when fired are:

- A dirty/fouled barrel;
- A bent/damaged barrel; and/or
- Damaged munitions.



## **Safety Checks**

Incidents have occurred when peace officers in other agencies shot engaged persons with lethal shotgun ammunition when those officers believed that less-lethal ammunition was loaded into their shotguns. In order to prevent a lethal firearms discharge, members shall strictly follow the deployment safety checks detailed in this section.

Prior to the deployment of **any** 12 gauge less-lethal SIM, members shall thoroughly complete the following safety checks:

1. Clear the weapon system of all lethal ammunition. Double check to ensure that the weapon system is indeed clear of any lethal ammunition.
2. Have a second officer double check that the weapon system is clear of any lethal ammunition. This step is incorporated to ensure that an officer has not overlooked any lethal ammunition due to fatigue, darkness, or stress.
3. Ensure that lethal ammunition for the weapon system is inaccessible to the less-lethal shooter. The best course of action to ensure that no lethal ammunition is accessible is to lock it in a secure location such as the glove box or the trunk. **THE LESS-LETHAL SHOOTER SHALL NEVER INTER-MINGLE LETHAL AMMUNITION FOR THE WEAPON SYSTEM ON HIS/HER PERSON OR SHOTGUN.**
4. Inspect each less-lethal round to ensure that the munitions are less-lethal. Visually inspect each and every less-lethal round that is deployed to ensure that it is indeed less-lethal. Never assume.

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5. Have a second officer double check each less-lethal round to ensure that the munitions are in fact less-lethal. This step is incorporated to ensure that an officer has not overlooked any lethal ammunition due to fatigue, darkness, or stress.

Although there are designated orange colored less-lethal Remington, Model 870 shotguns for Crowd Control Operations, this does not preclude negligent lethal discharges. The only way to prevent negligent lethal discharges is to strictly follow the five safety checks listed above.

### **40mm Single and Multi Shot Launchers**

40mm SIM shall be fired from a 40mm launcher. The launchers used by the Oakland Police Department are the Penn Arms Single and Multi Shot shoulder fired launchers and the Defense Technology 40LMTS. These launchers can be fired either in the single action or double action mode. Each launcher has a full length Picatinny rail adaptable for mounted electronic sight systems, and also a fixed front sight bead and rear ghost ring sight.

All users shall be thoroughly trained and qualify annually to maintain their Department certification in its use. The user shall visually inspect each round before placing it in the launcher to ensure he/she is using the intended round type.

40mm Multiple Foam Baton - A Direct and Indirect Fired SIM manufactured by Defense Technologies. It consist of a 1.60 inch diameter by 4.89 inch long casing that contains (3) foam rubber projectiles. This SIM uses smokeless powder as a propellant. Each foam rubber is a 1.40 inch cylindrical shaped baton made of foam. Each baton weighs .40 ounces. When fired, the batons travel at about 325 feet per second.

The 40 mm Foam Baton Round is intended to be direct fired. The operator shall be adequately trained in the use of Less Lethal Impact Munitions and have a thorough understanding of the round and considerations for selecting shot placement such as level of threat, target distance, size, and clothing.

The 40 mm Foam Baton Round is most suitable in close to medium ranges of fire, approximately 15 to 30 feet. Beyond 30 feet, the lightweight foam batons may move off target and lose most of their energy.

Engagement distances may be limited by walls or barriers. It may also prove valuable in urban riot situations where police lines and protestors are in close proximity. As a dynamic energy round for the incapacitation or distraction of single non-complaint or aggressive persons, it is best suited at close to moderate distances, approximately 10 to 20 feet. All users shall be thoroughly trained and qualify annually to maintain their Department certification in its use.

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40mm Direct Impact Round – A Direct Fired SIM manufactured by Defense Technologies. It consists of a

1.60 inch diameter by 4.40 inch long casing that contains (1) crushable foam nose, powder payload and plastic body projectile. This SIM uses smokeless powder as a propellant. Each foam is a 2.92 inch cylindrical shaped projectile made of foam. Each foam weighs 1.45 ounces. When fired, the batons travel at about 295 feet per second.

The 40 mm Direct Impact Round is a “point-of-aim, point-of-impact” direct fire round that is most commonly used by tactical teams in situations where greater accuracy and deliverable energy is desired for the incapacitation of an aggressive, non-compliant engaged person at longer distances. The 40mm sponge round is the only SIM that may be deployed during Crowd Management and Control incidents.

