

CITY OF CHICO
POLICING REVIEW AD HOC COMMITTEE

Meeting Agenda
July 23, 2020, 1:00 p.m. – 2:30 p.m.

Committee Members

Mayor Ann Schwab
Vice Mayor Alex Brown
Councilmember Kasey Reynolds

Margaret Swick
Cory Hunt
Rob Berry

Interim COP Matt Madden
Omar Peña
Jim Parrott

PUBLIC PARTICIPATION: *This meeting is being conducted in accordance with Executive Order N-29-20.* Members of the public may virtually attend the meeting using the City's WebEx platform or by sending an email to the following email address.

To provide email comments, please submit an email with the subject line "**PUBLIC COMMENT ITEM**", sent to policepubliccomments@chicoca.gov during the meeting, prior to the close of public comment on an item. The public is encouraged not to send more than one email per item and not to comment on numerous items in one email.

WebEx public participants may use the following information to remotely view and participate in the Policing Review Ad Hoc Committee meeting online:

Event Name: **Policing Ad Hoc Committee Meeting 07-23-20 1PM**

Date/Time: Thursday, July 23, 2020 1:00 pm

Event URL: <https://atteetrial2.webex.com/atteetrial2/onstage/g.php?MTID=ec11c8b2ac152da413f0def846a01d669>

Event #: 129 151 9527

Password: chico

Call-in #: 1-844-531-0749

Call-in Password: 129 151 9527

1. CALL TO ORDER

1.1. Roll Call

2. ITEMS TO BE DISCUSSED (1:00 p.m. – 2:00 p.m.)

2.1. Meeting Guidelines - (Debbie Presson, City Clerk) 10 minutes

City Clerk Presson will lead a presentation on meeting process for the Policing Review Ad Hoc Committee, including agenda posting, public comment, and WebEx. *Attachment: Meeting Guidelines*

2.2. Council Direction (Ann Schwab, Mayor) 10 minutes

Mayor Schwab will lead a presentation on Council direction to the Policing Review Ad Hoc Committee, goals and timeline. *Attachments: Mayor Schwab's Council Request & Vice Mayor Brown's Council Request*

2.3. Staff Presentations - 40 minutes

Members of the City Attorney, Human Resources, and Police Department will lead a presentation on the legal aspects of police policies, how police investigations fit into the justice system, an overview of the City's Use of Force Policy, AB 392 and other statutes. *Attachments: City Attorney Memorandum regarding Chico Police Department Use of Force Policy & AB 392/SB 230 and Chief Madden's 6/10/20 Memo*

3. BUSINESS FROM THE FLOOR/PUBLIC COMMENT - Time Certain 2:00 p.m. – 2:30 p.m.

Members of the public may address the Committee via WebEx or by email at policepubliccomments@chicoca.gov at this time on any matter not already listed on the agenda, with comments being limited to three minutes or as determined by the Chair. The Committee cannot take any action at this meeting on requests made under this section of the agenda.

4. ADJOURNMENT - Adjourn to the Adjourned Regular Meeting of Thursday, August 13th, 2020 from 1:00 – 2:30 p.m.

Information and Procedures Concerning Policing Review Ad Hoc Committee Meetings

The Brown Act:

Meetings will be held in accordance to the Brown Act (Gov. Code, § 54950 et seq.). The Brown Act promotes transparency and public participation in local government.

Agenda Information:

- Available the City's website at www.ci.chico.ca.us and found under "Government/Other Local Committees"
- Public Viewing Copy available for review in the City Clerk's Office. Appointment only due to COVID-19.
- Available at the meeting (if/when Executive Order N-29-20 is lifted)
- May be mailed by subscription, at an annual cost set forth in the City of Chico Fee Schedule.
- Sign up for distribution of electronic agenda notifications.

Public Participation:

All members of the public may address the Policing Review Ad Hoc Committee on items listed on the agenda. Public participation in the hearing process is encouraged. For the foreseeable future, meetings are conducted in accordance with Executive Order N-29-20. Members of the public may virtually attend the meeting using the City's WebEx platform which will be included on each agenda.

To provide written comments, please submit an email with the subject line "PUBLIC COMMENT ITEM", sent to policepubliccomments@chicoca.gov during the meeting, prior to the close of public comment on an item. The public is encouraged not to send more than one email per item and not to comment on numerous items in one email.

