LOS ANGELES POLICE COMMISSION

REVIEW OF NON-CATEGORICAL USE OF FORCE INVESTIGATIONS

Conducted by the

OFFICE OF THE INSPECTOR GENERAL

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Table of Contents

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I. INTRODUCTION AND EXECUTIVE SUMMARY

At the request of the Los Angeles Board of Police Commission (BOPC or Commission), the Office of the Inspector General (OIG) has conducted a review of Non-Categorical Use of Force (NCUOF) investigations completed by the Los Angeles Police Department (LAPD or Department) into incidents that occurred during the first calendar quarter of 2020. The OIG selected a stratified random sample of 81 NCUOF investigations for this review, which relied primarily on investigative reports and any available evidence regarding the incident, including photographs, crime reports, Body-Worn Video (BWV), Digital In-Car Video (DICV) and third-party recordings. The OIG also reviewed the written analysis submitted by the Chain of Command during its review of the incident to determine whether issues related to policy adherence were identified and addressed, and to determine whether the final adjudication was consistent with Department policy and supported by the evidence.

Overall, the OIG found that the majority of NCUOF cases reviewed for the report – as delineated in the table on the next page – were investigated and adjudicated according to Department policy. Notably, the OIG found that the LAPD's quality control process, which includes successive reviews by the involved officers' chain of command and the Department's Critical Incident Review Division (CIRD), was very effective in identifying procedural, policy, and substantive issues. Where identified, these issues were "kicked back" to be corrected or otherwise addressed by the appropriate party. Issues caught and addressed by the Department prior to the OIG review encompassed, for example, the delayed or inaccurate reporting of the use of force by officers, Investigating Supervisors not following investigative protocols, and concerns about the use of force itself.

The OIG also noted, however, a small number of instances with issues that were not addressed by the Department prior to the OIG review. This included cases where the OIG identified documentation or investigative issues, as well as four cases where the OIG believes that one or more uses of force should have been found out of policy,[1] and five cases where the OIG noted insufficient efforts at de-escalation that were not identified by the Department. A full breakdown of the types of issues identified by the OIG, as well as those that were previously identified and addressed by the Department, is included on the following page.

[1] In one additional case, the OIG had concerns about the use of force but could not make a final determination due to deficiencies in the investigative record.

Objective No.	Audit Objective	Cases In Compliance	Cases with Issues	Issues Identified & Addressed by Department Prior to OIG Review
Reporting the Use of Force				
1.1	NCUOF reported timely	75 of 81 (93%)	6 of 81 (7%)	6 of 6 (100%)
1.2	All uses of force fully documented	76 of 81 (94%)	5 of 81 (6%)	4 of 5 (80%)
Assessment of the Investigation				
2.1	Complaint investigation was initiated, if applicable	76 of 81 (94%)	5 of 81 (6%)	0 of 5 (0%)
2.2	Investigation was properly classified	74 of 81 (91%)	7 of 81 (9%)	7 of 7 (100%)
2.3	Group interviews prohibited	80 of 81 (99%)	1 of 81 (1%)	1 of 1 (100%)
2.4	Subject of the use of force was interviewed, if possible	80 of 81 (99%)	1 of 81 (1%)	0 of 1 (0%)
2.5	Investigating supervisor was not involved in incident	79 of 81 (98%)	2 of 81 (2%)	2 of 2 (100%)
2.6	Investigating supervisor recorded interviews with non-Department witnesses and subject[2]	75 of 81 (93%)	6 of 81 (7%)	1 of 6 (17%)
2.7	Investigating supervisor identified significant issues	73 of 81 (90%)	8 of 81 (10%)	4 of 8 (50%)
Assessment of Chain of Command Review				
3.1	Use of force was reasonable	73 of 81 (90%)[3]	7 of 81 (9%)	3 of 7 (43%)
3.2	De-escalated, if applicable	58 of 70 (83%)	12 of 70 (17%)	7 of 12 (58%)
Other Related Issues				
4.1	BWV activated on time or explained in writing	214 of 253 (85%)	39 of 253 (15%)	*Not tracked*
4.2	DICVS activated on time or explained in writing	38 of 48 (79%)	10 of 48 (21%)	*Not tracked*
4.3	AFDR filled out accurately	18 of 66 (27%)	48 of 66 (73%)	*Not tracked*

The OIG also noted several areas where Department policies or practices in place at the time could be improved or clarified. Some of these issues have already been addressed or are currently in the process of being addressed. For example, the OIG noted a lack of clarity with respect to how uses of force to the neck should be assessed and classified. This question has

[2] The OIG noted that issues in this area were due to some supervisors not being equipped with body-worn cameras; the OIG recommends that this matter be addressed to ensure that all investigating supervisors have access to an appropriate recording device.

[3] Does not include one case about which the OIG could not make a final conclusion regarding the reasonableness of the use of force due to deficiencies in the investigative record.

since been addressed through the development and implementation of a policy setting forth how such incidents should be treated. The OIG also found that written training directing officers to handcuff persons with mental illness was overly prescriptive. The Department has addressed this with a policy providing more discretion in these circumstances. Similarly, the OIG identified other concerns related to the handling of individuals undergoing a possible mental health crisis and expects that these will be ameliorated through the Department's new co-response and call-diversion programs.

The OIG also noted some areas that appear to call for further improvements. These include the limited documentation and analysis of the use of force during crowd control situations and incidents in which a less-lethal munition is fired but does not contact a person, as well as a lack of clear policies related to the video-recording of strip searches. As such, the OIG has developed a series of additional recommendations designed to strengthen and improve the Department's handling of NCUOF incidents as well as its practices related to such incidents.

II. BACKGROUND

A. Use of Force at the LAPD

The Department requires officers who become involved in a reportable use of force incident to notify a supervisor without delay, who will then respond to the scene of the incident. The incident will subsequently be classified into one of two types, Categorical or Non-Categorical, as described below. This classification dictates which Department entity conducts the investigation, how the case is reviewed, and how the case is adjudicated.

- Categorical Use of Force (CUOF) incidents include more serious uses of force, including officer-involved shootings and other discharges of a firearm, in-custody deaths, uses of force resulting in admission to a hospital for medical treatment, and other uses of deadly force.[4] These incidents, which make up approximately 3 percent of all reported use of force incidents (on average from 2016-2020), are investigated by a specialized unit known as Force Investigation Division (FID) and adjudicated by the BOPC. The OIG conducts significant oversight of each CUOF investigation and prepares an independent report to the Commission analyzing each use of force as well as the overall investigation. Shortly after a case is adjudicated by the BOPC, an abridged summary of the CUOF incident and the BOPC's findings are uploaded on the LAPD's website.[5]

- Non-Categorical Use of Force (NCUOF) incidents include all other incidents involving reportable force, and they make up approximately 97 percent of all reported use of force incidents (on average from 2016-2020). NCUOFs may include the use of less-lethal weapons, such as a TASER or beanbag shotgun; physical force such as a strike, kick, or takedown; or bites or other contacts by a Department canine.[6] Many incidents involve multiple instances or types of force, and they may also involve multiple officers. As

[4] LAPD Manual 3/792.05, "Definitions: Categorical Use of Force."

[5] Abridged CUOF Summaries and BOPC Findings can be found at https://www.lapdonline.org/categorical_use_of_force.

[6] As of April 2021. Please see page 37 for further detail on this recent policy change.

discussed in the following sections, NCUOF incidents are investigated and evaluated by the involved officers' Chain of Command, and they are ultimately adjudicated by the Commanding Officer of Critical Incident Review Division. Because of the comparatively large number of NCUOF incidents, the OIG's oversight of these incidents primarily consists of periodic reviews or audits of a sample of cases.

As noted, NCUOF incidents make up most of the Department's reported use of force cases each year – approximately 97 percent on average from 2016-2020, according to Department records. As shown in the chart below, LAPD officers reported an average of 2,137 NCUOF incidents per year during that time span.

Year	2016	2017	2018	2019	2020	Average
# of CUOFs	79	73	61	49	52	62.8
# of NCUOFs	1,925	2,123	2,125	2,320	2,194	2,137

It is important to note that not all force is considered reportable. As such, there may be times, including those described below, when some measure of force is used upon a person or group but is not subject to the Department's full force review process. While these occasions are not the focus of this report, the OIG notes that such uses of force may nonetheless have a significant impact on the subjects of the force and/or on the community's perception of the police. The OIG therefore also considered whether there are additional uses of force that should be considered reportable. This discussion can be found beginning on page 36.

The Department exempts the following force types from being reported unless they result in an injury or a complained-of injury to the subject. (Although these force types are not reportable when used on their own, they must nonetheless be documented and evaluated if they are used in combination with other force that is reportable.)

- The use of a C-grip, firm grip, or joint lock.
- The use of a joint lock walk-down or body weight to overcome a subject's passive resistance.

The Department also exempts the following uses of force from the NCUOF process, although officers must nonetheless document these incidents and submit them for review.

- In a crowd control situation, instances where force is used to push, move, or strike individuals who exhibit unlawful or hostile behavior and who did not respond to verbal directions by the police.[7]
- The discharge, including tactical discharge, of a projectile weapon (e.g., beanbag shotgun, 37mm or 40mm projectile launcher), electronic control device (TASER), or

[7] Use of force incidents meeting the criteria for a CUOF are always classified as such, even if they occur during a crowd control situation.

any chemical dispenser that does not make contact with the individual or their clothing.[8]

Additionally, the application of the Hobble Restraint Device (HRD) is not a reportable use of force.[9]

B. NCUOF Policies

1. NCUOF Classification

The Department defines an NCUOF as an incident in which any on-duty or off-duty Department employee whose occupation as a Department employee is a factor, uses physical force or a control device to:

- compel a person to comply with the employee's direction;
- defend themselves;
- defend others;
- effect an arrest or detention;
- prevent escape; or,
- overcome resistance.[10]

Each reportable NCUOF incident is classified as a Level I or Level II incident. An NCUOF incident is classified as Level I when any of the following occurs:

- An allegation of unauthorized force is made regarding the force used by a Department employee(s); or,

- The force used results in a serious injury, such as a broken bone, dislocation, an injury requiring sutures, etc., that does not rise to the level of a CUOF; or,

- The injuries to the person upon whom force was used are inconsistent with the amount or type of force reported by involved Department employee(s); or,

- Accounts of the incident provided by witnesses and/or the subject of the use of force substantially conflict with the involved employee(s) account.

A Level II incident is defined as all other reportable NCUOF incidents that do not meet Level I criteria, regardless of the type of force used. As shown below, an average of about 92 percent of NCUOF cases were classified as Level II incidents over the past five years.

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[8] The OIG has recommended that non-contact uses of less-lethal weapons be "reported and analyzed in the same manner as contact uses of the same devices." See "Follow-Up Review of National Best Practices, Office of the Inspector General", October 2019, page 18.

[9] LAPD Manual 4/217.40, "Use of the Hobble Restraint Device."

[10] LAPD Manual 4/245.05, "Categories and Investigative Responsibilities for Use of Force."

Year	2016	2017	2018	2019	2020	Average
NCUOF Level I	152	199	171	166	133	164.2
NCUOF Level II	1,773	1,924	1,954	2,154	2,061	1973.2

2. NCUOF Investigation Protocol

A Department employee who becomes involved in an NCUOF incident is required by policy to notify a supervisor about the use of force without delay. The full details of the use of force must also be documented in the related arrest or crime report, which serves as the primary narrative for the NCUOF incident. In instances where a crime or arrest report is not required, the use of force is to be documented instead on a Department form called an "Employee's Report."

NCUOF incidents are investigated by a supervisor from the involved officers' Area or division – usually a Sergeant – who was not involved in the use of force or in providing direction to officers involved in the incident. When a request for a supervisor is made, the supervisor responds to the scene to conduct the NCUOF investigation, which includes canvassing for witnesses, third-party video, and any other evidence. Protocols mandate the supervisor to conduct independent interviews of the officers who used force as well as officers who witnessed the use of force. The supervisor also conducts interviews of non-Department witnesses as well as the person upon whom the force was used.

All evidence is then reviewed, including Department videos obtained from Body-Worn Video (BWV) and Digital In-Car Video (DICV) cameras, as well as any third-party video collected from cellular phones and/or surveillance cameras. The information gathered from the investigation is entered into the Department's TEAMS II NCUOF system.[11] This includes uploading photographs and relevant scanned documents such as Arrest Reports, Employee Reports, etc. Since the advent of BWV technology, the Investigating Supervisor is required to review all BWV footage and bookmark those portions that are relevant to the NCUOF for the benefit of subsequent reviewers.

3. NCUOF Investigation Review Procedures

Upon completion of the NCUOF investigation, the Investigating Supervisor submits their work product for a Chain of Command review, beginning with the Area Watch Commander (WC), Area Commanding Officer (CO), and Bureau CO. Each case then gets forwarded to the Department's Critical Incident Review Division (CIRD) for final review and adjudication.

The Area WC, usually a Lieutenant, reviews the investigation in conjunction with the Area Training Coordinator and prepares a "Watch Commander's Insight," which includes an assessment of each officer's actions during the incident. The WC identifies any issues related to

[11] TEAMS II is the Department's Training Evaluation and Management System, which is composed of several databases that contain data related to personnel records such as performance thresholds, complaints, use of force, commendations, and training. It was also designed to be a paperless system to track and record use of force and complaint investigations.

each officer's tactics and adherence to Department policies, and he or she may also recommend training in specified areas or discipline where applicable.