The 40 mm Direct Impact Round is intended for direct fire deployment. The operator shall be adequately trained in the use of Less Lethal Impact Munitions and have a thorough understanding of the round and considerations for selecting shot placement such as level of threat, target distance, size and clothing. The 40 mm Direct Impact Round will prove most successful for incapacitation when used within their optimal energy range of 5 – 36 meters, although it may be used in situations from 2 – 50 meters.

All users shall be thoroughly trained and qualify annually to maintain their Department certification in its use. The user shall visually inspect each round before placing it in the launcher to ensure he/she is using the intended round type.

### **Hand Deployed Specialty Impact Munitions**

The Oakland Police Department deploys the following hand deployed SIM.

#15 Stinger Grenade – The Stinger Grenade is a combination specialty impact munition and diversion device that may incorporate optional CS or OC laden powder. The Stinger Grenade is a maximum effect device because it delivers up to four stimuli for psychological and physiological effect: rubber pellets, bright light, sound, and optional chemical agent powder.

These munitions are 3.1 inches in diameter and 5.2 inches long. These munitions contain 8 ounces of flash powder and 150 .32 caliber soft rubber balls. The munitions that contain powder chemical agent can contain up to 2.0 grams of CS or .30 grams of OC. Other variations that may be deployed are the same munitions without the rubber pellets.

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The Stinger Grenade has an initial 1.5 second delay that initiates fuse assembly separation, followed by another .5 second delay before the device functions. The blast is sufficient to project the rubber balls and optional chemical agent powder in a 50 foot radius.

Only members of the Tactical Operations Team are authorized to use the Stinger Grenade and the user shall be thoroughly trained, qualified and maintain the Department standard of annual qualification to maintain authorization in its use. The Stinger Grenade is not authorized for use in any Crowd Control or Crowd Management Operation or against people (See exception under *Tactical Operations Deployment* section below).

### **Tactical Operations Deployment**

The Stinger Grenade may only be deployed against a person by the Tactical Operations Team, during a Non- Crowd Control or Crowd Management Operation, when a member objectively and reasonably believes that his/her life, or life of another, is in immediate danger of death or serious bodily injury based upon the totality of the facts known at the time.

### **Post Deployment Considerations**

After an engaged person has been taken into custody using a SIM, specific tasks shall be completed.

First Aid or Medical Treatment – Members shall provide, as necessary, and summon professional medical assistance, as soon as practical, whenever an engaged person is struck by a SIM and taken into custody (See DGO K-3, USE OF FORCE, TB III-K, FIRST AID, and DGO I-4, AMBULANCE SERVICE, regarding first aid and emergency medical treatment.)

Evidence – Personnel shall recover all expended casings and projectiles for documentation purposes and make inventory of all remaining live munitions for accountability. If the situation or exigency does not allow the recovery of the evidence (e.g. crowd control situation), officers shall document in their respective reports the number of munitions deployed and the circumstances disallowing the recovery of the evidence.

Additionally members shall, when notifying their supervisor of the use of force, notify their supervisor regarding the non- recovery of evidence.

### **Equipment Use Reporting**

Any personnel firing or using a SIM outside of training shall report the use to their supervisor. Uses of force shall be handled as detailed in the next section. Other uses shall be reported via the military equipment deployment notification process by the deploying member's commander.

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Documentation – As required by Department General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE, a supervisor shall be summoned to the scene to conduct a Level 2 force investigation when SIM are used against a person.

At a minimum, members shall consider the following factors, as applicable, for detailed inclusion in their Offense, Supplemental or Investigation Report:

- The engaged person's behavioral signals at the onset of the incident.
- The engaged person's tone of voice or language (Was the engaged person yelling or using profanity or verbal threats, etc.?)
- The engaged person's body language/physical gestures (shirt off, violent combative gestures/movements, hands clenched into fists, rapid pacing).
- Any signals of submission by the engaged person (compliance, agreement to comply, etc.)
- Any indications the engaged person made to comply with verbal instructions (submission, going to a specific location, relinquishing/dropping objects/weapons).
- The conditions that dictated shot placement (lighting, obstacles, distance, etc.)
- Environmental conditions (darkness, rain, sunlight).
- The engaged person's approximate age, height, weight, clothing.
- Whether a physical confrontation would have resulted if less-lethal SIM had not been used.
- Whether BWC was viewed prior to writing the final version of the report.
- Identification of other Department members and public safety personnel, who were present, and their activities and/or role in the incident.
- What safety checks were done prior to deployment of SIM and who conducted the checks.
- When and type of first aid or emergency medical treatment that was provided, and by whom.
- Attach a copy of the paramedic and/or hospital medical report, if available.
- Evidence collected.



