



MEMORANDUM

TO: Suzy Loftus, President, San Francisco Police Commission
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Petra DeJesus, Commissioner, San Francisco Police Commission
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Joe Marshall, Commissioner, San Francisco Police Commission
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CC: Gregory Suhr, Chief, San Francisco Police Department
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THROUGH: Noble Wray, Chief of Police Practices and Accountability Initiative, Office of Community Oriented Policing Services, U.S. Department of Justice

FROM: Nazmia E.A. Comrie, Collaborative Reform Specialist (detail), Office of Community Oriented Policing Services, U.S. Department of Justice

SUBJECT: Review of San Francisco Proposed Use of Force Policies

DATE: May 4, 2016

This memorandum serves to summarize the U.S. Department of Justice Office of Community Oriented Policing Services (COPS Office) review and comments on the San Francisco, California Police Department (SFPD) use of force policies as part of the Collaborative Reform Initiative for Technical Assistance (CRI-TA).

Introduction

The COPS Office announced CRI-TA with SFPD on Monday, February 1st. Following the press conference, the COPS Office met with San Francisco Police Commissioner President Suzy Loftus. During that meeting and in follow up e-mails starting on February 12th, the COPS Office agreed to review the use of force policies. The COPS Office received four policies with

corresponding comments on Monday, March 21st. The polices include: *5.01 Use of Force*, *5.01.1 Use of Force Reporting*, *5.02 Use of Firearms and Lethal Force*, and *Special Operations CED Bureau Order*.

The COPS Office received comments on the proposed policies from external subject matter experts, San Francisco core assessment team members, and internal staff.

Summary of Review

The following summarize the COPS Office review and comments on the San Francisco use of force polices.

Although the CRI-TA assessment will cover the policies and procedures regarding use of force, this review only assesses the recently developed Use of Force policies, and not the *SFPD Manual of Policy and Procedure* or the current *Use of Force* policies. That will come as part of the overall assessment.

Overall Comments

The COPS Office commends the San Francisco Police Commission and the SFPD for developing, reviewing, and finalizing the use of force policies with community and stakeholder input. This process not only allows the community to have a voice, but also provides a stronger, more comprehensive policy. Furthermore, the process provides accountability and transparency regarding policy development. This is in line with Recommendations 1.3 and 1.4 of the *Final Report of the President's Task Force on 21st Century Policing* (Task Force Report).¹

The COPS Office suggests that the Police Commission consider combining the three separate use of force policies. The philosophical, legal, and organizational concerns are interlaced between all three policies and it could be streamlined if they were condensed into one policy. The COPS Office reasons that training and holding personnel accountable will be easier with one policy and will provide less opportunity for conflict. This combination will also reduce redundancies and duplication in the language.

The language for the policies needs to be simplified and clarified so that a rank-and-file officer can understand the general guidance and principles. If the policy cannot be understood by an officer reading or referencing them, then the policy has not fulfilled the intended purpose. The language needs to be strong and clear rather than minimizing the guidance with qualifiers.

To this point, whether these polices remain as three separate policies or one combined policy, there should be a section at the beginning with a definition of terms. Unless the definitions are included elsewhere and referenced, they need to be included at the beginning of the policies. The policies are intended to provide guidance to the rank-and-file and the terminology should be clearly stated without requiring an officer to assume the meaning. Although it is beneficial to receive feedback from many groups and individuals, it is crucial to refine the feedback and ensure that the policy reads well and is clear to the reader.

¹ http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf

Additionally, the Police Commission should provide a description of levels of force and the list of authorized impact weapons. If these two descriptions are listed elsewhere, then this should be referenced in the policy.

Furthermore, the Police Commission should consider adding information and guidance related to training, investigation, forensics, and especially the role of the supervisor. By suggesting that the supervisor can evaluate the need to respond allows for a failure of supervision. It is a national best practice that a supervisor should be called to an incident involving any use of deadly force or a critical incident. Transformation and reform requires that the first line supervisors be empowered to help change behavior, and therefore, they should be required to be on scene when a critical incident occurs.

As stated in the Task Force Report Action Item 1.5.4, it is vital that “use of physical control equipment and techniques against vulnerable populations – including children, elderly persons, pregnant women, people with physical and mental disabilities, limited English proficiency, and others – can undermine public trust and should be used as a last resort.”²

The COPS Office strongly recommends that the Police Commission review the Task Force Report, Recommendation 2.2 and its accompanying Action Items, 2.2.1 to 2.2.6 for consideration in the revised use of force policies.³ The Police Commission should consider the following action items:

- “...emphasize de-escalation and alternatives to arrest or summons in situations where appropriate” (Action Item 2.2.1, page 20)
- “...mandate external and independent criminal investigations in cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths” (Action Item 2.2.2, page 21)
- “...collect, maintain, and report data to the Federal Government on all officer-involved shootings, whether fatal or nonfatal, as well as any in-custody deaths” (Action Item 2.2.4, page 21)
- “clearly state what types of information will be released, when, and in what situation, to maintain transparency” (Action Item 2.2.5, page 22)
- “establish a Serious Incident Review Board comprising sworn staff and community members to review cases involving officer-involved shootings and other serious incidents that have the potential to damage community trust or confidence in the agency...” (Action Item 2.2.6, page 22)

As related to conductive energy devices (CED), the Task Force report states that “studies of CEDs have shown them to be effective at reducing both officer and civilian injuries....but new technologies should be subject to the appropriate use of force continuum restrictions” (page 38). Additionally, the COPS Office and Police Executive Research Forum, released guidelines in 2011 around electronic control weapons.⁴ The COPS Office encourages the Police Commission to consider all 52 guidelines as the CED policy is crafted.

² http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf, pages 15-16

³ http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf, pages 20-22

⁴ <http://ric-zai-inc.com/Publications/cops-p202-pub.pdf>

Finally, whether the policies stay as separate documents or are combined, there should be as much cross-referencing as is needed to ensure that adequate information is provided in each policy. For example, references to vehicle pursuits, training, or handcuffing should be cross-referenced to the appropriate SFPD policy.

Individual Policy Comments

The COPS Office is providing comments for each policy in a redline version. The comments and feedback are from the reviewers and are suggestions for improvement and clarity, rather than mandated changes. As stated previously, this memo and the accompanying documents are a preliminary review of the proposed policies and procedures without the full knowledge of the SFPD operations and practices; the CRI-TA assessment includes an objective to assess the use of force policies and procedures.