The Area CO then reviews the investigation and takes the Watch Commander's Insight into consideration in order to reach recommended "Findings" for the case with regard to each officer's tactics and use of force. The case is then submitted to the Bureau CO for review and approval. The Bureau CO will review the Area CO's recommended Findings and will either concur with them or override them. Once the Bureau CO makes this determination, the case is submitted to CIRD for final review and approval.[12] CIRD personnel review each NCUOF case and, if any significant issues were not sufficiently addressed by the investigation or review, they initiate a "kick back" of the case to the appropriate entity in the Chain of Command with a request to resolve the issues. Ultimately, the CO of CIRD generally has the final authority for adjudicating all NCUOF incidents on behalf of the Director of the Office of Support Services, who is the Department's identified "review authority" for such cases.[13]

C. Use of Force Policy[14]

All uses of force by LAPD employees must comply with the Department's overall use of force policy, which requires the use of non-deadly force to be objectively reasonable.[15] The objective reasonableness standard is based on the Fourth Amendment analysis set forth in *Graham v. Connor, 490 U.S. 386 (1989),* which states in part:

> "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application. The force must be reasonable under the circumstances known to or reasonably believed by the officer at the time the force was used. Therefore, the Department examines all uses of force from an objective standard rather than a subjective standard."[16]

As such, Department policy requires that officers use only that force which is objectively reasonable to defend themselves or others, effect an arrest or detention, prevent

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[12] For more detail on the NCUOF review process, please refer to the LAPD's Use of Force Year-End Review 2020 report at http://lapd-assets.lapdonline.org/assets/pdf/YER_2020_Book%20reduced1_compressed%20(1).pdf.

[13] Department Manual 3/793.15, "Commanding Officer, Critical Incident Review Division, Responsibility."

[14] The Use of Force policy was modified multiple times in 2020 – in January, February, and August. The most recent modification occurred in December 2021. The majority of these changes focused on the use of deadly force, although some also applied to NCUOFs. Such changes have been noted, where relevant.

[15] As a result of recent changes to California State law, the Department now requires that the use of deadly force be used "only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary."

[16] Department Manual 1/556.10, "Definitions: Objectively Reasonable."

escape, or overcome resistance. Officers are also required to "attempt to control an incident by using time, distance, communications, and available resources in an effort to de-escalate the situation, whenever it is safe, feasible, and reasonable to do so."[17]

The policy requires that, in determining the appropriate level of force, officers shall evaluate each situation in light of the facts and circumstances of each particular case. Those factors may include, among others, the seriousness of the crime or suspected offense, the level of threat or resistance presented by the subject, and whether the subject was posing an immediate threat to officers or a danger to the community.[18,19]

Along with the Department's overall use of force policy, officers must also comply with the more detailed standards set forth for each type of force, where applicable, in one or more relevant Use of Force-Tactics Directives. These Directives include, for example, requirements related to the circumstances under which each use of force may be employed as well as warning requirements and other considerations. The Department also maintains a Directive specifically related to Tactical De-escalation, which sets forth detailed expectations about an officer's required use of de-escalation techniques when safe, feasible, and reasonable.

D. Prior OIG Reports and Recommendations

This report follows several previous reviews completed by the OIG on the topic of NCUOF investigations, including an in-depth review of NCUOF cases and policies, a review of NCUOF incidents resulting in litigation, and a review of NCUOF investigations stemming from arrests for resisting or obstructing an officer.[20] These reports resulted in a series of recommendations designed to improve or clarify policies and procedures for the investigation and evaluation of NCUOF incidents. Of these, the majority have already been implemented by the Department.

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[17] OIG noted that this portion of the policy was amended on February 2020 to include the word "feasible." (*See* Special Order No. 4, "Policy on the Use of Force – Revised", February 5, 2020). Special Order No. 4 also amended the policy to include the "Use of De-escalation Techniques" and added the feasibility of using de-escalation tactics as a factor used to determine objective reasonableness. *See also* Special Order No. 1, "Policy on the Use of Force – Revised," January 2, 2020.

Additionally, in August 2020, this section of the policy was amended to include the concept of Proportionality, which states, "Officers may only use force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance." (See Special Order No. 23, "Policy on the Use of Force – Revised", August 26, 2020).

Then in December 2021, the policy was amended to reflect changes made by California Assembly Bill 26, which requires officers to intercede when they observe a potential use of excessive force by another officer, prohibits any retaliation against the officer who reported the excessive force, and prohibits an officer who has a sustained excessive force complaint from training other officers for a period of at least 3 years.

[18] Department Manual 1/556.10, "Definitions: Factors Used to Determine Reasonableness".

[19] For a full list of these factors, please see the Appendix for the full use of force policy implemented in December 2021. (*See* Special Order No. 23, "Policy on the Use of Force - Revised", December 7, 2021). Please note that policy language related to the use of de-escalation was revised in February 2020, as described in Footnote 17.

[20] *See* "Review of Non-Categorical Use of Force Investigations," Office of the Inspector General, June 2013; "Follow-Up Report on Non-Categorical Use of Force Investigations," Office of the Inspector General," December 2013; and "Review of Arrests for Violations of California Penal Code Section 148(a)(1)," Office of the Inspector General, August 2018.

As discussed later in the report, one prior OIG recommendation that has not been implemented by the Department is for all officer accounts of an NCUOF incident to be individually and independently documented.

III. REVIEW METHODOLOGY

In order to complete its review, the OIG selected a stratified random sample of 81 NCUOF investigations.[21] For each case, the OIG examined the information contained in the Department's TEAMS II Use of Force System and as well as all related attachments (e.g., arrest reports, photographs, etc.). The review also included an examination of all available video and audio recordings of each incident, including Body-Worn Video (BWV), Digital In-Car Video (DICV), surveillance footage, and cell phone recordings that were obtained during the Department's investigation. Additionally, the entire NCUOF process was also reviewed for any possible systemic issues and areas for improvement. Automated Field Data Reports (AFDRs) and any complaint investigations associated with an NCUOF incident were also reviewed.

A. Review Objectives

The OIG's review provided a qualitative assessment of Department-wide adherence to policy, focusing on the following objectives: Reporting the Use of Force, Assessment of the Investigation, and Assessment of the Chain of Command Review. The OIG utilized a testing database with 55 questions to collect data about each case and assess compliance with the review objectives, as described below.

With respect to the Reporting of the Use of Force, the OIG examined the following areas:

- Whether the use of force was timely reported to a supervisor; and,
- Whether the use of force incident, including the description of the subject's actions precipitating the use of force, was accurately and completely documented.

With regard to the Assessment of the Investigation, the OIG examined the following areas:

- Whether a complaint investigation was initiated, if applicable;
- Whether the NCUOF investigation complied with Department protocols; and,
- Whether the NCUOF investigation identified and addressed all significant issues.

With regard to the Assessment of the Chain of Command Review (which included the reviews conducted by the Area WC, Area CO, Bureau CO, and CIRD), the OIG examined the following areas:

- Whether the overall analysis of the incident was adequate and identified concerns related to policy adherence;
- Whether the evaluations of the Tactics and the Use of Force were adequate;

[21] The OIG used a one-tail test with a 95 percent confidence level, a six percent expected error rate, and a five percent plus precision rate to select its sample.

- Whether the recommended findings were appropriate and supported by the evidence; and,
- Whether the final adjudication was consistent with Department standards.

As with all reviews conducted by the OIG, other standard protocols that officers follow as part of their duties were also examined for compliance and/or identification of areas for improvement. This included ancillary responsibilities related to any incident such as BWV and/or DICV camera activation and completion of AFDRs.

B. Population and Sample

To identify the review population, the OIG generated a report of all NCUOF incidents that occurred during the first calendar quarter (January through March) of 2020 from the NCUOF System. This report identified a total of 592 NCUOF incidents that occurred in that quarter, which consisted of 40 Level I investigations and 552 Level II investigations. The OIG then took a random sample from each Level, which resulted in a total of 81 investigations. Of these, 25 (31 percent) were Level I investigations and 56 (69 percent) were Level II investigations.

To provide an overview of the use of force incidents reviewed, the OIG analyzed various characteristics of each case, including the race and gender of each subject of the use of force, the original source of the police contact, the types of force used, and the proportion of cases involving a mental health condition as a possible factor in the incident. These characteristics are described below.

The OIG notes that, due to sample stratification, Level I incidents (which are considered to be higher-risk incidents) are overrepresented when compared to the overall NCUOF population, while Level II incidents are underrepresented. As such, the percentages provided in this document may not be applicable to the entire population of NCUOF incidents.

1. Race and Gender

Of the 81 use of force subjects in the OIG's sample, the majority – about 83 percent – were listed as male, while about 17 percent were female. With respect to race, people identified by officers as Hispanic made up about 46 percent of use of force subjects, followed by Black subjects at 38 percent, White subjects at 12 percent, Other subjects at about 3 percent, and Asian subjects at 1 percent.

Race/ Gender	Hispanic	Black	White	Other	Asian	Grand Total
Male	30 (37.1%)	29 (35.8%)	7 (8.6%)	0 (0%)	1 (1.2%)	**67 (82.7%)**
Female	7 (8.6%)	2 (2.5%)	3 (3.7%)	2 (2.5%)	0 (0%)	**14 (17.3%)**
Total	**37 (45.7%)**	**31 (38.3%)**	**10 (12.3%)**	**2 (2.5%)**	**1 (1.2%)**	**81 (100%)**

2. Source of Police Contact

The table below provides the source of activity that led the officers to come into contact with the person against whom force was used in the 81 NCUOF incidents that were reviewed by the OIG. The source of the contact in over half of the incidents (47 incidents, or 58 percent) was a call for service. Officer-initiated activities were the source of 19 additional encounters (23 percent),

including vehicle stops (7 incidents), pedestrian stops (6 incidents), and other officer observations (6 incidents). The source of the remaining 15 incidents (18 percent) included encounters occurring in a jail or other custody setting (7 incidents), enforcement related to the Metropolitan Transit Authority (MTA) (2 incidents), flag-downs by a member of the public (2 incidents), and other circumstances that did not fit into any of the previously-listed categories (4 incidents).[22]

Source of Contact[23]	*# of Incidents*	*Source of Contact*	*# of Incidents*
Call for Service	47 (58%)	**Observation**	6 (7%)
Jail/In-Custody	7 (9%)	**MTA Enforcement**	2 (2%)
Vehicle Stop	7 (9%)	**Flag Down**	2 (2%)
Pedestrian Stop	6 (7%)	**Other**	4 (5%)

3. Types of Force

The table below provides a breakdown of the types of force used by officers in the 81 NCUOF incidents reviewed by the OIG. It is important to note that one incident may involve the use of several types of force. For example, in one incident, officers might use Firm Grips, Physical Force, a Takedown, Bodyweight, and Joint Locks, which are considered non-lethal uses of force.

Along with the non-lethal force options used, 11 incidents in the OIG's sample involved the use of one or more less-lethal weapons. Specifically, there were a total of nine NCUOF incidents involving a use of the TASER, one involving the use of the 40mm less-lethal launcher, and one involving the use of the Bola Wrap.[24]

Type of Force Used	# of Incidents
Firm Grip	75
Physical Force	57
Bodyweight	56
Joint Lock	24
Takedown	19
TASER	9
Leg Sweep	4
Neck Restraint	2
Kick/Strike	2
Bola Wrap	1
40mm Launcher	1

[22] The four incidents identified as "Other" involved an off-duty traffic collision, an officer who was assaulted as his vehicle was entering a police station, and two separate incidents when the involved subject was refusing to leave a police station.

[23] Figures shown may not add up to 100 percent due to rounding.

[24] The OIG notes that the Department does not currently consider the use of such weapons during crowd-control situations to be reportable in most cases. For further discussion of this issue, please see page 37.

4. Mental Health Condition as a Factor in the Incident

In 27 (33.3 percent) of the 81 NCUOF incidents, the subject of the use of force appeared to be impaired by a mental health condition. Among those cases, the reason for the contact with the subject was a call for service 21 times (77.8 percent), officer observation two times (7.4 percent), the subject's transfer between jail cells once (3.7 percent), the subject's refusal to leave a police station once (3.7 percent), a citizen flag-down once (3.7 percent), and an unprovoked assault on an officer once (3.7 percent).

Of the 27 incidents that appeared to involve a mental health condition, 15 (55.6 percent) resulted in a mental evaluation hold pursuant to Welfare and Institutions Code, Section 5150, 11 (40.7 percent) resulted in an arrest, and one (3.7 percent) resulted in no change to the subject's custodial status, given that the subject was already in custody and the NCUOF occurred during a cell transfer at the jail.

IV. OIG FINDINGS

A. Reporting the Use of Force

Department policy states that any employee who becomes involved in a reportable NCUOF shall notify a supervisor "without delay." In reviewing the timeliness of officer notifications, the OIG found that the vast majority of NCUOF incidents in its sample – 75 cases, or 93 percent – were reported in a timely fashion. In six NCUOF cases, however, the involved employee(s) did not immediately report the use of force while still on scene, thereby preventing a prompt on-scene response by a supervisor. In each case, however, a Department supervisor later identified that an NCUOF had occurred during the incident and that it should have been reported as such. Two of these cases resulted in a complaint investigation being initiated against the involved employees, ultimately resulting in sustained allegations.[25] In one additional case, no complaint was filed, but divisional training was provided to the involved employees.

The OIG's review found that in the remaining three cases with a reporting delay, the involved employees informed a Sergeant about the incident when they arrived at the police station. In each case, the reviewing Sergeant determined that the incident should have been handled as an NCUOF. (The OIG noted that one of these cases met the definition of an NCUOF only once the subject complained of pain; the force used in that case would not otherwise have been reportable.)

The OIG also reviewed the extent to which officers fully and accurately reported each use of force employed during an incident. Department policy requires that the officer documenting a use of force "report the full details of the use of force incident" in the relevant report, and that they ensure that all descriptions of actions by officers and the suspect are in plain language.[26] Policy also requires that officers review recordings of the incident when documenting a use of

[25] In one of these cases, the officers also did not report that their vehicle had collided with the subject's bicycle, knocking him down. They later stated that they were unaware of the collision or the subject's reported injuries and did not consider a push to the ground to be a use of force. For further discussion of this case, please see page 22.