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- Names, contact information, and thorough recorded statements of witnesses.
  - Time when supervisor was advised of the use of SIM.
  - Availability of photographs, sketches, diagrams, video, etc. of the scene.
  - Photos of the suspect and clothing.
  - Other articulable factors which led the member to believe it was objectively reasonable to utilize force and the type of force used.

### **Inquiry and Complaint Process**

The Oakland Police Department DGO M-3: **Complaints Against Departmental Personnel or Procedures** will inform all employees and the public of procedures for accepting, processing and investigating complaints concerning allegations of member employee misconduct.<sup>7</sup>

Refer to DGO K-7 for additional information on inquiries around controlled equipment.

<sup>7</sup> DGO M-3 states, "IAD investigations shall be completed, reviewed, and approved within 180 days unless approved by the IAD commander."

## **Description and Purpose**

<b>40mm Launcher LMT 40mm</b>	
<b>Description</b>	Single Shot, breech fed, rifled barrel, chambered for 40mm, with double action trigger
<b>Manufacturer's Product Description</b>	Manufactured exclusively for Defense Technology®, the 40LMTS is a tactical single shot launcher that features an expandable ROGERS Super Stoc and an adjustable Integrated Front Grip (IFG) with light rail. The ambidextrous Lateral Sling Mount (LSM) and QD mounting systems allow both a single and two point sling attachment. The 40LMTS will fire standard 40mm less lethal ammunition, up to 4.8 inches in cartridge length. The Picatinny Rail Mounting System will accept a wide array of enhanced optics/sighting systems.
<b>Capabilities / How the item works</b>	With breech open, a 40mm cartridge/round can be manually loaded. Once breech is closed, launcher is fired by pulling the trigger. Once cartridge fires, the projectile travels down and out of the front of the barrel. Operator then opens breech to manually extract/eject spent casing of cartridge. The launcher is then ready to be reloaded. Capable of firing multiple different types of 40mm launched munitions.
<b>Expected lifespan</b>	No lifespan indicated by the manufacturer
<b>Quantity</b>	10
<b>Purpose and intended uses and/or effects</b>	The 40mm launcher is a delivery device for 40mm munitions. 40mm Specialty Impact Munitions are designed to be used as an intermediate force option at distance.

**40mm Penn Arms PGL 65-40**

<b>Description</b>	Six Shot capacity cylinder, pump action, rifled barrel, chambered for 40mm, with double action trigger
<b>Manufacturer's Product Description</b>	A 40mm pump-action advance magazine drum launcher with a fixed stock and combo rail. It has a six-shot capacity and rifled barrel. Previously labeled the PGL-65, the features include: Double-action trigger, trigger lock push button and hammer lock safeties.
<b>Capabilities / How the item works</b>	With cylinder opened, six 40mm cartridge/rounds can be manually loaded. Once cylinder is closed, launcher is fired by pulling the trigger. Once single cartridge fires, the projectile travels down and out of the front of the barrel. Operator, then pumps fore-end to advance cylinder to next cartridge/round. <b>We do not use/deploy this launcher due to function unreliability.</b>
<b>Expected lifespan</b>	No lifespan indicated by the manufacturer
<b>Quantity</b>	9
<b>Purpose and intended uses and/or effects</b>	The 40mm launcher is a delivery device for 40mm munitions. 40mm Specialty Impact Munitions are designed to be used as an intermediate force option at distance.

<b>Orange Stock 12 Gauge Wilson Combat/Remington 870 Shotgun</b>	
<b>Description</b>	12 Gauge, pump action shotgun with 18" smooth bore, and four shell capacity magazine tube.
<b>Manufacturer's Product Description</b>	The Remington 870 Police pump-action shotgun is a rugged 12-gauge with a short, tactical 18" barrel backed by a stout 3" chamber. The all-matte black gun is Parkerized for generalized durability and rust-resistance. Both the pump action forend and stock are robust and tough synthetic.
<b>Capabilities / How the item works</b>	See Description and Manufacturer's Product Description. Capable of firing both lethal and less-lethal shotgun munitions, but marked specifically for firing less-lethal rounds.
<b>Expected lifespan</b>	No lifespan indicated by the manufacturer
<b>Quantity</b>	Approximately 20 owned by Department
<b>Purpose and intended uses and/or effects</b>	The orange stocked 12 Gauge Shotguns are designated to be less lethal shotguns only. They are to be loaded only with 12 Gauge less lethal drag stabilized flexible baton rounds, which are Specialty Impact Munitions designed to be used as an intermediate

force option at distance. These are no longer issued or allowed in the field by the Department.

