

## **2-57 Use of Force—Review and Investigation by Department Personnel**

### **2-57-1 Purpose**

It is the policy of the Department to objectively and thoroughly review every use of Force and Show of Force by officers to reach a finding, supported by the evidence, concerning whether the officer used the minimum amount of Force that was reasonable, necessary, and proportional based on the totality of the circumstances to bring about a lawful objective.

The Department categorizes Force based on the level of Force used and the risk of injury or actual injury from the use of Force. The category of Force—Level 1, 2, or 3—determines the kind of review or investigation that will be undertaken.

The Department's goal in categorizing Force is to promote efficiency and reduce the burden on first-line supervisors, while optimizing critical investigative resources on higher-level uses of Force.

### **2-57-2 Policy**

Supervisors and Force Investigation Section (FIS) detectives shall conduct timely, thorough, and accurate reviews and investigations of use of Force by Department personnel.

Supervisors and detectives reviewing and investigating use of Force shall assess whether the officer used the minimum amount of Force that was reasonable, necessary and proportional based on the totality of the circumstances confronting an officer in order to bring about a lawful objective.

Supervisors and detectives reviewing use of Force shall weigh all evidence presented through an incident to reach a reliable finding based upon a preponderance of the evidence.

Supervisors and detectives reviewing use of Force shall take into consideration the minimum legal requirements as set forth in the United States Supreme Court decision in *Graham v. Connor*, 490 U.S. 386 (1989) governing the use of Force, such as objectively reasonable Force.

Any review or investigation of use of Force will also take into consideration that officers must at all times comply not only with the minimum legal requirements, but also the even stricter standards as set forth in Department policy.

Supervisors and others analyzing Force incidents will do so from the perspective of a reasonable officer on-scene rather than with 20/20 hindsight. They will take into account where appropriate the fact that officers must make rapid decisions regarding the amount of Force to use in tense, uncertain, and rapidly evolving

situations.

## **2-57-3 Use of Force Review by Supervisors and the Chain of Command**

### **A. General Requirements**

1. A supervisor who was involved in a Reportable Use of Force or Show of Force, including by participating in or ordering the use of Force being reviewed, shall not be involved in reviewing the incident.

“Participating” is defined as physically assisting in overcoming an individual’s resistance.

2. Personnel will classify use of Force according to the highest level of Force used during an incident.

For example, where an officer uses Level 1 and Level 2 Force during an incident it will be investigated as a Level 2 use of Force by an FIS detective.

3. For Level 2 and Level 3 uses of Force, the supervisor shall ensure that FIS is immediately notified and dispatched to the scene of the investigation to initiate the Force investigation.

### **B. Supervisory Responsibilities for Classifying Force**

1. The supervisor of an officer using Force shall immediately respond to the scene to ensure that the use of Force is appropriately classified based upon the Department’s three-level Force classification system.

**Level 1 Use of Force:** Force that is likely to cause only transitory pain, disorientation and/or discomfort during its application as a means of gaining compliance.

- a. This includes techniques, which are not reasonably expected to cause injury, do not result in an actual injury, and are not likely to result in a complaint of injury (i.e., pain compliance techniques and resisted handcuffing).
- b. Pointing a firearm, beanbag shotgun, or 40 millimeter launcher at an individual, or using an ECW to “paint” an individual with the laser sight or arcing, as a show of Force are reportable as a Level 1 Use of Force.
- c. Level 1 Use of Force does not include interaction meant to guide, assist, or control an individual who is offering minimal resistance.

**Level 2 Use of Force:** Force that causes an injury, could reasonably be expected to cause injury, or results in a complaint of an injury.

Level 2 Use of Force includes:

- a. Use of an ECW, including where an ECW is fired at an individual but misses;
- b. Use of a beanbag shotgun or 40 millimeter launcher, including where it is fired at an individual but misses;
- c. OC Spray application;
- d. Empty Hand Techniques (e.g. strikes, kicks, takedowns, distraction techniques, or leg sweeps); and
- e. Strikes and attempted strikes with impact weapons, except for strikes to the head, neck, or throat, which would be considered a Level 3 use of Force.

**Level 3 Use of Force:** Force that results in, or could reasonably result in, serious physical injury, hospitalization, or death.