[26] LAPD Manual 4/245.10 "Reporting a Non - Categorical Use of Force Incident."

force. To this end, the policy requires supervisors to allow officers to review their own body-worn video recordings and, "if deemed necessary," other video as well "to ensure complete and accurate reports and documentation of the incident."[27]

Again, the majority of narratives – 76, or about 94 percent – provided by officers in cases reviewed by the OIG included a full account of the force that was used during the incident. The OIG identified five cases, however, in which officers appropriately reported that some amount of force had been used but failed to document one or more specific uses of force – or force types – in the initial Arrest Report, Crime Report, or Employee's Report.[28] In four of these cases, at least one additional force type was identified during subsequent review of the incident by the Department.[29] Some examples where force was not initially reported are as follows:

- In an NCUOF Level II incident involving seven officers, the OIG observed on BWV one officer placing his hand on the subject's chin and neck area as other officers were attempting to restrain the subject on the ground in order to handcuff him. The Arrest Report use of force narrative described that the first officer "used both hands to grab Suspect's head and turn it to the right towards the ground to assist in turning the Suspect face-down." The investigation, at all levels of review, did not identify the officer's hand being placed on the subject's neck at this point. After the subject was handcuffed, the same officer escorted him to a police vehicle where another use of force occurred as he was being placed inside the vehicle. According to the investigation, "As the suspect continued to thrash back and forth, [the officer's] left hand inadvertently slipped up towards the suspect's neck. Officer […] never applied pressure on the suspect's neck. Upon realizing that his hand slipped up to the suspect's neck, Officer […] immediately repositioned his hand back onto Suspect's chest." The first application of force to the subject's neck should have been identified and addressed in the investigation.

- In a prolonged NCUOF Level II incident involving nine officers in total, some aspects of the use of force utilized by one officer – including placing his forearm and hand near the subject's neck area, an elbow strike to the subject's face, and a punch to the subject's groin area – were not initially reported. The written use of force narrative stated the following: "Although it was a lengthy NCUOF, it only consisted of firm grips, body weight, use of a hobble, and verbalization." The OIG believes a possible contributing factor to this type of discrepancy between the force that was used and the force that is reported is the Department's continued practice of having only one officer document the NCUOF accounts of all involved officers, rather than having each involved officer complete their own account of the use of force. The uses of force listed above were also not identified by the Investigating Supervisor in this instance. During an internal review of the investigation at the Area level, however, the punch to the subject's groin area was identified on DICV by the Area's training coordinator. After further review, the Investigating Supervisor advised the

[27] LAPD Manual 3/579.15, "Viewing of Body Worn Video Recordings by Officers," "Recordings in Non-Categorical Use of Force Incidents - Supervisor's Responsibilities."

[28] The OIG also noted two cases in which officers accurately reported their actions, yet one or more specific force types were not entered into the TEAMS II system.

[29] In one instance, the Department directed that a Follow-up Investigation Report be completed to document the identified additional force used; however, this report could not be located.

officer that he should "avoid the use of force to the neck, head, and groin area whenever possible," but the ultimate analysis stated generally that the officer's uses of force were objectively reasonable.[30] Later, during CIRD's review of this incident, an additional unreported use of force by another officer was identified – specifically, that officer had held his forearm against the subject's neck area.[31]

These newly identified uses of force were "kicked back" to the Chain of Command for additional review; however, the additional review of the unreported uses of force was insufficient. The officers mentioned in the examples above were not asked to articulate the basis for the unreported uses of force, nor was a clear justification otherwise provided.

1. Lack of Independent Documentation

In reviewing issues with the documentation of reportable uses of force, the OIG noted that one possible factor underlying many such issues is the Department's current protocol of having only one officer document the entire use of force incident, regardless of the number of officers who were involved in it. The OIG has previously recommended that "[a]ll officer accounts of a NCUOF (including those of witness officers) should be individually and independently documented in a prompt manner."[32] In the OIG's view, this lack of independence can impact the quality of the NCUOF investigation and subsequent evaluation of the incident, and it may also result in inaccuracies or omissions in the report of the use of force itself. Further, as noted previously by the OIG, "objective reasonableness is judged based upon the facts known, at the time, to the officer using force. A composite account may not provide enough officer-specific information to make this determination."[33] The OIG continues to recommend that this policy change be implemented.

2. Changes to Policies Regarding Neck Restraints and Related Issues

A second issue noted by the OIG involved officers' use of force on a subject's neck area, which was not fully documented in three initial use of force reports.[34] At the time of the incidents reviewed for this report, the Department maintained limited guidance for the handling of cases involving pressure applied to a person's throat or neck area, unless the involved officer was

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[30] For additional analysis of this case, please see page 23.

[31] FID was consulted regarding the applications of the officer's forearm to the person's neck area at that time, which was approximately 3 months after the incident occurred. FID determined that the force used did not rise to the level of a CUOF based on current standards at the time, and that the investigation should remain at the Area.

[32] "Review of Non-Categorical Use of Force Investigations," Office of the Inspector General, June 2013, pages 19-20, and page 36. https://a27e0481-a3d0-44b8-8142-1376cfbb6e32.filesusr.com/ugd/b2dd23_ca056c07c33f4241bba01c2778d10b4b.pdf

[33] *Id*, page 20.

[34] In two of these instances, the use of force on a subject's neck area was later identified and addressed during the Department's subsequent review of the incident.

attempting to apply a Carotid Restraint Control Hold (CRCH).[35] The attempted use of a CRCH would always be classified as a CUOF, although other types of neck restraints were only classified as CUOFs when there was a determination that the restraint constituted deadly force. The Department defines deadly force as force that creates "a substantial risk of causing death or serious bodily injury."[36]

The OIG observed that, to the extent this type of force was identified in the cases it reviewed, Investigating Supervisors or the Chain of Command often qualified the involved officers' actions by stating that they were inadvertent or brief. However, the OIG noted that in the three cases at issue, an officer's use of a hand or arm against someone's neck appeared to be deliberate and may have resulted in the brief restriction of the person's airway. Even so, these uses of force did not appear to meet the deadly force standard as constituted at that time. In one case involving the application of an officer's hand and arm to a subject's neck and throat, the case was referred to FID for additional review. FID determined that the incident did not rise to the level of a CUOF and should remain an NCUOF.

The Department has since moved to clarify its policies related to neck restraints. In April 2020, it published a new directive on the CRCH stating that "**any force** applied by an officer (e.g., headlock, firm grip to the neck, etc.) that causes restriction to the airway or carotid arteries of a person's neck, that is more than momentary and incidental, regardless of intent, will be investigated and evaluated as a Categorical Use of Force."[37] In the wake of the death of George Floyd, however, the State of California moved to cease providing training on the CRCH, and an Emergency Regulatory Action was approved on July 1, 2020 to remove training in the use of the hold from State training and testing specifications. Subsequently, the BOPC voted on July 14, 2020 to rescind the Department's directive authorizing the use of the CRCH and to definitively ban all uses of the technique.

In August 2020, the California State Assembly passed AB 1196, which prohibits a law enforcement agency from authorizing the use of a carotid restraint or choke hold and sets forth definitions for these techniques.[38] Consistent with this law, which became effective in 2021, the Department published a new Special Order in December 2020 stating that "all uses of a carotid restraint and choke hold" were unauthorized and that any such use would be classified and investigated as a CUOF. For the purposes of this policy, a choke hold is defined as "any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe." Similarly, a carotid restraint is defined as a tactic where pressure is applied to the

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[35] At the time, the Department trained officers in two CRCH techniques, which were each designed to render a subject unconscious through the use of bilateral pressure to the subject's carotid arteries. These techniques were authorized only in situations where the use of deadly force would be authorized.

[36] According to California Penal Code Section 243(4)(f): "'Serious bodily injury' means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement."

[37] LAPD Use of Force – Tactics Directive No. 19, "Carotid Restraint Control Hold – Deactivated", April 2020. (Emphasis added.)

[38] Law Enforcement Use of Force Policies, California Government Code Section 7286.5.

sides of a person's neck in a manner that involves a substantial risk of restricting blood flow and that may render the person unconscious in order to subdue or control the person.[39] These most recent changes have assisted in clarifying Department policy. The potentially serious nature of the actions governed by the policy, however, underlines the continuing importance of accurately documenting and reviewing any use of force to a subject's neck in order to determine whether it should be handled as a CUOF and, ultimately, whether it was authorized by the Department.

As a related issue, the OIG noted that the Department has also moved to restrict the amount of bodyweight that may be placed on a subject's back during a use of force. Specifically, the LAPD Arrest and Control (ARCON) Manual was updated to address concerns about weight being placed on an individual's back for a protracted amount of time as well as the dangers of having multiple officers on the individual's back at the same time.[40] The changes indicated, for example, that officers should not place bodyweight on a subject's back while the subject is handcuffed and hobbled. The manual also included changes to guidance on team takedowns and other techniques, indicating that officers should focus on controlling a subject's limbs and avoid placing unreasonable pressure to the subject's back; that multiple officers should not pile on top of a subject's back; and that subjects should be placed in a seated position as soon as practicable. The manual further states that common mistakes on the part of officers include the use of protracted bodyweight to a subject's back while the subject is in the prone position.

The OIG also identified three cases in which a person who stated that they could not breathe was told by a Department employee that if they could talk, then they could breathe. In one of these instances, the person who made the statement was being subjected to a use of force at the time the statement was made. With regard to the other two instances, one involved a person who was in a car with the windows rolled up when they made the statement, and the other involved a person who said he could not breathe when a spit sock was placed on his head. The OIG notes that this response by officers is inappropriate and does not accurately reflect the relationship between a person's respiration and their speaking capability. According to one article on the topic, for example, "[t]he belief that a person's ability to speak precludes the possibility of suffocation is not true and can have fatal consequences."[41] As such, the OIG recommends that the Department move to educate officers on this topic and to ensure that any statement made by a person that they cannot breathe is immediately and appropriately addressed by officers at the scene.

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[39] Special Order No. 29, "Officer Involved Shootings or In-Custody Deaths (ICD) or Injury — Confidential Reports; Definitions Categorical Use of Force; Department Operations Center Notification — Revised; and, Miscellaneous Department Manual Sections Pertaining to the Procedures for Investigating, Reviewing and Adjudicating Categorical Use of Force Incidents — Renamed and/or Revised, or Deleted," December 2020.

[40] LAPD ARCON Manual, Updated December 2020.

[41] "A Dangerous Myth: Does Speaking Imply Breathing?" Anica C. Law, MD, MS, et al, Annals of Internal Medicine, November 3, 2020. *See also*: "I Can't Breathe: What It Means for Law Enforcement," Brian Casey, Lexipol, July 13, 2020. https://www.lexipol.com/resources/blog/i-cant-breathe-what-it-means-for-law-enforcement/

B. Assessment of the Investigation

1. Initiation of a Complaint

As part of the OIG's review, it assessed whether a Department complaint was appropriately initiated regarding any instance in which a person alleged unauthorized force or other misconduct on the part of one or more officers, including the filing of a claim for damages or a lawsuit. The review determined that a complaint was filed as required in all but five such cases.[42,43] In each of these cases, the subject of the use of force made statements that appeared to allege excessive or unauthorized force by the involved officers, yet these statements were not further explored to determine whether the person who made them wanted to file a complaint. For example:

- During a Level II NCUOF involving a possible use of force to the subject's neck area, the subject stated that a sergeant was "choking" him, that he couldn't breathe, and that excessive force was being used. The subject further attempted to tell a Los Angeles Sheriff's Department employee at a jail facility that an officer had put his thumb on the subject's throat and squeezed it. As noted in the following section (page 19), the sergeant in question subsequently conducted an interview of the subject that was very brief and did not include specific questioning about the use of force. The subject did not reiterate his claims of excessive force or choking at that time, but his earlier statements about this should have been further explored by an uninvolved supervisor and, if appropriate, a complaint should have been initiated.

The OIG also reviewed all complaints associated with an NCUOF in its sample of cases to determine whether they been initiated by a member of the public or by the Department itself based on the identification of potential officer misconduct. Overall, 12 NCUOF incidents (15 percent) in the sample had an associated complaint investigation that was either directly related to the use of force or to other alleged misconduct during the NCUOF incident. Of these 12 complaints, nine were initiated by the subject of the NCUOF, two were initiated by the Department, and one was initiated by both of those parties. Eight of the complaints included allegations related to the use of force by at least one of the involved officers, and the remaining four complaints alleged other types of misconduct unrelated to the use of force itself.

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[42] In one case, the OIG noted that the subject of a use of force, as well as the subject's friend, indicated that the subject had been the victim of a serious crime. The involved officers, however, did not take a crime report or conduct additional investigation. The OIG referred this case to the Area command and, as a result, the Department initiated a complaint alleging Neglect of Duty against the involved officers.

[43] The OIG's review also determined that in each case where a complaint of unauthorized force was made, the underlying use of force was properly classified as a Level I NCUOF. Sometimes this classification was made by the investigating supervisor, while other times it did not occur until after a review of the incident by the Chain of Command or CIRD.

2. Compliance with Investigative Protocols

The OIG found that, in all NCUOF cases in its sample, an uninvolved supervisor responded to the scene of the use of force to conduct an investigation as required.[44] This included cases where officers were delayed in their reporting of the use of force.

When conducting an NCUOF investigation, some of the tasks the Investigating Supervisor is responsible for include: a) collecting and preserving all appropriate evidence and canvassing the scene to locate witnesses; b) conducting independent interviews of all involved and witnessing Department employees, non-Department witnesses, and the person against whom force was used (group interviews are prohibited); and c) identifying the time frames relevant to the use of force and electronically bookmarking relevant portions of BWV for subsequent reviewers. Overall, the OIG found that a large majority (approximately 68 percent) of the NCUOF investigations it examined were appropriately conducted according to Department policy, but that there were some exceptions to this conclusion. In many cases, as delineated below, the Department identified and addressed issues with an NCUOF investigation through its review process.