#### **40mm Direct Impact Marking 6326**

<b>Description</b>	Defense Technology Impact Munition, 40mm, crushable foam tip, green marking powder
<b>Manufacturer's Product Description</b>	The 40mm Direct Impact® munition is a point-of-aim, point-of-impact direct-fire round. An excellent solution whether you need to incapacitate a single subject or control a crowd. When loaded with a green marking agent, the Direct Impact can be used to indicate the aggressor in a crowd or riot situation to the team on the ground.
<b>Capabilities / How the item works</b>	Launched from a 40mm Launcher. The crushable foam breaks on impact dispersing a green marking powder. Capable of causing blunt-trauma injuries similar to a hand-held impact weapon such as a police baton.
<b>Expected lifespan</b>	5 Years- Per manufacturer
<b>Quantity</b>	200
<b>Purpose and intended uses and/or effects</b>	40mm Direct Impact Marking 6326: Intended use is as a distance intermediate force option. It creates blunt force trauma. It is also used to strike objects in order to gain attention/compliance of subjects and break windows in order to improve visibility

#### **CTS 40mm Frangible Impact 4550 Orange Marking Powder**

<b>Description</b>	Combined Tactical Systems, 40mm, crushable foam tip, orange marking powder
<b>Manufacturer's Product Description</b>	The 40mm Direct Impact® munition is a point-of-aim, point-of-impact direct-fire round. An excellent solution whether you need to incapacitate a single subject or control a crowd. When loaded with a green marking agent, the Direct Impact can be used to indicate the aggressor in a crowd or riot situation to the team on the ground.

<b>Capabilities / How the item works</b>	Launched from a 40mm Launcher. The crushable foam breaks on impact dispersing a orange marking powder. Capable of causing blunt-trauma injuries similar to a hand-held impact weapon such as a police baton.
<b>Expected lifespan</b>	5 years per manufacturer
<b>Quantity</b>	50
<b>Purpose and intended uses and/or effects</b>	40mm Frangible Impact 4550: Intended use is as a distance intermediate force option. It creates blunt force trauma. It is also used to strike objects in order to gain attention/compliance of subjects and break windows in order to improve visibility

<b>40mmFoam Baton 6099</b>	
<b>Description</b>	Defense Technology Impact Munition, 40mm, three foam projectiles
<b>Manufacturer's Product Description</b>	The 40 mm Multiple Foam Baton Round is most widely used as a crowd management tool where stand-off distances are limited. It may also prove valuable in riot situations where police lines and protestors are in close proximity. The round contains three foam projectiles. It utilizes smokeless powder and has more consistent velocities and tighter patterns compared to its 37 mm counterpart. The foam projectile allows for closer deployment, while minimizing injury.
<b>Capabilities / How the item works</b>	Launched from a 40mm Launcher. The three foam projectiles will spread over distance. Capable of causing blunt-trauma injuries similar to a hand-held impact weapon such as a police baton.
<b>Expected lifespan</b>	5 years- per manufacturer
<b>Quantity</b>	60
<b>Purpose and intended uses and/or effects</b>	40mm Foam Baton round is intended as a distance intermediate force option. <b><i>We do not use/deploy this round because of the higher potential for portions of the round to strike unintended targets.</i></b>

<b>12Ga 2581 Super Sock</b>	
<b>Description</b>	Combined Tactical Systems, 12 gauge drag stabilized flexible baton round, "bean bag" round

<b>Manufacturer's Product Description</b>	The Model 2581 Super-Sock® is in its deployed state immediately upon exiting the barrel. It does not require a minimum range to “unfold” or “stabilize.” The Super-Sock® is an aerodynamic projectile and it’s accuracy is relative to the shotgun, barrel length, environmental conditions, and the operator. The Super-Sock® is first in its class providing the point control accuracy and consistent energy to momentarily incapacitate violent, non-compliant subjects. Effective range is 75ft.
<b>Capabilities / How the item works</b>	Launched from a 12 gauge shotgun. Capable of causing blunt-trauma injuries similar to a hand-held impact weapon such as a police baton.
<b>Expected lifespan</b>	5 years- per manufacturer
<b>Quantity</b>	2000 in reserve- Every certified officer is issued 5
<b>Purpose and intended uses and/or effects</b>	12Ga 2581 Super Sock: Intended use is as a distance intermediate force option. It creates blunt force trauma. It is also used to strike objects in order to gain attention/compliance of subjects and break windows in order to improve visibility

## **Fiscal Costs**

### ***Initial Costs***

The Oakland Police Department (OPD) currently owns/possesses/uses the equipment. Initial costs (if known) to obtain the equipment were:

The LMT 40mm launchers are approximately \$500 per launcher.