#### C. On-Scene Responsibilities of Supervisors Reviewing Use of Force

1. The supervisor of an officer using Force shall perform the following duties at the scene of a use of Force:
  - a. identify the involved and witness officers to the use of Force;
  - b. review the involved officer's lapel video to determine whether the incident involves a Level 1 use of Force;
  - c. review the lapel video of other officers where uncertainty remains about whether the incident rises to a Level 2 or Level 3 use of Force;
  - d. examine personnel and the individual for injuries and request medical attention, where appropriate;
  - e. gather any evidence located at the scene of a Level 1 use of Force;
  - f. capture photographs of the officer(s) and the individual involved in Level 1 use of Force;
  - g. require submission of a Use of Force Report from the involved officer by the end of the shift; and
  - h. conduct any other necessary fact-gathering activities to reach reliable conclusions, including obtaining a statement from the individual after providing them with a *Miranda* warning, regarding the officer's use of Level 1 Force.

2. Where a supervisor determines that the use of Force by an officer involves a Level 2 or Level 3 use of Force, they shall contact FIS to conduct the investigation.

#### D. Supervisor Documentation of Level 1 Use of Force

1. Supervisors shall generate a BlueTeam entry for the use of Force without regard to the number of involved or witness officers.
2. The investigating supervisor shall ensure involved and witness officer on-body recording device footage, and any other video of the use of Force, is attached to the corresponding BlueTeam entry.
3. Supervisors shall complete and document a supervisory Force review of a Level 1 use of Force within seventy-two (72) hours after the use of Force occurs.
  - a. Where a supervisor is unable to satisfy the initial seventy-two (72) hour deadline for a Level 1 use of Force, based upon a good faith basis for any delay, they will be granted an additional seven days to complete the delayed review.
  - b. The lieutenant in the involved officer's chain of command will have ten days to complete the review of a Level 1 use of Force review.
  - c. The commander in the involved officer's chain of command will have ten days to complete the review of a Level 1 use of Force review.
4. Supervisors shall complete Level 1 use of Force reviews electronically so that they can be tracked in IAPro.
5. The supervisory review of all Level 1 use of Force shall include:
  - a. all written or recorded use of Force narratives or statements provided by personnel or others;
  - b. a list of evidence that was gathered, including sufficient identifying information of civilian witnesses (names, phone numbers and addresses) to the use of Force. The supervisor shall specifically note if there were no witnesses to the use of Force. The supervisor shall also explain why witness information was not gathered in circumstances where there were witnesses to the use of Force that were not documented.

The report should also include all available identifying information for anyone who refuses to provide a statement;

- c. the names of all other Department employees witnessing the use of Force;
- d. a narrative evaluating the use of Force, based on the supervisor's analysis of the evidence gathered, including a determination whether the officer's actions complied with Department policy and state and federal law;

Where an officer's Level 1 use of Force is found by a supervisor to be out of policy it shall be evaluated for complexity to either be retained and resolved by the involved chain of command or referred to FIS.

- e. an assessment of the incident for tactical and training implications, including whether the need to use of Force could have been reduced or eliminated through the use of de-escalation techniques; and
  - f. documentation from the supervisor of any tactical issues found during the review which shall be included as part of the BlueTeam entry; and
  - g. documentation that the supervisor completed an administrative investigation into any policy violations found during the review.
6. The supervisor shall forward a Level 1 use of Force review through their chain of command once it has been completed. The commander of the reviewing supervisor shall assess the BlueTeam entry to ensure that it is complete and that the findings are supported by a preponderance of the evidence standard.
7. Each time a supervisor conducts a deficient Force review it will be documented in talent management by their commander.

A supervisor repeatedly conducting deficient Force reviews shall receive the appropriate corrective and/or disciplinary action, including training, demotion and/or removal from a supervisory position.

#### E. Chain of Command Review of Level 1 Use of Force

- 1. The supervisor's chain of command shall order additional review when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improving the reliability or credibility of the findings.
- 2. Where the findings of a supervisory review are not supported by a preponderance of the evidence, the supervisor's Commander shall document

the reasons for such determination and shall include this documentation as an addendum to the original review.

The supervisor's lieutenant or commander shall take appropriate action to address the inadequately supported determination and any deficiencies that led to it.

3. The chain of command shall suspend a Level 1 use of Force review and immediately notify FIS and the Chief of Police upon the discovery of apparent criminal conduct in the use of Force by an officer.

Upon this notification, IAFD shall immediately initiate an administrative and criminal investigation into the use of Force.

4. When the chain of command discovers that a use of Force is more appropriately categorized as a Level 2 or Level 3 then IAFD shall immediately be notified to conduct the investigation.
5. When misconduct is discovered during a Level 1 Use of Force review then an administrative investigation shall be initiated by either the supervisor or the Internal Affairs Misconduct Division.