- In seven cases an NCUOF that should have been classified as a Level I due to inconsistent statements, the presence of a complaint of misconduct, or other issues, was initially misclassified as a Level II. In each of these cases, however, this issue was caught during a subsequent review of the case by the Chain of Command or CIRD, and each case was ultimately classified correctly.

- Department policy prohibits group interviews during an NCUOF investigation. While interviews of employees are not required to be recorded, the OIG noted that in one case, the Investigating Supervisor's BWV camera captured him interviewing both of the officers who were involved in the incident at the same time. This issue was identified by the Department during its Chain of Command review and was addressed with the Investigating Supervisor.

- Department policy requires the Investigating Supervisor to interview the person upon whom force was used. The OIG noted that in one case, the Investigating Supervisor, accompanied by a Detention Officer, went to that person's jail cell. The Detention Officer asked the person to come closer to the cell door, but the person refused. The Investigating Supervisor then took two photographs of the person and left. The Investigating Supervisor never advised the person that he (the Investigating Supervisor) was there to conduct an interview about the use of force incident. This issue was not addressed during the Chain of Command review.

- Department policy requires that the supervisor responsible for investigating an NCUOF not be someone who was involved in the NCUOF incident. The OIG identified two cases in which a supervisor involved in the NCUOF incident also conducted one of the investigative interviews regarding the incident. In one case (the case previously mentioned on page 17), the investigation materials stated that this occurred because an uninvolved Investigating Supervisor was not able to respond to the location of the incident in time to interview the

[44] As noted later, there were nonetheless two investigations that included interviews conducted by a supervisor who was involved in the incident.

subject of the use of force before that subject was transported to a different detention facility. The OIG further noted that the interview of the subject in this case was extremely brief, with limited questioning. In the second case, a supervisor involved in the NCUOF incident interviewed a non-Department witness. These issues were also identified by the Department during its standard review of the associated incidents.[45]

- Department policy requires Investigating Supervisors to activate their BWV when interviewing non-Department witnesses. The OIG identified one case in which this did not occur, with no apparent justification. In five additional cases, the Investigating Supervisors did not have an assigned BWV camera and, as such, interviews conducted by those supervisors were not recorded. The Department noted this issue in one of the five cases and determined that the supervisor's omission to record non-Department witness interviews was consistent with policy given the lack of available BWV equipment. The issue was not identified in the remaining four cases.

The OIG also noted several possible inconsistencies in Department policy with respect to recording interviews in Level I and Level II cases. For example, Department policy requires, with a few exceptions, that Supervisors shall activate their BWV when interviewing "all non-Department witnesses during all NCUOF Level I and Level II investigations." In other sections, however, that policy discusses a requirement only in Level I investigations to either "electronically record" or "tape record" statements of the subject of the use of force and non-Department witnesses. The policy also states that "[t]ape-recording non-Department employee witnesses is optional" in Level II cases.[46] The OIG recommends that the policy be clarified to require that, for all Level I and Level II investigations, interviews of all use of force subjects and non-Department witnesses must be recorded either using BWV or, if not available, another method.

3. Identification and Investigation of All Significant Issues

The OIG reviewed each case to determine whether the Investigating Supervisor identified all significant issues, including conflicts between officers' statements and other evidence, including camera footage and statements from witnesses or the subject of the use of force. In 73 cases (90 percent), the OIG found that there were either no identified conflicts or that the Investigating Supervisor properly identified and addressed any conflicts that were present. As noted earlier, however, there were five cases in which the Investigating Supervisor did not identify or properly address unreported force types or other issues via the supervisor's notes or written narrative about the case.

The OIG also noted three cases where the Investigating Supervisor did not adequately investigate or address salient aspects of the case, such as a significant injury to the subject. For example:

[45] The OIG also noted one case in which an officer who used force was asked to translate an investigative interview. Although the translation appeared to be accurate, this is not an appropriate investigative practice and should be avoided in the future.

[46] *See* LAPD Manual 4/245.10 and 4/245.13.

- In an NCUOF Level I incident, the subject on whom force was used was initially found bleeding due to an earlier assault, resulting in a call for service to the police. The subject was transported to the hospital for the injuries to his head and ear. During the involved officers' investigation, it was determined that the subject had an outstanding warrant, and he was arrested after being medically cleared by the hospital staff. Subsequently, at the holding cell of the police station, an NCUOF occurred after the subject's handcuffs were removed, with one officer delivering three punches to the subject's head in response to the subject yelling and resisting being placed into the holding cell. The subject stated during his interview that he was upset about not being allowed to make a phone call. There was substantial bleeding from the subject's ear area after the officer punched him, and a Rescue Ambulance was requested once the subject was placed into a lying position and handcuffed. The OIG's review of available video found that LAFD personnel rendered medical aid, were able to stop the bleeding coming from inside the subject's ear, and determined that the subject did not need to be transported to the hospital after being advised by the officers that the hospital personnel had already assessed the subject for an injury to his ear. At that time, the subject mentioned that he had a bad headache.

  During the OIG's review of BWV, it was observed that the officer who delivered the punches was holding a handcuff key with the hand he used to punch the subject, and that the key protruded out of his closed fist during the use of force, including when the punches were delivered. The investigation did not identify or address the key in the officer's hand or whether it struck the subject's head, nor did it fully address or describe the subject's injury, stating only that it was pre-existing. Given the apparent seriousness of the injury, there should have been additional context and analysis provided in the investigation of the use of force, including documentation of the subject's condition during the officers' earlier encounter and any medical information known to the officers.[47] In the OIG's view, the presence of the key, in combination with the subject's injury, should also have prompted an assessment by FID to determine whether the use of force involved a substantial risk of causing death or serious bodily injury, thereby resulting in its classification as a CUOF.

  The OIG also noted that when the subject was being interviewed by the Investigating Supervisor regarding the NCUOF, he repeatedly complained of having a severe and debilitating headache, and he requested painkillers. The supervisor asked the subject whether he wanted to go to the hospital, and the subject said he did not. Given the subject's injury as well as the fact that he was in custody, however, the OIG is of the opinion that the

[47] Note that while the OIG was able to review video showing what occurred during treatment of the subject by LAFD personnel, this information was not detailed in the use of force investigation. The OIG noted that the subject did appear to be bleeding from his ear area during the use of force, just prior to the punches delivered by the officer, after which the bleeding appeared to intensify. The officers' report also indicated that the subject could not be housed at an LAPD jail due to his pre-existing injuries and that he was being placed into the holding cell pending transportation to the County Jail. Notably, at the time the subject was interviewed regarding the NCUOF, he refused a request for his medical records to be released. The subject later filed a claim for damages indicating his assertion that he is now deaf in one ear and has a number of psychological issues as a result of the NCUOF incident. The subsequent complaint investigation resulted in a determination that all of the subject's claims, including those alleging excessive force, were unfounded.

Investigating Supervisor should have exercised his duty of care by requesting additional medical evaluation of the subject.

- In an NCUOF Level I incident, two officers responded to a call for service regarding a Battery suspect. The officers met with the victim and confirmed that a crime had occurred. The subject's father was also at the location and advised the officers as to where his son was located. The officers then responded to the subject's residence and immediately placed hands on him as he opened his front door, reportedly fearing that he might flee from them and close the door. The subject resisted the officers, and a use of force ensued with officers using firm grips and joint locks on the subject's arms in order to handcuff him. After the subject was handcuffed, he indicated that his elbow was injured. An ambulance was requested, and LAFD personnel treated the subject for pain to his left arm before releasing him at the scene. After the subject was transported to a Police Station, the officers requested an ambulance again due to his continuing complaints about his left arm. The subject was transported to a hospital where it was later determined that he had sustained a "chip avulsion type fracture on his left elbow," according to the Arrest Report. Although the investigation and Chain of Command review mentioned the subject's injury, there was insufficient assessment of the involved officers' use of the joint lock, which was not specifically documented in the investigation, and of the extent to which the use of the technique may have contributed to the fracture.

- In another NCUOF Level I incident, prior to being advised of his Miranda rights, the subject alleged that an officer had placed a knee on his face and caused an injury to his lip. The subject refused to provide a statement after his Miranda rights were read to them. The use of force investigation stated that BWV of the incident was reviewed and that it refuted the subject's allegation. The OIG reviewed the BWV as well and noted that it did not show where the involved officer's left knee was placed on the subject. The OIG determined that the Investigating Supervisor inappropriately addressed this discrepancy.

C. Assessment of the Chain of Command Evaluation

After the Investigating Supervisor completes his or her NCUOF investigation, the case undergoes a series of formal reviews beginning with the Area WC, the Area CO, the Bureau CO, and ultimately CIRD. Each case is also reviewed by the training coordinators at the Area and Bureau on behalf of their COs. The review process evaluates whether each involved officer's use of force was objectively reasonable. Additionally, tactical issues and policy adherence issues are to be identified and addressed with the involved employee(s). The OIG assessed each case in its sample to determine whether the Chain of Command's review and evaluation was adequate and based on the available evidence, whether procedural compliance issues were identified and addressed, and whether each involved employee's tactics and use of force were properly analyzed and adjudicated.

1. Use of Force

Of the 81 cases reviewed by the OIG, there were three cases for which the Department appropriately classified at least one aspect of the use of force to be Out of Policy. All of these

cases also resulted in a finding of Administrative Disapproval for the tactics used by the involved officers. Brief summaries of the three Out of Policy NCUOF cases are provided below.

- In an NCUOF Level II incident, officers were involved in a pursuit of a possible stolen vehicle. During the pursuit, the subject vehicle collided with another vehicle, causing it to stop, and the driver of the vehicle immediately exited and ran away. Three officers ran after the driver, leaving one officer behind to manage the three remaining occupants of the vehicle. That officer began ordering the occupants to exit. The right rear passenger exited the vehicle and appeared to be complying with the officer's verbal commands. The officer approached that passenger and grabbed his lower pant leg to bring him down to the ground, where he was handcuffed without further incident. The two remaining occupants of the vehicle were also handcuffed without further incident. The Department concluded that the officer's tactics of approaching the three suspects who remained in the vehicle placed him at a significant tactical disadvantage because he was alone, and that his use of force on a person who appeared to be compliant with his commands was unreasonable. As such, the Department found the officer's tactics to warrant an Administrative Disapproval, and it found his use of force to be Out of Policy. The OIG concurred with this finding.

- In an NCUOF Level II incident, officers responded to a call for service regarding a trespass and were met by an individual who was eventually the subject of the use of force. When the officers asked the individual to leave the premises, he threw a cot that he was lying on at one of the officers. That officer then pushed the subject twice and instructed him to leave the building. The subject complied and, as he was walking toward the exit, the same officer pushed him two more times. Given that the subject was no longer posing a threat and was complying with directions, the last two pushes were deemed unreasonable and were found by the Department to be Out of Policy. An additional issue was later identified, as the officer did not report his use of force in a timely manner. Counseling was provided by his command. The OIG concurred with this finding.

- In an NCUOF Level I incident, two officers observed the subject throw a brick over the wall of a police station parking lot, breaking the back windshield of a police vehicle. The subject then fled the area on a bicycle. The officers pursued him in their vehicle, eventually colliding with his bicycle and causing him to fall to the ground.[48] After exiting the vehicle, the driver officer then pushed the subject to the ground and put his foot on the subject's back. The subject was taken into custody and transported to the police station, where he was booked. The officers did not report the collision or the push, stating only that the subject was taken into custody without incident. Following a complaint made by the subject, the Department became aware of the incident and initiated a misconduct investigation against both officers for, among other allegations, not reporting the use of force or the collision. The Department ultimately determined that the push of the subject was Out of Policy, and it

[48] The Department's collision investigation determined that the driver officer was at fault and that he caused the collision by following too closely.

sustained various allegations of misconduct including excessive force and a failure to report both the use of force and the collision.[49] The OIG concurred with the Department's findings.

Overall, in 76 (94 percent) of the 81 cases reviewed, the OIG agreed with the Department's final adjudication of the case. However, in four cases (5 percent), the OIG found that at least one use of force during the incident did not meet Department standards and should have been adjudicated as Out of Policy. In a fifth case (1 percent), the OIG found that the use of force could not be fully assessed due to an insufficient investigation. These cases are described in more detail below.

- In the NCUOF Level II incident discussed on page 13, which involved a use of force to the subject's neck area as well as two strikes to the subject, the Department found all uses of force to be In Policy. The OIG, however, noted concerns with the use of force employed after officers had arrested the subject and placed him in the back seat of a police vehicle. The subject kept his left foot outside the vehicle, extended his right leg across the floorboard of the vehicle, and refused to be placed in a seated position. In response, the officer controlling the subject alternated between placing his right forearm and left hand against the subject's neck area for a period of 57 seconds. The subject began yelling, "I can't breathe." The officer then delivered a right elbow strike to the left side of the subject's face and, shortly thereafter, delivered a left-handed punch to the subject's groin area. As noted earlier, these uses of force were not initially reported or identified by the Investigating Supervisor, which resulted in an insufficient review of these actions. The incident did result in the officer being debriefed and advised not to use force on the head, neck, or groin areas when possible. Given that the subject was handcuffed and was not posing an immediate threat in this instance, however, the OIG found that this officer's uses of force on the subject's head, neck, and groin area were not objectively reasonable and should have been classified as Out of Policy.

- In the NCUOF Level I incident mentioned on page 20, which involved a subject with a previous injury to his ear area, the subject quickly turned around toward the officers after his handcuffs were removed. He began yelling and moved aggressively toward the officers as they stood just outside the doorway of the holding cell.[50] The officers immediately grabbed the subject's arms and moved him inside the cell; however, the subject continued to actively resist by pushing his body against the officers. As the officers were trying to obtain control of the subject, one of the officers, who was still holding a handcuff key, delivered three closed-fist punches to the left side of the subject's head, causing him to cover up his head with both of his hands; the subject was then moved to the bench inside the holding cell.[51] The subject began to bleed substantially from his ear and appeared to become non-responsive for a period of time. The OIG questions whether these punches were appropriate given the

[49] The OIG noted that the officer who pushed the subject was the same officer discussed in the previously-discussed case above.