The Penn Arms 40mm multi-launchers are approximately \$1600 per launcher and were acquired through a grant.

The 12 Gauge Wilson Combat/Remington 870 shotguns are approximately \$1200 per.

The 40mm impact munition rounds are typically approximately \$25 per round. The 12Ga impact munitions are typically approximately \$5 per round.

**NOTE:** OPD does utilize standard-issue patrol shotguns (also Remington 870 shotguns) for firing of specific 12 gauge SIM. While these shotguns are not specifically listed in this report as they are standard issue and have the primary purpose of providing a lethal force shotgun

option, the alternative use for specific 12 gauge SIM is specifically addressed by the controlling policy.

OPD proposes to obtain the equipment. Initial costs are anticipated to be:

### ***Estimated or anticipated costs for each proposed use***

Delivery devices (launchers and shotguns) require no recurring cost for use beyond normal wear and tear.

Impact munitions will need to be replenished as they are used during incidents or during training at a cost of \$25 per 40mm round and \$5 per 12ga round. Incidents involving the use of specialty impact munitions vary and trainings are annual per certified officer.

Like other less-lethal or lethal weapons that are used as force options, there may be serious costs such as injury or loss of life even when these weapons are used exactly as specified in law and policy. Even justified uses of less-lethal force may result in costly litigation or other costs.

### ***Estimated or anticipated costs of potential adverse impacts***

There is no way of anticipating every possible adverse impact, and there may be some impacts that occur which are extremely unlikely or unforeseeable. Additionally, even some known possible adverse effects may be so remote that they were not assessed for the purposes of this report. Furthermore, injuries may result as a consequence (unintended or not) of the use of controlled equipment. If the controlled equipment is a weapon, then the cost of injuries resulting from use of that weapon can vary considerably. Since persons in OPD's custody are typically treated at Alameda County Hospital, Highland Campus, the costs for this treatment, if not covered by insurance or other means, may be paid with public funds. Recovery from injuries and/or trauma relating from situations in which controlled equipment is used could include ongoing costs such as medications or counseling. Finally, costs of even likely adverse effects may vary wildly based on other circumstances which are difficult to predict and can vary from incident to incident. Keeping this in mind, some potential adverse effects and their possible costs are:

Deliberate misuse might cause the Department to be exposed to liability, which could include monetary judgments against the City. In the past, victims of misuse of military equipment

have successfully litigated settlements from the City of Oakland. The aim of this policy to prevent uses of these weapons that result in litigation and settlements.

Unintentional misuse might cause the Department to be exposed to liability, which could include monetary judgments against the City.

Failures of the equipment might cause the Department to have to purchase additional items, at a cost per item as indicated.

Potential negative impacts include injuries, both anticipated and beyond anticipated, from deployment of these weapons. The costs of these injuries could include psychological effects, monetary costs, and opportunity costs from litigation.

### ***Estimated or anticipated ongoing costs***

The 40mm impact munitions are used only by certified members of the tactical team and Patrol Rifle program, and are not as widely used as the 12 gauge drag stabilized flexible baton rounds. Those that certify/recertify, do so once a year. That process includes the use of 40mm training rounds, which are reloadable/reusable.

The 12 Gauge Drag stabilized flexible baton rounds also vary in use depending on the incident. Every officer coming out of Academy is certified in the use of these rounds and are recertified annually. Expired rounds are used during recertification training.

## **Impacts**

### ***Reasonably anticipated impacts***

#### **Deliberate misuse.**

Though unlikely, it is possible that LMT 40mm Launcher, Penn Arms PGL 65-40 40mm Launcher, Wilson Combat Remington 870 12 Gauge Shotgun, 40mm Direct Impact Marking 6326, CTS 40mm Frangible Impact 4550 Orange Marking Powder, 40mm Foam Baton 6099, CTS 12Ga 2581 Super Sock specialty impact munitions may be deliberately misused by employees. Some of the ways that the Department attempts to prevent deliberate misuse is through background checks of prospective employees, supervision and training, strict policy guidelines, robust reporting and accountability practices, and discipline for deliberate



misconduct up to and including termination. Suspected criminal misuse of equipment may also be forwarded to the District Attorney's office or other appropriate prosecuting agency for charging consideration.