#### F. Performance Review Unit Audit of Level 1 Use of Force Reviews

1. Upon receipt of a Level 1 Use of Force review from a commander the PRU shall conduct a review to ensure that it is complete and that the findings are supported by the evidence.
2. After completing its review, the PRU shall ensure that the file is forwarded to IAFD for recordkeeping.
3. Where the PRU determines that a Level 1 use of Force review is deficient it will be sent back to the originating supervisor for correction.
4. Any deficiencies in the Level 1 use of Force review, noted by the PRU detective, shall be forwarded to the effected commander by the Deputy Chief of the Compliance Bureau to assure entry of the findings into the work performance records of the chain of command.

#### G. Chief of Police Authority to Re-assign Reviews and Resolve Level 1 Use of Force Policy Violations

1. The Chief of Police may assign or re-assign a Level 1 use of Force review within or outside of the original chain of command within which the incident occurred.

2. The Chief of Police may return a Level 1 use of Force to the original supervisor for further analysis.
3. The Chief of Police shall explain any assignment or re-assignment of a Level 1 use of Force review in writing.
4. Where a Level 1 use of Force by an officer could have violated policy the Chief of Police shall:
  - a. Refer the matter to the chain of command to conduct an administrative investigation into the alleged misconduct; or
  - b. Refer the matter to the Internal Affairs Misconduct Division to conduct an administrative investigation into the alleged misconduct.
5. The Chief of Police shall ensure that policy, training or equipment concerns noted during a Level 1 use of Force review are appropriately resolved.
6. Once a commander finds that a Level 1 Use of Force Review finding by a supervisor is supported by the evidence, the file shall be forwarded to the Performance Review Unit (PRU) of the Department's Compliance Bureau.
7. The quality of supervisory Force investigations shall be taken into account in the performance evaluations of the officers performing such reviews.

## **2-57-4 Level 2 and Level 3 Use of Force Investigations by the Force Investigation Section**

### **A. General Requirements**

1. FIS shall respond to the scene and conduct investigations of Level 2 and Level 3 uses of Force.
2. FIS shall also conduct investigations into uses of Force indicating apparent criminal conduct by an officer.
3. FIS shall conduct the use of Force investigation where the involved officer is a rank higher than sergeant.
4. FIS shall conduct the use of Force investigation upon reassignment by the Chief of Police.
5. Where a Level 2 or Level 3 use of Force investigation indicates criminal conduct by an officer in the use of Force, FIS shall refer the use of Force to

an investigator in the Division, with no involvement in the initial administrative investigation into the Force, to conduct a criminal investigation.

The criminal investigation shall remain separate from and independent of the administrative investigation into the use of Force.

6. In instances where the Multi-Agency Task Force is conducting the criminal investigation of a use of Force, the IAFD shall conduct the administrative investigation.

#### B. Level 2 and 3 Use of Force Investigations by the Force Investigation Section

1. In conducting its investigations of Level 2 or Level 3 uses of Force, IAFD shall:
  - i. respond to the scene and consult with the on-scene supervisor to ensure that all personnel and subject(s) of use of Force have been examined for injuries, that the use of Force has been classified according to APD's classification procedures, that subject(s) have been interviewed for complaints of pain after advising the subject(s) of his or her rights, and that all officers and/or subject(s) have received medical attention, where necessary;
  - ii. ensure that all evidence to establish material facts related to the use of Force, including but not limited to, audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected;
  - iii. canvass for, and interview witnesses(es). In addition, witnesses shall be encouraged to provide and sign a written statement in their own words;
  - iv. ensure, consistent with applicable law, that all officers witnessing a Level 2 or Level 3 use of Force provide a use of Force narrative of the facts leading to the use of Force;
  - v. provide a written admonishment to involved and witness officer(s) to the use of Force that they are not to speak about the Force incident with anyone until they are interviewed by the investigator of the FIS;
  - vi. conduct only one-on-one interviews with involved and witness officers;
  - vii. review all Use of Force Reports to ensure that these statements include information required by APD policy;

- viii. ensure that all Use of Force Reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when the incident occurred;
  - ix. conduct investigations in a rigorous manner designed to determine the facts and, when conducting interviews, avoid asking leading questions and never ask officers or other witnesses any questions that may suggest legal justifications for officers' conduct;
  - x. record all interviews;
  - xi. consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations, if feasible; and
  - xii. make all reasonable efforts to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of Force described by the officer and any injuries to personnel or subjects.
2. An investigator with the FIS shall complete an initial Use of Force Data Report through the chain of command to the Chief of police as soon as possible, but in no circumstances later than twenty four (24) hours after the use of Force.
  3. An investigator with the FIS shall complete Level 2 or Level 3 administrative investigations within two months after learning of the use of Force. Any request for an extension to this time limit must be approved by the commanding officer of the FIS through consultation with the Chief or by the Chief.