[50] The Arrest Report associated with this incident indicated that the subject was upset because he had not been allowed to make a phone call.

[51] The use of force was captured on one officer's BWV; however, it was recorded during the BWV device's two-minute buffer period, so no audio was captured during this portion of incident.

totality of the circumstances – including the subject's actions, the use of punches to the subject's head, and the subject's earlier injuries.[52,53] As previously noted, however, the OIG also found that the circumstances of this incident – including the impact of the handcuff key in the officer's hand and the nature of the subject's injury – were insufficiently investigated and documented. As such, the evaluation of this incident would have benefited from greater clarity regarding the facts of the case.

The remaining three incidents each involved the inappropriate use of a TASER, as summarized below. Per Department policy, "Less-Lethal force options are only permissible when an officer reasonably believes the suspect or subject is violently resisting arrest or poses an immediate threat of violence or physical harm. Less-Lethal force options shall not be used for a suspect or subject who is passively resisting or merely failing to comply with commands. Verbal threats of violence or mere non-compliance by a suspect do not alone justify the use of Less-Lethal force. An officer may use the TASER as a reasonable force option to control a suspect when the suspect poses an immediate threat to the safety of the officer or others."[54]

- In an NCUOF Level II incident involving seven officers who used force, the officers responded to a call for service regarding a battery that had allegedly been committed by the subject. When the officers attempted to contact the subject, he refused to speak with them and began walking away. Officers followed him on foot for several blocks until it was verified with the victim that a battery had occurred. When the subject continued to disregard the officers' commands for him to stop, a plan was formulated to take him into custody. A sergeant who was at the scene designated one officer to use the Bola Wrap remote restraint device on the subject and assigned other officers to form an arrest team. After these roles were assigned, a warning was issued about the Bola Wrap being used, and it was then deployed. The device was ineffective, however, as the subject managed to step out of the Kevlar tether that had wrapped around his legs.

  As the subject began to walk away again, four officers grabbed him and brought him to the ground. The subject resisted arrest by not allowing officers to place his hands behind his back. At least four officers were on top of the subject, utilizing firm grips and bodyweight to keep him on the ground. The subject continued to resist the officers and would not allow them to handcuff him. During this physical struggle, a TASER warning was issued, and the TASER was used on the subject twice in the drive-stun mode, which is intended to cause localized pain. This usage occurred while several officers were already on top of the subject,

[52] As noted on page 20, the investigation of this incident did not identify that the involved officer was holding a handcuff key during the use of force, nor did it gather additional information related to the subject's injury. As such, the OIG could not determine whether the key was involved in the injury to the subject.

[53] The Department's Use of Force Tactics Directive related to strikes and kicks states, in relevant part, "Intentional strikes or kicks to any part of the body other than the [shoulders, chest, arms, abdomen, sides, legs, and buttocks] may be objectively reasonable based on the facts and circumstances articulated by the involved officer. Intentional strikes to the head should be avoided in most circumstances. […] Absent exigent or unusual circumstances which must be fully articulated by the involved officer, fist strikes should be used primarily on soft tissue areas to prevent injury to an officer's hands, and to minimize the risk of serious injury to the suspect." Los Angeles Police Department, Use of Force - Tactics Directive No. 14, Strikes and Kicks, December 2012.

[54] Los Angeles Police Department, Use of Force - Tactics Directive No. 4.5, Electronic Control Device TASER, July 2018.

holding him down. The Chain of Command reviews of this incident found all of the uses force, including the Bola Wrap device, the TASER, firm grips, body weight, and wrist locks, to be In Policy. With regard to the two drive-stun TASER activations, however, the OIG noted that while it was apparent that the subject was physically resisting being handcuffed, he was not "violently resisting," nor was he posing "an immediate threat to the safety of the officers or others." As such, the OIG believes that these uses of the TASER were not objectively reasonable or compliant with Department policy, and that they should have been classified as Out of Policy.

- In an NCUOF Level II incident involving nine officers, the officers responded to a call for service regarding a man jumping onto moving vehicles at an intersection. When the officers arrived at the scene, they encountered a subject who was bleeding from his neck area and was walking in the middle of the intersection toward stopped vehicles on the roadway. The subject appeared to be under the influence of narcotics and was behaving erratically. Officers advised the subject that they would get him help; however, he approached a vehicle and reached inside its passenger side window, which had been left halfway open by the sole occupant of the vehicle. To prevent the subject from entering the vehicle, three officers grabbed his arms. One of the officers stated, "Hey, you're gonna get tased if you fight ok?" The subject then kicked at one of the officers. When this occurred, the TASER was activated in the probe/dart mode, and the officers guided the subject to the ground.

  Additional officers arrived and assisted with attempting to take the subject into custody. While the subject was on the ground, he resisted being handcuffed by placing his right arm under his waist area; and, with his left hand, he grabbed onto the rim of the wheel of a nearby vehicle. According to the NCUOF Report, because the subject had not yet been searched and it was unknown whether he might be armed, the TASER was activated again two times in the drive-stun mode. Shortly thereafter, one of the officers was able to pull the subject's right arm out from underneath him and apply handcuffs to his right wrist; however, the subject continued grabbing onto the wheel of a vehicle with his left hand. Officers attempted to pry his left hand off the wheel. When they were unsuccessful, the TASER was activated two more times in the drive-stun mode, which caused the subject to release his grip on the wheel. The officers were then able to complete the handcuffing of the subject without further incident. The Chain of Command reviews found all uses of force in this incident, which included the TASER, firm grips, body weight, and wrist locks, to be In Policy.

  In this instance, the OIG believes that the two final applications of the TASER in drive-stun mode while the subject was resisting being handcuffed did not meet Department standards, given that the subject was not "violently resisting" nor posing "an immediate threat to the safety of the officers or others" at this point in the incident.[55] Additionally, there were at least four officers on top of the subject, holding him down. The OIG believes that these uses of the TASER were not objectively reasonable or compliant with Department policy, and that they should have been classified as Out of Policy.

[55] Department Manual 3/793.30, Multiple Uses of Force, states, in relevant part, "When multiple uses of force occur during a single incident, each use of force must be identified and evaluated separately."

- In an NCUOF Level II incident, two officers responded to a call for service from the Fire Department regarding a subject who was reported to be overdosing on narcotics. The subject had been advised by Fire Department personnel that he urgently needed to receive medical treatment and to be transported to a hospital, but he refused treatment. The LAPD officers subsequently arrived and persuaded the subject to sit on a gurney. They then handcuffed him to the gurney using minimal force, after which the subject was transported to a hospital.

  At some point after arriving at the hospital, the officers removed one of the handcuffs they had used to secure the subject to the gurney. The subject, who was standing, demanded that the other handcuff be removed as well and refused to move or sit back down on the gurney until this occurred. In response to this behavior, the officers attempted to re-handcuff the subject behind his back by removing the second handcuff from the gurney; as they did so, the subject pulled away from the officers and began flailing his arms and heading toward the exit. As articulated by one of the involved officers in a follow-up report, "…to prevent the subject from escaping and causing harm to others because he had one handcuff hanging from his wrist, I attempted to detain the suspect and my left arm made contact with the subject's shoulder, upper chest, and back of neck area in an attempt to detain him. A head lock was never applied to the subject." That officer, along with hospital staff, attempted to restrain the subject; however, due to the subject's size and strength, they were unable to stop him. Another officer then used his TASER on the subject in probe/dart mode, with both darts contacting the subject's upper right shoulder area. The TASER was ineffective at this point, however, and the subject ran out of the hospital with officers giving chase. As the foot pursuit continued, the same officer deployed his TASER again, this time in drive-stun mode, to the subject's back; the TASER again proved ineffective. The same officer then caught up to the subject and pushed him in his upper back area, causing him to lose his balance, fall forward, and strike his forehead on a nearby wall.[56] The subject ultimately gave up and was handcuffed without further incident.

  In his assessment of the incident, the Area CO stated, "Based on the subject's violent and unpredictable behavior, armed with a weapon (handcuff on one wrist), his mental state (under the influence), coupled with the subject running through the hospital then eventually running out of the hospital into the street with one handcuff dangling from his wrist, [the officer] reasonably believed that the subject posed an immediate threat of violence or physical harm not only to [the officers], but also to patrons in the immediate area. Based on the subject's behavior, the use of the TASER (both applications) was appropriate and within the Department's guidelines."

  The OIG disagrees with this assessment and believes that the uses of the TASER during this incident were not objectively reasonable and should have been classified as Out of Policy. Overall, the totality of the circumstances did not warrant the use of less-lethal force on this individual. The subject was at the hospital for medical attention and had not exhibited any assaultive behavior. Additionally, although the subject initially flailed his arms at the time force was used on him, he was merely running away and did not reasonably appear to pose

[56] The subject sustained an abrasion to his eyebrow during this incident. FID was consulted regarding the possible classification of this use of force as a head strike (which is considered a CUOF), but it was determined that the incident should be investigated as a Level II NCUOF.

any threat to the officers or other persons in the area.[57] The involved officers did not, in the initial written account of the incident, mention any perceived threat or safety concern; they were later asked to provide a follow-up report, during which a concern was articulated about the subject possibly "causing harm to others because he had one handcuff hanging from his wrist."

2. Assessment of De-escalation Techniques

An increasingly relevant aspect of each use of force by the Department's officers is the extent to which those officers utilized de-escalation techniques. Department policy states that "whenever practicable, officers shall use techniques and tools consistent with Department de-escalation training to reduce the intensity of any encounter with a suspect and enable an officer to have additional options to mitigate the need to use a higher level of force while maintaining control of the situation."[58] In addition, as of February 2020, one of the primary factors used to determine the reasonableness of a use of force is the feasibility for the officer who used force to employ de-escalation techniques. The analysis of officers' use of de-escalation is therefore an important component of the evaluation of any use of force.

In its sample of cases, the OIG found that de-escalation of the incident by officers did not appear to be feasible in 11 (14 percent) of the 81 NCUOF incidents reviewed. The circumstances of these incidents primarily consisted of officers using force to take someone into custody during a foot pursuit or reacting to a sudden assault or other action by the subject.

In the remaining 70 cases (86 percent), the OIG determined that the requirement for de-escalation efforts by officers was applicable and could therefore be reviewed. In the majority of these cases – 58 of the 70 (83 percent) – the OIG found that the officers appropriately utilized de-escalation techniques designed to reduce the intensity of the encounter and obtain voluntary compliance from the subject. In the remaining 12 cases (17 percent), one or more of the involved officers did not appear to adequately use de-escalation techniques in accordance with Department training and policy. In seven of these incidents, the Department identified the issue during its evaluation of the use of force; in the other five, it did not. An example of an incident where de-escalation efforts were identified by the Department as being insufficient follows:

- In the use of force discussed on page 21 that resulted in the subject suffering an avulsion fracture, one of the involved officers immediately grabbed the subject when he opened the door and attempted to force the subject's hands behind his back. On BWV, the subject could

[57] The OIG noted that the Watch Commander's assessment of this incident indicated that the officer's "usage of the TASER on the Subject, twice in this incident for a fleeing Subject, was against the TASER DIRECTIVE and Department Policy." However, this statement was immediately followed by a seemingly inconsistent one: "I recommend that the FORCE used was In Policy – No Action."

[58] Special Order No. 4, February 5, 2020, Policy on the Use of Force – Revised. The OIG notes that Department policies on the use of force did change during the period under review, and that requirements related to de-escalation were further strengthened as a result of that change. However, the use of de-escalation has been a Department requirement since 2016. For a more in-depth review of the history of de-escalation policies, *see* Implementation of De-Escalation Concepts and Training Within the Los Angeles Police Department, Office of the Inspector General, April 2021.

be heard asking, "What are you doing bro?" as the officer kept telling him to "relax." The subject repeatedly asked, "Why?" and resisted the officer's efforts. Approximately 10 seconds into struggling with the subject, the officer stated, "You slapped him. You slapped him, right? The security guard." Based on the OIG's review of the video, it appeared that the officer's partner was not prepared for this action by the officer, as he (the partner) was not yet at the door and had to move quickly in an attempt to assist the officer. This issue was appropriately identified by the Department; in his review, the Watch Commander stated, "It is recommended that [the officers] first explain the reason for detention (when possible), adhering to Use of Force – Tactics Directive No. 16 Tactical De-Escalation Techniques."

The OIG also noted two other areas of potential concern related to the use of de-escalation principles. The first area is related to the use of force to complete administrative tasks, such as fingerprinting, in a custody setting. While the Department permits the use of pain compliance techniques if a detainee refuses to be fingerprinted, the OIG observed that two incidents involving administrative tasks might have had a different outcome – and possibly not resulted in a reportable use of force – if officers had made additional attempts to de-escalate the situation and gain voluntary compliance.[59] Another area, described in the following section, stemmed from use of force cases involving subjects who appeared to be experiencing a mental health crisis, including some who were ultimately detained on a mental evaluation hold per Section 5150 of the Welfare and Institutions Code.

3. Cases Involving a Possible Mental Health Crisis

There were 15 incidents (19 percent) in the OIG's sample in which a person was taken into custody for a mental health hold rather than being booked for a crime. In four of these incidents, the subject had not been suspected of any crime but was being detained solely due to a concern that they might be a danger to themselves.