#### Unintentional misuse.

Unintentional misuse of LMT 40mm Launcher, Penn Arms PGL 65-40 40mm Launcher, Wilson Combat Remington 870 12 Gauge Shotgun, 40mm Direct Impact Marking 6326, CTS 40mm Frangible Impact 4550 Orange Marking Powder, 40mm Foam Baton 6099, CTS 12Ga 2581 Super Sock specialty impact munitions may come in many forms, from unfamiliarity or lack of training to the encountering of a scenario that was not anticipated in training or policy. The Department attempts to prevent unintentional misuse through thorough training, clear policy prescriptions, and robust review processes such as force reports, force review boards, and pursuit review boards.

#### Perception of militarization or exacerbation of a police/community divide.

While it is not the intent of the Department that this occur, the Department does recognize the possibility that its use of LMT 40mm Launcher, Penn Arms PGL 65-40 40mm Launcher, Wilson Combat Remington 870 12 Gauge Shotgun, 40mm Direct Impact Marking 6326, CTS 40mm Frangible Impact 4550 Orange Marking Powder, 40mm Foam Baton 6099, CTS 12Ga 2581 Super Sock specialty impact munitions may lead to a perception of militarization of the Department, or an exacerbation of any existing divides between the Department and the community it serves and is a part of. The Department attempts to overcome challenges such as this by taking full advantage of community forums required by policy and law (see for instance the mandated community engagement meeting in DGO K-07 and CA Government Code § 7072(b)), by completing full and robust reports such as this one, and by collaborating with the Police Commission in the creation of use policies and procedural safeguards surrounding this equipment.

#### Injuries and Effects

##### **Psychological (Mental) Effects**

Impact munitions have a tremendous mental effect on an individual. In many cases, the mental effects far outweigh the physical effects and may be the determining factor in the engaged person's response to the munitions.

Possible effects in engaged persons who have SIM deployed against them are fear, anxiety, and panic:

Fear: Impact munitions may cause a powerful mental distraction. If the engaged person has prior knowledge of the effects of impact munitions and realizes that he/she is about to be targeted, this realization may be enough to cause the engaged person to comply or, at least, be distracted long enough for a plan of action to be implemented. The engaged person must also mentally cope with the physical pain that he/she feels after being struck with impact munitions.

Anxiety: The action of pointing a firearm directly at an individual and/or firing a projectile at him or her arouses fear in the individual of being shot with a firearm. The pain and, sometimes, the appearance of the injury may reinforce this belief.

Panic: Because it may create the “fight or flight” response, panic may not be the most desired effect.

Members shall consider and prepare contingencies for a panic response. Should it induce a “fight” response, a reliable secondary plan for incapacitation is needed. Should it induce the “flight” response, a secure perimeter along with other available assets should overcome any eluding actions.

### **Physiological (Physical) Effects**

There are two types of injuries caused by projectiles: penetrating and non-penetrating.

Penetrating injuries are caused from low mass, high velocity projectiles, such as bullets and some SIM if used at a close distance, or low velocity sharp objects such as knives.

Non-penetrating injuries are caused when blunt objects impact the surface of the body at moderate speeds causing blunt trauma but do not penetrate the body.

In simple terms, blunt trauma is the primary desired physical effect of less-lethal impact munitions.

The flexible baton inflicts enough pain to get most individuals to comply yet, when used properly, has a low probability of causing serious physical harm. Generally, the impact of the

projectile along with the associated pain works to deter the individual from unwanted aggressive behavior.

The possibility of physical injury always exists whenever impact weapons are used. Inappropriate use of a SIM significantly increases the risk of injury or death to a suspect. Abrasions, lacerations, contusions, and fractures may result and need to be addressed by trained medical personnel (See DGO K-3, TB III- K, and DGO I-4 regarding first aid and emergency medical treatment.)

The human body can withstand high levels of force for very short durations of time if the force is distributed on the strong parts of the skeleton. The soft body tissues are responsible for absorbing and dissipating a great deal of force without producing a large amount of compression. However, if the amount and speed of blunt trauma is greater than can be absorbed, soft tissues can be damaged by tearing or rupturing, causing lacerations, cuts, and bruises.