#### C. Level 2 and 3 Use of Force Investigation Reports by the Force Investigation Section

1. At the conclusion of each use of Force investigation, the FIS shall prepare an investigative report. The report shall include:
  - i. a narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the officer's conduct based on the FIS independent review of the facts and circumstances of the incident;
  - ii. documentation of all evidence that was gathered, including names, phone numbers, addresses of witnesses to the incident, and all underlying Use of Force Data Reports. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification,

phone number, or address of those witnesses, the report shall state the reasons why. The report should also include all available identifying information for anyone who refuses to provide a statement;

- iii. the names of all other officers or employees witnessing the use of Force;
- iv. the investigator's narrative evaluating the use of Force, based on the evidence gathered, including a determination of whether the officer's actions complied with Department policy and state and federal law; and an assessment of the incident for tactical and training implications, including whether the use of Force could have been avoided through the use of de-escalation techniques or lesser Force options;
- v. if a weapon was used by an officer, documentation that the officer's certification and training for the weapon were current at the time of the incident; and
- vi. the complete disciplinary history of the officers involved in the use of Force.

D. Level 2 and 3 Use of Force Investigation Review by the Force Investigation Section Chain of Command

1. Upon completion of the FIS investigation report, the FIS investigator shall forward the report through his or her chain of command to the IAFD Commander.
2. The IAFD Commander shall review the report to ensure that it is complete and that, for administrative investigations, the findings are supported using the preponderance of the evidence standard.
3. The IAFD Commander shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings.
4. For administrative investigations, where the findings of the FIS investigation are not supported by a preponderance of the evidence, the IAFD Commander shall document the reasons for this determination and shall include this documentation as an addendum to the original investigative report.
5. The IAFD Commander shall take appropriate action to address any inadequately supported determination and any investigative deficiencies that led to it.

6. The IAFD Commander shall be responsible for the accuracy and completeness of investigation reports prepared by the FIS.
7. Where a member of the FIS repeatedly conducts deficient Force investigations, the member shall receive the appropriate corrective and/or disciplinary action, including training or removal from the FIS in accordance with performance evaluation procedures.
8. When the IAFD Commander determines that the Force investigation is complete and findings are supported by a preponderance of the evidence, the commanding officer shall forward the investigation report to the Force Review Board with copy to the Chief of Police.

#### H. Chief of Police Authority to Re-assign Reviews and Resolution of Level 1 Use of Force Policy Violations

1. At the discretion of the Chief of Police, a Force investigation may be assigned or re-assigned for investigation to the MATF or the FBI, or may be returned to the FIS for further investigation or analysis. This assignment or re-assignment shall be confirmed in writing.
2. Where after an administrative Force investigation, a use of Force is found to violate policy, the Chief of Police shall direct and ensure appropriate discipline and/or corrective action.
3. Where a Force investigation indicates apparent criminal conduct by an officer, the Chief shall ensure that IAD or the MATF consults with the Bernalillo County District Attorney's Office or the United States Attorneys' Office as appropriate.
4. In use of Force investigations, where the incident indicates policy, training, tactical, or equipment concerns, the Chief of Police shall ensure that necessary training is delivered and that policy, tactical, or equipment concerns are resolved.

#### I. Role of the Multi-Agency Task Force in the Review of Level 2 or Level 3 Use of Force for Potential Criminal Conduct

1. Where appropriate to ensure the fact and appearance of impartiality with the authorization of the Chief of Police, APD may refer a use of Force indicating apparent criminal conduct by an officer to the MATF for criminal investigation.
2. To ensure that criminal and administrative investigations remain separate, APD's Violent Crimes Section may support the FIS of IAD or the MATF in the investigation of any Level 2 or Level 3 use of Force, including critical firearm

discharges, in-custody deaths, or police initiated actions in which a death or serious physical injury occurs.

3. The Chief of Police shall notify and consult with the Bernalillo County District Attorney's Office, the FBI and/or the USAO, as appropriate, regarding any use of Force indicating apparent criminal conduct by an officer discovered during a misconduct investigation.
4. If APD initiates a criminal investigation, or where APD requests a criminal prosecution, the FIS will delay any compelled interview of the target officer(s) pending consultation with the BCDA or the USAO.
5. No other part of the administrative investigation shall be held in abeyance unless specifically authorized by the Chief of Police in consultation with the agency conducting the criminal investigation.

DRAFT