In reviewing cases involving a subject who appeared to be having a mental health crisis, the OIG noted four instances where actions by the involved officers appeared to have escalated the situation into an NCUOF incident, often in conjunction with an attempt to handcuff or otherwise restrain the subject. Three of these instances are described below:

- In an NCUOF Level II incident, officers responded to a radio call involving a person who reportedly had made suicidal statements. When the officers made contact, the subject was cooperative, invited the officers inside, consented to a pat-down search, and did not appear to pose a threat. The officers then moved to handcuff the subject, however, which the subject was apparently not expecting. As the subject turned and began to resist, several officers conducted a takedown using bodyweight, firm grips, and joint locks in order to apply handcuffs to the subject. Based on a review of the video of the incident, the subject appeared extremely upset and agitated by the encounter and expressed feeling traumatized by the force that had been used. When asked about the reason for the officers' actions in this instance, the

[59] LAPD Custody Services Division, Jail Operations Manual, January 2019 (Rev 1.x), Section 780.20, Live Scan Refusal states, "If an inmate refuses to be Live Scanned, they will be informed that physical force may be used. All forced fingerprints shall be directed by a supervisor. If the force used resulted in a reportable Non-Categorical Use of Force (NCUOF), a NCUOF investigation shall be completed."

on-scene supervisor indicated that handcuffing is part of "Department protocol" and that police did not normally warn people prior to handcuffing them. After the NCUOF, the subject was transported to a police station, where they were detained in a holding cell for over an hour before being transported to a hospital for further evaluation.

- In an NCUOF Level II incident, a missing person was believed to possibly be suicidal. Officers located the person and detained her on a mental evaluation hold. They handcuffed her, and she questioned why they were detaining and handcuffing her, given that she had not committed any crime. The officers on scene agreed with the subject that she did not commit any crime but stated that they still had to handcuff her. It appeared to the OIG that the subject began to get agitated because she did not understand what was occurring. She was transported to a police station and placed in a holding cell pending the arrival of a SMART unit, which later arrived and initiated a mental evaluation hold. The subject then remained in the holding cell pending transportation to a hospital, and her handcuffs were removed. After she had been in the holding cell for a little over two hours, she began banging on the door with both her fist and her head. The Watch Commander advised officers to handcuff her and apply a hobble restraint device to prevent her from hurting herself. Officers then entered the holding cell and handcuffed her. Subsequently, due to her efforts to slip out of the handcuffs, officers attempted to apply plastic flex-cuffs and the hobble restraint device.[60] The subject began resisting the officers by pulling away from them, and an NCUOF occurred with officers applying firm grips and bodyweight and using a wall as a controlling agent. The subject was placed in a sitting position after application of the restraints. She then began to twist her body around and struggle against the officers who were holding her in place. She threw her head back, yelling for the officers to let her go, and her head struck one officer in the face, causing injury to the officer's mouth. It was not clear from the video whether this action was deliberate or occurred inadvertently as she struggled; the subject also reportedly scratched the officer's hand. The subject was subsequently arrested for battery on a police officer.

- In an NCUOF Level II incident, a person with physical and mental health disabilities refused to leave the lobby of a police station for nearly four hours because he believed that he was being followed. Officers arranged for a taxi to take the person to the hospital while the subject continued to make demands. After exiting the police station at one point, the person changed his mind and stated that he would rather go to jail. He then attempted to reenter the station, at which time an officer tried to close the door to the station in order to keep him outside. Just prior to the door closing, the person put his arm through the partially opened door and subsequently fell on the floor when the door opened. The involved officers appeared to have become frustrated with the person and advised him that they would arrest him for outstanding warrants (which he had earlier admitted to having). At that point, one officer told the person, "You are being arrested for warrants; you said you wanted to be arrested, so there you go." Officers then used body weight and firm grips to handcuff the person, who struggled against the officers and stated that he had recently had surgery and was in pain.

[60] Department training states that plastic handcuffs (flex-cuffs) should not be used on persons with mental illness. This issue was identified by the Department during its review of the incident. "Handcuffing," Training Bulletin XLVII, Issue 6, August 2019.

> The person was then taken to a holding cell, where he was held for approximately five hours. According to the NCUOF investigation, although the person was initially arrested for the outstanding warrants, a supervisor determined that a "mental evaluation hold would be better suited in the interest of public safety and justice." A second NCUOF involving bodyweight and firm grips occurred, however, when the person refused to leave the holding tank after LAFD arrived to transport him to the hospital. The Department reached a finding of Administrative Disapproval/Formal Training on Tactics against the officer who attempted to close the door on the person as well as a sergeant who was at the scene, citing their lack of coordination and planning. All uses of force were found to be In Policy, as were the tactics used by the other involved officers. The Department also commended one officer's use of Command and Control principles during the use of force.

In reviewing these mental-health-related cases, the OIG noted two possible areas of concern with respect to Department policies and practices, both of which have also been identified by the Department itself and are being addressed by new policies and/or programs.

a. Handcuffing Practices

The first area of concern relates to policies and training that addresses the handcuffing of persons who are perceived to have a mental health condition. At the time of the incidents under review by the OIG for this report, Department policy stated that "[o]fficers **must** handcuff a person with mental illness taken into custody when the person is not restrained by means of a straitjacket or restraining straps." The policy made an exception for those whose age or physical condition was such that the safety of those present was clearly not in jeopardy, allowing for additional discretion in such circumstances. Although this policy appeared to refer primarily to people being taken into custody rather than those merely being detained, the OIG also noted training materials indicating that officers should handcuff "immediately upon contact with mentally ill."[61] The OIG found that these materials appeared to provide limited discretion with respect to handcuffing a person who has a mental health disability, possibly allowing for the escalation of some incidents and raising concerns about the reasonableness of such actions.

In December 2020, however, the Department revised its policy regarding handcuffing requirements related to people with a mental health condition. The new policy states that when taking a person with such a condition into custody, Department personnel shall evaluate the totality of the circumstances in order to facilitate taking custody of the individual without unnecessarily escalating the contact. It further states that decisions as to the timing and use of handcuffs shall be based on the viability of de-escalation factors such as time and distance in order to minimize the likelihood of an "aggressive/combative response."[62] The OIG expects that

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[61] Training materials, Mental Health Intervention Training, 2019.

[62] Special Order No. 30, December 9, 2020, Policy on Contact with Persons Suffering from a Mental Illness, Handcuffing Persons with a Mental Illness – Revised, Taking Persons with Mental Illness into Custody. The policy also indicates that when the age or physical condition of a person with mental illness is such that the personal safety of the individual or the officer clearly will not be jeopardized, the use of handcuffs shall not be required but shall be at the discretion of the officer.

the revised policy's circumstance-specific approach to handcuffing and de-escalation will improve outcomes in incidents similar to those noted above.

b. Placement in a Holding Cell

The second area of concern relates to instances in which a person was placed in a holding cell for an extended period of time pending an evaluation by the Department's Mental Evaluation Unit (MEU) or a transport to a mental health facility, particularly when the person had not been arrested for any crime.[63] In discussions with the MEU, the OIG learned that this issue was generally the result of delays in that unit's response to the station where the subject was being held, as well as delays in the transport of the subject to a health facility or hospital. In an effort to address this and other concerns, the Department recently developed a Co-Response Model for a subset of calls involving a mental health issue. Under the new model, a SMART unit is dispatched to higher-risk calls meeting specific criteria at the same time that a patrol unit is assigned the call for service (as opposed to being dispatched a substantial amount of time after the patrol unit has begun to address the call for service).[64] Although the responding SMART unit will generally serve as a supporting element during the incident, there also may be instances where they are called upon to serve as the contact element in order to de-escalate the situation. Once the scene at such an incident has been stabilized, the patrol and SMART units collaborate to determine the best course of action with respect to the subject of the call for service. The patrol officers will conduct any criminal investigation, and the SMART unit will assume responsibility for the mental evaluation portion of the call. It is hoped that this system will assist in de-escalating incidents involving mental health issues and in streamlining the post-incident response.

It should be noted, however, that it appears unlikely at this time that SMART units will be able to co-respond to every request they receive due to limited resources – with a total of about 12-14 SMART units available to be deployed each day – and travel time.[65] According to the MEU, the co-response program went live on February 9, 2021; between that date and the end of June 2021, the Department generated a total of 12,667 mental-health related calls. The MEU does not yet specifically track the number of calls that meet the new co-response criteria, but it noted that there were approximately 2,058 MEU incidents during this period, resulting in 1,723 evaluations and 1,286 mental health holds involving transport to a hospital. As part of this program, the Department also began diverting a subset of calls for service – those determined to be non-

[63] In one such instance, the subject was handcuffed to a bench in a holding cell.

[64] A SMART (Systemwide Mental Assessment Response Team) unit is composed of a sworn officer and a Los Angeles County Department of Mental Health clinician. SMART units will respond to calls that may include the following: subject is violent; subject is armed, and the public is at risk; welfare checks; subject has possibly committed a criminal act due to mental illness; subject's behavior is high-risk (barricade or unsecured on an elevated platform, for example); or, any critical incident where SMART may assist with de-escalation. (Office of the Chief of Police Notice, Implementation of the Mental Evaluation Unit's Systemwide Mental Assessment Response Team Co-Response Model, January 14, 2021).

[65] On July 27, 2021, the Department presented a report to the BOPC proposing the addition of more resources to better meet the needs of SMART and MEU. *See* Fact Sheet: MEU and SMART Expansion (Council File #20-0780), Los Angeles Police Department, July 23, 2021. http://www.lapdpolicecom.lacity.org/072721/BPC_21-135.pdf

imminent suicide or behavioral health calls meeting certain criteria – to a dedicated phone line run by the Didi Hirsch Mental Health Crisis Call Center. Initially, calls could be diverted between the hours of 12pm and 8pm each day, and, according to the Department, 432 such calls were diverted between February 1, 2021, and June 30, 2021.[66]

The OIG believes that the co-response and call diversion programs will address several of the concerns noted in this review.[67] To that end, however, the OIG recommends that the Department continue to develop metrics to specifically track the number of calls that are eligible for a co-response by SMART, as well as whether a unit responded, the point at which the unit responded, and the outcome of each call. This will allow for a better assessment of current resources and practices. The OIG also recommends that the Department develop additional guidelines with respect to determining when to book a person meeting the criteria for a mental evaluation hold who is also arrested for a low-grade misdemeanor crime, a misdemeanor warrant, or an infraction. Currently, the decision to book the subject in such instances is left to the discretion of the Watch Commander with no additional guidance.

4. Corrections and Kickbacks

The OIG found that about two-thirds (54) of the 81 cases it reviewed included "kickbacks," or requests for corrections, information, or additional follow-up, from one level of review to another. This system of sending back an investigation for additional work is an important component of the Department's quality review process, which aims to ensure that all procedural steps are followed, all case documents are accurate, and all substantive and/or policy issues or deficiencies are addressed. Kickbacks occur primarily through the TEAMS II electronic routing process, which allows reviewers to send requests for additional information or corrections down to the case investigator or to previous reviewers. The system also includes a standardized "Critique Info" form to be used by CIRD to identify issues with the investigation, evaluation, or other relevant matters.

The OIG found that the majority of kickbacks were initiated by CIRD, which acts as the final level of quality control for each investigation. These requests ranged from technical corrections in the investigation, to the TEAMS II data entry reflecting the incident, to more substantive questions about possible investigative deficiencies, policy compliance, or other issues with a given use of force. Some of the more substantive issues identified included, for example, the incorrect classification of an investigation as a Level I NCUOF (seven cases), insufficient documentation of a use of force (nine cases), and questions about how an investigation was conducted (six cases).

The OIG generally agreed with the questions raised by these kickbacks and found that they represent a very valuable aspect of the NCUOF investigation system. The kickbacks corrected or otherwise addressed most of the issues noted by the OIG in its review of NCUOF cases. The OIG notes, however, that this process should not be used to retroactively provide justification for

[66] As of July 1, 2021, the program was expanded to receive calls on a 24-hour basis.

[67] The City is also working to implement additional programs that utilize an unarmed response model for certain mental health crisis calls.

a use of force that was not properly articulated in the first instance, or to simply correct information that should have been accurately documented in the report. Rather, the OIG recommends that these follow-up reports or supplemental information be considered only in the context of the information previously provided, and that officers be held accountable for inaccurate reports. As noted earlier, ensuring that officers document their own force individually would also help to ensure additional accuracy and accountability.

5. Use of Proxies

During its review, the OIG observed that most of the entries of information into the NCUOF database about a given incident were made by a proxy – generally a person of lower rank than the designated reviewer. For example, in one case, each level of review – designed to be completed in order by an Area lieutenant, Area captain, Bureau deputy chief, and CIRD captain – was recorded in the system by a proxy who held the rank of lieutenant or sergeant. With regard to this issue, Department materials state the following:

> An authorized user may also delegate proxy rights to a subordinate that allows the subordinate to act for the authorized user. This includes approving reports such as Use of Force reports, action items, and complaints that require a commanding officer's signature for approval. A commanding officer can give proxy rights to their assistant commanding officer or a member of their staff such as an adjutant, who could then sign off for the commanding officer, when he/she is not available to access the system and has at least verbally approved the report. Granting proxy rights shall be closely monitored by a commanding officer and should be rarely used.[68]

In the OIG's review of NCUOF cases for this report, it was not always clear whether the person listed as a proxy was simply the person who made the database entry on behalf of their supervisor, or whether that person was also the one who had conducted the review of the use of force incident. The OIG recommends that the Department review the use of proxies and ensure that there is a clear process for ensuring that each case is reviewed by a person of sufficient rank, and that there are adequate controls and guidance related to the use of proxies in the TEAMS II system.

D. Other Related Issues

1. BWV and DICV Activation

The OIG assessed each NCUOF incident for officers' compliance with the Department's policies governing the use of body-worn video (BWV) and digital in-car video (DICV) cameras. Overall, BWV cameras were activated on-time by 81 percent of BWV-equipped officers involved in an NCUOF incident. An additional 4 percent of officers either did not activate their BWV cameras or activated them late, but the officers provided written justification for their delay, as required by Department policy. About 10 percent of officers activated their cameras late and did not

[68] LAPD Manual 1/668.06, Authorized Access to TEAMS II Report.

document a reason for the delay. Finally, five percent of officers did not activate their BWV at all during the underlying incident and did not provide a reason why.