Impacts to the abdomen can cause injury to the liver and spleen causing crushing deformation. Chest impacts can displace internal organs and possibly lacerate major vessels by crushing or stretching.

Although rare, penetration into the body has occurred and is always a possibility, especially when improperly used, as a result of a combination of kinetic energy (weight, size, shape, and velocity); target distance; the engaged person's weight, mass, clothing, or other material coverings; and the area of the body at which the engaged person is impacted. Members shall use SIM within training guidelines and Department policy.

## **Mitigations**

### ***Use of force and de-escalation policy - [DGO K-03](#)***

Controlled and military equipment frequently takes the form of a force option, or else is often used during high risk situations where force may be used. OPD, in concert with the Police Commission, created a state-of-the-art use of force policy that centers the Department's

mission, purpose, and core principles, provides clear guidance that force is only allowed when reasonable, necessary, and proportional, and makes clear the consequences of unreasonable force. Additionally, OPD's use of force policy incorporates a robust de-escalation policy (Section C), which mandates that officers use de-escalation tactics and techniques in order to reduce the need for force when safe and feasible.

The entirety of this policy – which encapsulates OPD's values surrounding force and commitment to de-escalation – is a clear general procedural mitigation to the possible adverse impacts of the use of this equipment.

### ***Force reporting and review policy and practice – DGOs [K-04](#) and [K-04.1](#)***

Though the Department expects that every use of this equipment will be within the boundaries of policy and law, the Department also has clear procedures regarding force reporting and review in place. DGO K-04 and its attendant special orders require that force by officers – including force where controlled equipment was used – be properly reported and reviewed, with the level of review commensurate to the severity of the force incident. Additionally, for severe uses of force or where a use of force had severe outcomes, the Department utilizes Force Review Boards, led by top Department command staff and often attended and observed by Community Police Review Agency staff or Police Commission Chairs, to review every part of a force incident. These boards not only determine whether the force was proper, but also have wide latitude to suggest changes in policy, training, or practice, including with controlled equipment.

OPD's force reporting and review policies and practices serve as important procedural mitigations to the possible adverse impacts of the use of this equipment.

### ***Complaint receipt and investigation procedures – [DGO M-03](#)***

The use of controlled equipment, as with any use of the police powers, is subject to the rules and laws that govern the Department and its employees. Complaints and allegations that the Department or its employees have violated these rules or laws are treated with the utmost seriousness, including proper intake at the Internal Affairs Division and investigation by the appropriate investigative individual. Where allegations are found to be substantiated, the Department uses a progressive discipline structure to serve both deterrent and rehabilitative functions. Finally, deliberate misconduct or actions contrary to the Department's values are not tolerated, and can lead to termination of employment.

OPD's complaint receipt and investigation procedures serve as important procedural mitigations to the possible adverse impacts of the use of this equipment.

### ***Community outreach and specific inquiry pathways - DGO K-07***

Use of controlled equipment, especially equipment that may have analogues used by militaries or quasi-military federal law enforcement, can drive perceptions of a militarized police force that is pre-disposed to the use of force as opposed to thoughtful, deliberate resolutions to incidents using de-escalation and minimizing the use of force. An important procedural mitigation to this type of perception is regularly communicating with the community served, as a way for information to be shared in both directions. This serves to dispel common misconceptions as well as provide valuable perspective for the Department and its employees. OPD uses community outreach, such as social media, community events, and a specific, annual community forum as required by DGO K-07. Additionally, OPD's overarching controlled equipment policy sets forth processes for inquiries about the equipment.

### ***Equipment-specific use policy and Police Commission oversight - OMC 9.65***

While most every law enforcement agency is bound by state law (Government Code § 7070 et. seq.), the very nature of police oversight in Oakland provides one of the most powerful procedural mitigations of potentially adverse impacts. For instance, state law requires that most agencies have their controlled equipment use policies approved by their governing body (e.g., City Council, or Board of Supervisors). In the case of OPD, however, there is an additional layer of oversight in the Police Commission, which must review any controlled equipment use policy prior to it being approved by the City Council. This requirement, set forth in Oakland's municipal code section 9.65, is a procedural mitigation to the possible adverse impacts of the use of this equipment.

### ***Technical safeguards***

There are no specific technical safeguards other than their design to be used as less lethal impact munitions and if used properly lower the potential for adverse effects such as great bodily injury or death.