The OIG also checked each BWV recording to ensure that there was a full 2-minute buffer, which would indicate that the camera was turned-on prior to its activation, as required by Department policy in most instances.[69] Approximately 87 percent of the 235 BWV recordings reviewed contained a full buffer, with the remaining 13 percent having either no buffer or one that was shorter than two minutes. The OIG noted that in 35 percent of the recordings without a full buffer, its absence appeared to be justified due to an overlapping video recording or pursuant to a policy exception. Therefore, overall, the OIG was unable to identify a justification for the lack of a buffer in 9 percent of BWV recordings it reviewed. The OIG also noted four NCUOF incidents (2 percent) in which an officer's BWV camera was de-activated prior to the use of force occurring or prior to the conclusion of the contact with the subject; the OIG has referred these cases to the Department for additional review and any action deemed appropriate.[70,71]

Officers were equipped with DICV cameras in 48 NCUOF incidents (59 percent) of the OIG's sample. Of those, the DICV system was activated on-time in about 38 (79 percent) of the cases. In one additional case (2 percent), the DICV camera was turned on late, with no written justification for the delay. In the remaining nine cases (19 percent), the DICV camera was not activated at all, and no written justification for the lack of activation was provided.

2. BWV Dislodging Issue

During its review of BWV footage, one issue that became increasingly apparent to the OIG was the frequency of BWV cameras getting dislodged from their magnetic mounts (called Flex BWV mounts) in the course of NCUOF incidents. Of the 81 NCUOF incidents reviewed by the OIG, 66 contained BWV footage from a total of 234 officers. In 35 of these 66 incidents (53 percent), at least one BWV camera was dislodged during the use of force. 58 of the 234 officers who activated their BWV cameras (25 percent) had them dislodged during these incidents. In most cases, this issue was mitigated by the presence of other officers at the scene whose BWV recording captured the use of force against the subject. In some instances, however, where only two officers were involved in an incident and both of their BWV cameras were dislodged, no video depicting the use of force was available.

The Department has previously recognized the issue of BWV cameras dislodging during various incidents and has taken measures to address it. On October 8, 2020, a correspondence was published by the Uniform and Equipment Committee advising that the AXON Flex BWV

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[69] Officers are permitted to fully turn their cameras off, thereby preventing a buffer from being recorded, in certain circumstances, such as when they are in locker rooms, restrooms, or other areas where recording is prohibited. *See* Body-Worn Video Device Pre-Activation Buffer, Requirement to Leave Device Powered On – Reminder, Chief of Police Notice, January 27, 2020.

[70] Department Manual, Volume 3, Section 579.15, states, "For each incident recorded on a BWV, officers shall identify the event type and other information using the BWV equipment and software that best describes the content of the video (i.e. arrest, traffic stop, report)." The OIG noted that in 11 BWV recordings (5 percent of available recordings), officers did not identify the event type or other information to describe the content of the video.

[71] In one instance, the Department found that the officer's BWV camera was deactivated as a result of its battery being drained, and not due to an intentional act by the officer.

mounts would be replaced by the AXON Wing Mount, which provided a more secure option for affixing a BWV camera to an officer's uniform. The OIG was advised that by December 2020, approximately 7,000 replacement AXON Wing Mounts had been deployed, and that additional spares were being held in reserve. To assess the effectiveness of the new AXON Wing Mounts, the OIG conducted a cursory review of NCUOF BWV footage for incidents that occurred during the first week of February 2021. Out of 42 NCUOF incidents, which included BWV recordings from 154 officers, the OIG found that BWV cameras were dislodged during 12 of them (29 percent). In each of those 12 incidents, only one officer who activated their BWV camera had it dislodged. This represented a decrease in the number of officers experiencing a BWV camera dislodging issue, from 25 percent of officers reviewed during the first quarter of 2020 to just 8 percent during the first week of February 2021.

3. Recording Strip Searches

The OIG noted that in three of the 81 investigations it reviewed (4 percent), a strip search of an arrestee was recorded on an officer's BWV camera. In one of these cases, the searching officer indicated that he did so to protect himself against possible allegations of misconduct during the search. While recording strip searches is not common practice, the OIG noted that there are no Department policies or protocols clearly addressing the matter. Department policy, which is based on California law, states only that "the [strip] search shall be conducted in an area of privacy so that persons not of the same sex as the arrestee or not required for the search are excluded from the immediate area and are unable to observe the arrestee."[72] Likewise, the BWV policy does not specifically address strip searches, although it does require that officers activate their camera during searches more generally. The policy also exempts recording in certain sensitive circumstances or environments.[73]

While conducting research on this topic, the OIG found that several law enforcement agencies, including the Philadelphia, New York, Long Beach, and Chicago Police Departments, specifically prohibit the recording of strip searches. Other agencies, such as the Denver and Minneapolis Police Departments, direct officers to face their BWV camera away from the person being searched so that only audio of the search will be recorded. The OIG also identified two agencies that permit recording of strip searches under certain circumstances. The Baltimore Police Department permits the recording of such searches only if the person to be searched states that they want the search to be recorded or if they do not answer a question about whether they want it to be recorded, while the San Francisco Police Department allows the recording of such searches when the employee conducting the search can articulate an exigent circumstance requiring deviation from the policy that is otherwise prohibitive.[74]

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[72] LAPD Manual 4/620.22, Strip Search or Visual Body Cavity Search. *See also* California Penal Code Section 4030(l).

[73] LAPD Manual 3/579.15, Objectives of Body Worn Video.

[74] As part of a previous review of jail and holding tank procedures, the OIG was informed during site visits that certain areas of the jail were designated for strip searches and were not equipped with video cameras due to privacy concerns. Following its review, it is the OIG's opinion that privacy considerations should extend to BWV cameras as well, and that strip searches should generally not be video-recorded.

The OIG recommends that the Department research this issue and develop a policy prohibiting the visual recording of strip searches, including visual body cavity searches, except under exigent circumstances.

4. AFDR Documentation

Per California law, Department officers are required to document most detentions that they effect as well as actions that they took during the detentions, including any force that they used.[75] This information is then submitted to the California Department of Justice for review and analysis. The OIG examined each available stop report, known as an Automated Field Data Report (AFDR), that was connected with an NCUOF in its sample of cases to determine whether these reports were completed accurately. Of the 66 cases where an AFDR was completed, 18 (27 percent) were accurately completed. In an additional 39 cases (59 percent), at least one reportable action taken by an involved officer – such as a use of force or a search – was not reported, and in 9 cases (14 percent) the OIG identified some other type of inaccuracy.[76] The OIG also noted four cases in which an AFDR appeared to be required but was not completed, leaving eleven cases in which an AFDR did not appear to be required.

The OIG has been working with the Department to identify areas of confusion with regard to the AFDR, and to improve the AFDR materials as well as training on the topic to address these concerns. The OIG expects that these steps will significantly reduce such inaccuracies in the future.

V. OIG REVIEW OF USE OF FORCE CLASSIFICATION SYSTEM

One of the requests made by the BOPC was that the OIG, as part of its review, evaluate the Department's current classifications of uses of force to determine whether they ensure the appropriate level of subsequent investigation and review.

A. Previous Changes and Recommendations

In conducting its review, the OIG noted several changes to the Department's reporting and classification systems which should address some of issues identified by the OIG. These include, for example:

- The revision of policies related to neck restraints and choke holds, as discussed on page 14. As of December 2020, and pursuant to a State law passed in August 2020, the Department has designated that any use of a carotid restraint or choke hold, as defined by policy, will be classified as a CUOF incident.[77] When ambiguity exists as to whether or not a carotid restraint or choke hold was used by an officer in a given incident, the OIG is

[75] Racial and Identify Profiling Act of 2015, California Government Code Section 12525.5.

[76] These included, for example, inaccuracies related to demographic or other characteristics of the subject, as well as other aspects of the stop such as its outcome.

[77] Special Order No. 29, Officer-Involved Shootings or In-Custody Deaths (ICD) or Injury – Confidential Reports; Definitions – Categorical Use of Force; Department Operations Center Notification – Revised; and, Miscellaneous Department Manual Sections Pertaining to the Procedures for Investigating, Reviewing and Adjudicating Categorical Use of Force Incidents – Renamed and/or Revised, or Deleted, December 9, 2020.

regularly consulted by the Department to assist in determining whether that incident is most appropriately classified as a CUOF or NCUOF.

- The classification of a bite or other contact by a Department canine as an NCUOF incident unless it meets the definition of a CUOF incident (i.e., that it results in admission to a hospital or death).[78] Prior to the implementation of this policy in April 2021, these incidents were not considered to be uses of force and were classified as part of a different process altogether.

- The implementation of a new process to track incidents in which a firearm is pointed at a person by an officer. As of August 2020, LAPD officers are now required to document any such pointing of a firearm on as part of the AFDR process, where it can be tracked as part of the Department's overall use of force statistics.[79]

In previous reports, the OIG has also made a recommendation that non-contact uses of less-lethal weapons be "reported and analyzed in the same manner as contact uses of the same devices."[80] The Department has since begun tracking such uses of less-lethal weapons on a separate spreadsheet, though it still does not investigate or review them in the same manner as reportable uses of force. Notably, the Department is presently developing an updated policy that would require the investigation and review of these incidents as NCUOFs, which would satisfy the OIG's recommendation. The OIG is providing its commentary to the Department as it develops the policy.

B. Use of Force During Crowd Control Situations

As noted on page 4, force used by officers during crowd control situations is generally exempt from being reported as an NCUOF, although incidents meeting the definition of a CUOF will still be reported and investigated as such. In most cases, the involved officer is required to report the use of force to a supervisor, who will then document it and the circumstances surrounding it on an Activity Log, also known as a Form 214.[81] The incident generally will not be further investigated unless there is an associated complaint, and it will not be entered into the Department's use of force tracking system.[82]

The OIG has observed that crowd control situations are often the source of substantial numbers of significant uses of force by Department officers, including the deployment of less-lethal weapons and munitions. For example, officers fired the 40mm Less-Lethal Launcher 2,621 times during the "SAFE LA" crowd control incidents that occurred in mid-2020, and they fired the beanbag shotgun 4,307 times. Additionally, officers fired the 37mm Less-Lethal Launcher,

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[78] Special Order No. 10, Categories and Investigative Responsibilities for Use of Force – Revised; and, Non-Categorical Use of Force Report – Revised, April 27, 2021.

[79] Special Order No. 21, Automated Field Data Reports/Completion and Tracking – Revised, August 26, 2020.

[80] *See* Follow-Up Review of National Best Practices, Office of the Inspector General, October 2019, page 18.

[81] This policy applies only to "officers working in organized squad and platoon sized units directly involved in a crowd control mission." Note that a use of force report is required when the force occurs during an isolated incident that goes beyond the mission of the skirmish line.

[82] LAPD Manual 4/245.05, Categories and Investigative Responsibilities for Use of Force.

which is only authorized for use in crowd control situations, a reported total of 4,377 times.[83] This is contrasted with non-crowd control situations; the Department's annual use of force report for 2020 stated that the 40mm launcher was used 118 times during 68 NCUOF incidents, and that the beanbag shotgun was used 70 times during 32 NCUOF incidents.[84] Therefore, and in light of the Department's policy with respect to crowd control situations, the majority of large quantities of uses of force in those situations is currently not subjected to a rigorous evaluation.

The OIG acknowledges that the character of crowd control situations, as well as the number of times force may be used during such situations, may make it difficult to gather evidence and fully investigate each use of force.[85] However, the OIG also notes that most crowd control incidents do not result in the volume of force that was reported during the SAFE LA events, with many encompassing a relatively small number of force incidents, if any. For example, the Department reported that a total of 23 less-lethal munitions were used during protests related to the closure of Echo Park Lake in March 2021. The OIG noted that the Department's after-action report on that event also made recommendations to improve the reporting on the deployment of less-lethal munitions and that the Department is currently working on revisions to its use of force policy to address this matter.[86]

C. BOPC Monitoring of Special Cases

Finally, the OIG's review identified a small number of NCUOF cases that, on their face, present unusually concerning uses of force and might therefore be appropriate for tracking and/or review by the Police Commission. Because these incidents do not necessarily involve a particular level of force or injury, the OIG recommends that the BOPC's Use of Force Subcommittee identify them, with the OIG's assistance, on a case-by-case basis. It further recommends that that the OIG monitor the investigation of such incidents, and that a joint Department-OIG briefing be provided to the subcommittee about the details of each case.

VI. RECOMMENDATIONS

Based on the findings set forth in this report, the OIG recommends that the Commission direct the Department to do the following:

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[83] LAPD Safe LA Civil Unrest 2020 After Action Report, Page 74.

[84] LAPD Use of Force Year-End Review 2020, Pages 328 and 329.

[85] The OIG's review of the use of force policies of 11 major law enforcement agencies did not identify other organizations that contain broad reporting exemptions for crowd control situations. Five agencies (the New York, Philadelphia, Houston, San Francisco, and Oakland Police Departments) were silent on the issue, while five others (the Chicago, Portland, Minneapolis, and San Diego Police Departments as well as the Los Angeles County Sheriff's Department) specifically indicate that uses of force in these instances are subject to the respective Department's overall use of force policy. The Austin Police Department, in contrast, states that "[a]ny deviation from… reporting requirements must be approved by an assistant chief and only for special circumstances (e.g., mass arrest situations, emergency crowd control)."

[86] LAPD Echo Park Rehabilitation After Action Report, Page 58.

1. Review NCUOF cases in which there was a delay in the reporting of the use of force by an involved officer to determine whether additional clarifications or training on this issue are warranted.

2. Implement the OIG's previous recommendation that "[a]ll officer accounts of a NCUOF (including those of witness officers) should be individually and independently documented in a prompt manner."[87]

3. Implement the OIG's previous recommendation that non-contact uses of less-lethal weapons be reported and analyzed in the same manner as contact uses of the same devices.[88]

4. Ensure that involved officers and reviewing supervisors are held accountable, including with remedial and/or disciplinary action when appropriate, for any reports that do not fully and accurately describe a use of force.

5. Educate officers to ensure that any statement made by a person indicating that they cannot breathe receives an immediate and appropriate response by officers at the scene.

6. Provide Investigating Supervisors who are not equipped with BWV cameras access to an audio recorder for use during NCUOF investigations.

7. Clarify Department policy to require that interviews of subjects and other non-Department witnesses – or their refusal to be interviewed – be recorded in all cases.

8. Explicate in relevant Department materials that the requirement to de-escalate a situation applies to the completion of administrative tasks in custody settings, and that the use of force is a last resort.

9. Develop metrics to specifically track the number of calls for service that are eligible for a co-response that includes a SMART unit, as well as whether such a unit responded, the point at which the unit responded, and the outcome of each call.

10. Develop additional guidelines with respect to determining when a person meeting the criteria for a mental evaluation hold will be arrested for a low-grade misdemeanor crime, misdemeanor warrant, or infraction.

11. Ensure that follow-up reports or other supplemental information provided by officers are considered only the in the context of the information they previously provided, and that officers are held accountable for inaccurate reports.

12. Identify the proper use of proxies within the NCUOF investigation process to ensure that each NCUOF case is evaluated by a person of sufficient rank, in accordance with applicable policy.

13. Prohibit the visual recording of strip searches, including visual body cavity searches, except under exigent circumstances. Should such circumstances exist (and should such a search be

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[87] Review of Non-Categorical Use of Force Investigations, Office of the Inspector General, June 2013, pages 19-20, page 36.

[88] *See* Follow-Up Review of National Best Practices, Office of the Inspector General, October 2019, page 18.

visually recorded), require the employee(s) conducting the search to fully document the exigency, and hold the employee(s) accountable for their decision, including with remedial and/or disciplinary action when appropriate.

14. Develop a more rigorous system for the reporting and evaluation of the use of less-lethal munitions and other significant force during crowd control situations. Such a system should include, at a minimum, supervisory review of all uses of a less-lethal weapon as well as all uses of force that result in an injury or a reported injury.

The OIG also recommends that the BOPC's Use of Force Subcommittee identify, on a case-by-case basis and with the OIG's assistance, NCUOF incidents that are appropriate for tracking and review by the Police Commission. It further recommends that the OIG monitor the investigation of such cases, and that a joint Department-OIG briefing be provided to the subcommittee about the details of each one.

VII. APPENDIX

Policy on the Use of Force – Revised, December 2021 (Page 1 of 7)

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 23 **December 8, 2021**

APPROVED BY THE BOARD OF POLICE COMMISSIONERS ON December 7, 2021

SUBJECT: POLICY ON THE USE OF FORCE – REVISED

PURPOSE: On January 1, 2022, California Assembly Bill (AB) 26 becomes effective. Assembly Bill 26 clarifies an officer's duty to intercede when they observe a potential use of excessive force by another officer. In addition, AB 26 defines what encompasses retaliation against an officer who has reported a potential use of excessive force, and prohibits any officer who has a sustained complaint of excessive force from training other officers for at least three years from the date that the complaint was sustained. The purpose of this Order is to revise Department Manual Section 1/556.10, *Policy on the Use of Force*, pursuant to AB 26.

PROCEDURE: Department Manual Section 1/556.10, *Policy on the Use of Force*, has been revised. The revised manual section is attached with the revisions indicated in italics.

AMENDMENTS: This Order amends Section 1/556.10 of the Department Manual.

AUDIT RESPONSIBILITY: The Commanding Officer, Audit Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.

MICHEL R. MOORE
Chief of Police

Attachment

DISTRIBUTION "D"

APPENDIX

Policy on the Use of Force – Revised, December 2021 (Page 2 of 7)

DEPARTMENT MANUAL
VOLUME I
Revised by Special Order No. 23 2021

556.10 POLICY ON THE USE OF FORCE.

PREAMBLE TO USE OF FORCE. The use of force by members of law enforcement is a matter of critical concern both to the public and the law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, law enforcement officers are sometimes called upon to use force in the performance of their duties. The Los Angeles Police Department also recognizes that members of law enforcement derive their authority from the public and therefore must be ever mindful that they are not only the guardians, but also the servants of the public.

The Department's guiding principle when using force shall be reverence for human life. Officers shall attempt to control an incident by using time, distance, communications, and available resources in an effort to de-escalate the situation, whenever it is safe, feasible, and reasonable to do so. As stated below, when warranted, Department personnel may use objectively reasonable force to carry out their duties. Officers may use deadly force only when they reasonably believe, based on the totality of circumstances, that such force is necessary in defense of human life. Officers who use unreasonable force degrade the confidence of the community we serve, expose fellow officers to physical hazards, violate the law and rights of individuals upon whom unreasonable force or unnecessary deadly force is used, and subject the Department and themselves to potential civil and criminal liability. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers.

POLICY.

Use of De-Escalation Techniques. It is the policy of this Department that, whenever feasible, officers shall use techniques and tools consistent with department de-escalation training to reduce the intensity of any encounter with a suspect and enable an officer to have additional options to mitigate the need to use a higher level of force while maintaining control of the situation.

Verbal Warnings. Where feasible, a peace officer shall, prior to the use of any force, make reasonable efforts to identify themselves as a peace officer and to warn that force may be used, unless the officer has objectively reasonable grounds to believe that the person is aware of those facts.

Proportionality. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.

Fair and Unbiased Policing. Officers shall carry out their duties, including use of force, in a manner that is fair and unbiased. Discriminatory conduct on the basis of race, religion, color, ethnicity, national origin, age, gender, gender identity, gender expression, sexual orientation, housing status, or disability while performing any law enforcement activity is prohibited.

Use of Force–Non-Deadly. It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:

APPENDIX

Policy on the Use of Force – Revised, December 2021 (Page 3 of 7)

DEPARTMENT MANUAL
VOLUME I
Revised by Special Order No. 23 2021

- Defend themselves;
- Defend others;
- Effect an arrest or detention;
- Prevent escape; or,
- Overcome resistance.

Factors Used to Determine Objective Reasonableness. Pursuant to the opinion issued by the United States Supreme Court in Graham v. Connor, the Department examines the reasonableness of any particular force used: a) from the perspective of a reasonable Los Angeles Police Officer with similar training and experience, in the same situation; and b) based on the facts and circumstances of each particular case. Those factors may include, but are not limited to:

- The feasibility of using de-escalation tactics, crisis intervention or other alternatives to force;
- The seriousness of the crime or suspected offense;
- The level of threat or resistance presented by the subject;
- Whether the subject was posing an immediate threat to officers or a danger to the community;
- The potential for injury to citizens, officers or subjects;
- The risk or apparent attempt by the subject to escape;
- The conduct of the subject being confronted (as reasonably perceived by the officer at the time);
- The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;
- The availability of other resources;
- The training and experience of the officer;
- The proximity or access of weapons to the subject;
- Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion, and number officers versus subjects;
- The environmental factors and/or other exigent circumstances; and,
- Whether a person is a member of a vulnerable population.

Drawing or Exhibiting Firearms. Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm. When an officer has determined that the use of deadly force is not necessary, the officer shall, as soon as practicable, secure or holster the firearm. Any drawing and exhibiting of a firearm shall conform with this policy on the use of firearms. Moreover, any intentional pointing of a firearm at a person by an officer shall be reported. Such reporting will be published in the Department's year-end use of force report.

Use of Force - Deadly. It is the policy of this Department that officers shall use deadly force upon another person only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary for either of the following reasons:

- To defend against an imminent threat of death or serious bodily injury to the officer or to another person; or,
- To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily

APPENDIX

Policy on the Use of Force – Revised, December 2021 (Page 4 of 7)

injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible. Before discharging a firearm, officers shall consider their surroundings and potential risks to bystanders to the extent reasonable under the circumstances.

Note: Because the application of deadly force is limited to the above scenarios, an officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or another person.

Department's Evaluation of Deadly Force. The Department will analyze an officer's use of deadly force by evaluating the totality of the circumstances of each case consistent with California Penal Code Section 835(a), as well as the factors articulated in Graham v. Connor.

Rendering Aid. After any use of force, officers shall immediately request a rescue ambulance for any person injured. In addition, officers shall promptly provide basic and emergency medical assistance to all members of the community, including victims, witnesses, subjects, suspects, persons in custody, subjects of a use of force, and fellow officers:

- To the extent of the officer's training and experience in first aid/CPR/AED; and,
- To the level of equipment available to an officer at the time assistance is needed.

Warning Shots. It is the policy of this Department that warning shots shall only be used in exceptional circumstances where it might reasonably be expected to avoid the need to use deadly force. Generally, warning shots shall be directed in a manner that minimizes the risk of injury to innocent persons, ricochet dangers and property damage.

Shooting at or From Moving Vehicles. It is the policy of this Department that firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle. The moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants. Firearms shall not be discharged from a moving vehicle, except in exigent circumstances and consistent with this policy in regard to the use of Deadly Force.

Note: It is understood that the policy regarding discharging a firearm at or from a moving vehicle may not cover every situation that may arise. In all situations, officers are expected to act with intelligence and exercise sound judgment, attending to the spirit of this policy. Any deviations from the provisions of this policy shall be examined rigorously on a case by case basis. The involved officer must be able to clearly articulate the reasons for the use of deadly force. Factors that may be considered include whether the officer's life or the lives of others were in immediate peril and there was no reasonable or apparent means of escape.

APPENDIX

Policy on the Use of Force – Revised, December 2021 (Page 5 of 7)

DEPARTMENT MANUAL
VOLUME I
Revised by Special Order No. 23021

Requirement to Report Potential Excessive Force. An officer who is present and observes another officer using force that the present and observing officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer *[as delineated in California Penal Code Section 835(a)]*, shall *immediately* report such force to a superior officer.

An officer who has a sustained excessive force complaint shall be prohibited from training other officers for a period of at least three years from the date that the complaint was sustained.

Retaliation for Reporting Potential Excessive Force or Violation of Any Law or Regulation. *Retaliation for reporting potential excessive force or violation of any law or regulation by any employee of this Department is strictly prohibited, shall be reported immediately, and is considered to be serious misconduct.*

Requirement to Intercede When Excessive Force is Observed. An officer shall intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

> ***Note:*** *For purposes of this section, "intercede" includes, but is not limited to, physically stopping the excessive force (when safe and reasonable to do so) and recording the excessive force, if equipped with a body worn video (BWV) camera. Officers shall attempt to document on BWV the efforts to intervene, efforts to de-escalate the excessive use of force, and confronting the offending officer about the excessive force during the use of force. If the offending officer continues to use excessive force, the witnessing officer shall immediately report the excessive force to a superior officer.*

Any officer who has received all required training on the requirement to intercede and fails to do so when excessive force is observed as described above shall be subject to discipline up to and including in the same manner as the officer who committed the excessive force.

DEFINITIONS.

Deadly Force. Deadly Force is defined as any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to, the discharge of a firearm.

Excessive Force. *Excessive Force means a level of force that is found to have violated Section 835(a) of the California Penal Code (PC) or the requirements of any other law or statute.*

Feasible. Feasible means reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

Imminent. Pursuant to California Penal Code Section 835a(e)(2), "[A] threat of death or serious bodily injury is "imminent" when, based on the totality of the circumstances, a reasonable officer in

APPENDIX

Policy on the Use of Force – Revised, December 2021 (Page 6 of 7)

the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed."

Intercede. *Intercede includes, but is not limited to, physically stopping the excessive force (when safe and reasonable to do so) and recording the excessive force, if equipped with a body worn video (BWV) camera.*

Necessary. In addition to California Penal Code 835(a), the Department shall evaluate whether deadly force was necessary by looking at : a) the totality of the circumstances from the perspective of a reasonable Los Angeles Police Officer with similar training and experience; b) the factors used to evaluate whether force is objectively reasonable; c) an evaluation of whether the officer exhausted the available and feasible alternatives to deadly force; and d) whether a warning was feasible and/or given.

Objectively Reasonable. The legal standard used to determine the lawfulness of a use of force is based on the Fourth Amendment to the United States Constitution. See Graham v. Connor, 490 U.S. 386 (1989). Graham states in part, "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments–in circumstances that are tense, uncertain and rapidly evolving–about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application." The force must be reasonable under the circumstances known to or reasonably believed by the officer at the time the force was used. Therefore, the Department examines all uses of force from an objective standard rather than a subjective standard.

Retaliation. *Retaliation means demotion, failure to promote to a higher position when warranted by merit, denial of access to training and professional development opportunities, denial of access to resources necessary for an officer to properly perform their duties, or intimidation, harassment, or threat of injury while on or off-duty.*

Serious Bodily Injury. Pursuant to California Penal Code Section 243(f)(4), Serious Bodily Injury includes but is not limited to:

- Loss of consciousness;
- Concussion;
- Bone fracture;
- Protracted loss or impairment of function of any bodily member or organ;
- A wound requiring extensive suturing; and,
- Serious disfigurement.

Totality of the Circumstances. All facts known to or reasonably perceived by the officer at the time, including the conduct of the officer and the subject leading up to the use of force.

APPENDIX

Policy on the Use of Force – Revised, December 2021 (Page 7 of 7)

DEPARTMENT MANUAL
VOLUME I
Revised by Special Order No. 23 2021

Vulnerable Population. Vulnerable populations include, but are not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.

Warning Shots. The intentional discharge of a firearm off target not intended to hit a person, to warn others that deadly force is imminent.