### ***Procedural safeguards***

Every officer that is certified to use specialty impact munitions have to be certified by POST certified instructors and recertify every 18 months during the continued professional training (CPT) cycle. The certification process includes, but not limited to, training: in policy, de-escalation, use of force, practical application. There are also procedural safeguards trained, that include procedures for ensuring absence of lethal ammunition, non-target areas (head, neck, throat, groin, left armpit, kidney, spleen, upper chest) and preferred target areas (Areas of large muscle groups (shoulder, arms, buttocks, legs). In an attempt to minimize injury potential, the Department has a minimum safe distance of 21 feet for the deployment of SIM.

There have been incidents in American law enforcement use of SIM where the sound of a SIM deployment has induced “sympathetic fire” from other officers with lethal ammunition. OPD’s policy anticipates this and specifically requires both notification over the radio and/or in person as well as notification to personnel from other law enforcement agencies (if they are near) that SIM is being deployed prior to its use.

## **Alternatives**

### ***De-escalation and alternative strategies***

As mentioned in the Mitigations section, above, OPD officers are mandated to use de-escalation strategies and tactics when safe and feasible. These strategies and tactics, which are predicated on de-escalation best practices around communication, containment, positioning, and time/distance/cover, reflect the Department’s commitment to de-escalation over the reliance on force to compel compliance.

However, even during de-escalation strategies and actions, controlled equipment may be used or ready to further a safe outcome to the event for the engaged person, the community, and the officers. Generally, a built-in alternative to the actual use of controlled equipment – especially as a force option – is its use as a tool to provide safety, information, or containment to an incident so that officers can bring the situation under control and hopefully encourage a peaceful outcome. This, in conjunction with other de-escalation or alternative strategies, provides a baseline for OPD officers in the conduct of their duties when using or contemplating the use of this controlled equipment.

It is also instructive to consider the possible adverse costs of not possessing this equipment. For instance, the unavailability of a particular tool may adversely impact the safety of police

personnel and the community by limiting de-escalation strategies, exposing personnel to greater risk, or limiting the options available to safely resolve situations.

The closest reasonable alternative to Specialty Impact Munitions is the ECW specifically the Axon Taser 7 which we have and is now replacing our Taser X26. The ECW does provide an intermediate force option that can be used at distance but only to a max range of 25 ft. The specialty Impact munitions that we deploy are effective to 75ft.

## **Location**

LMT 40mm Launcher, Penn Arms PGL 65-40 40mm Launcher, Wilson Combat Remington 870 12 Gauge Shotgun, 40mm Direct Impact Marking 6326, CTS 40mm Frangible Impact 4550 Orange Marking Powder, 40mm Foam Baton 6099, CTS 12Ga 2581 Super Sock specialty impact munitions will typically be used within the areas that OPD has jurisdiction or in areas of the State of California where OPD is specifically conducting operations or investigations. This includes the entirety of the City of Oakland, and may include neighboring jurisdictions or other areas within the State.

## **Third Party Dependence**

- This item does not require third-party actors for operation.
- This item does require third-part actors for operation:

## **Track Record**

Less-lethal specialty impact munitions have a long track record, as they create a long-distance alternative to weapons that police officers have been carrying for as long as there were organized patrols: impact weapons. Just like handheld impact weapons, SIM are intermediate force options which allow for use of less-lethal force at distances that don't require officers to be close to a person. These can be especially useful for persons who are armed with edged or blunt weapons that can cause great bodily injuries or death (such as

knives or clubs), as using the less-lethal SIM can lead to non-lethal outcomes that might otherwise turn into encounters where the officer fired their lethal firearm.

OPD has had many successful uses of SIM as a long distance less-lethal force option, especially for cases of persons who were armed with weapons that were not firearms. Other police agencies report that SIM, especially 40mm SIM, are effective; Berkeley police noted that “it has been our experience that a 40mm projectile impact will almost always resolve a violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.” Santa Rosa PD reported that they deploy a 40mm SIM launcher in every marked patrol vehicle, and have different policies depending on the type of incident encountered.

With these weapons, there have been notable times when the weapons were either misused or otherwise resulted in poor outcomes. For instance, in the case of *Deorle v. Rutherford*, a seminal case on the use of less-lethal SIM, a resident of Butte Co. California was struck by a SIM which resulted in the loss of his eye. Closer to the Bay Area, a protestor was struck by a SIM during an “Occupy” protest in downtown Oakland leading to life-threatening brain injury. Just like any weapon, SIM can be dangerous and must be handled properly; OPD’s policy is similar to many other agencies in its delineation of prohibited areas and requirement for training prior to the use of these weapons.