Meeting Process:

For the foreseeable future, meetings will be conducted in accordance with Executive Order N-29-20. Members of the Committee and members public will access the meeting through the City's WebEx platform.

Meetings of the Policing Review Ad Hoc Committee will be 90 minutes in duration. During the first 60 minutes of the meeting, agenda reports will be provided and committee members will discuss the items on the agenda. During the last 30 minutes, the public will be given an opportunity to address the Policing Review Ad Hoc Committee on items listed on the agenda. Comments will be limited to a maximum of three minutes. The length of time a person may address the Committee will be determined by the number of persons wishing to address the Committee.

Committee Action:

The Policing Review Ad Hoc Committee has been formed as an advisory body of the Chico City Council. When a vote is to be taken by the committee, the public will be given an opportunity to address the Policing Review Ad Hoc Committee prior to the vote being taken.

Dani Rogers

From: Ann Schwab
Sent: Monday, June 8, 2020 4:59 PM
To: Debbie Presson
Cc: Mark Orme; Andrew Jared
Subject: Councilmember Requests (6.5) June 9, 2020

City Clerk Presson:

I will be bringing this item forward during Item 6.5, Councilmember Requests, at our June 9, 2020 meeting. I will be asking the Chico City Council to agendaize a discussion to establish an Ad Hoc committee to review police policies, including training and implementation, and report their findings and recommendations for reforms. Please let me know if you have any questions.

The unrest in our country is unprecedented. The voices for reform are loud. This is a time to take action and assure our City's decisions are aligned with our values.

I have accepted and signed the My Brother's Keeper Pledge for Mayors to introduce common-sense limits on police use of force. As the Mayor, I am committed to these actions:

1. **REVIEW** Chico's police use of force policies.
2. **ENGAGE** the Chico community by including a diverse range of input, experiences, and stories in our review.
3. **REPORT** the findings of our review to our community and seek feedback.
4. **REFORM** our community's police use of force policies.

I am asking the Chico City Council to join me in this Pledge and to agendaize a discussion to establish an Ad Hoc committee to review police policies, including training and implementation, and report their findings and recommendations for reforms.

The committee should be comprised of community members (including representatives of Concerned Citizens for Justice), the Mayor and two Councilmembers, the Chief of Police or their designee, and two members of the Chico Police Officer's Association.

I have met with the Interim Chief of Police and members of the Chico Police Officers Association and they have committed to work with the council and community members and examine their policies, training, practices, and culture. The Chico Police Department's practices should reflect community values and expectations. The men and women of the Chico Police Department strive for excellence and endeavor to be the best police officers and department in the nation. The Chico Police Department embrace improved communication, transparency, and understanding.

Among the policies and trainings to review are:

1. De-escalation of situations, where possible, through communication, maintaining distance, slowing things down, and otherwise eliminating the need to use force.
2. Officers' use of maneuvers that cut off oxygen or blood flow, including chokeholds or carotid restraints, which often result in unnecessary death or serious injury.
3. Officer intervention and stopping of excessive or unnecessary force used by other officers and report these incidents immediately to a supervisor.
4. Officers shooting at moving vehicles, which is regarded as a particularly dangerous and ineffective tactic.
5. Types of force and/or weapons that can be used to respond to specific types of resistance and specific characteristics such as age, size, or disability.
6. Officers' use of all other reasonable means before resorting to deadly force.

7. Officers giving a verbal warning, when possible, before using serious force such as shooting, tasing, or pepper spraying someone.
8. Officers reporting each time they use force or threaten to use force (e.g., pointing a gun at a person).

The road ahead won't be easy. At times we will stumble, and the conversations may be difficult, but I will remain committed. But if we truly commit to this progress, I believe we can create a more just world for all of us to live.

Sincerely,

Ann M. Schwab
Mayor

City of Chico
411 Main Street
PO Box 3420
Chico, CA 95927

(530) 518-7383
www.chicoca.gov



Dani Rogers

From: Alex Brown
Sent: Thursday, June 4, 2020 12:33 PM
To: All City Clerk
Subject: Agenda Request: Discussion of new policies and practices in policing

Dear City Clerk,

As our nation is responding to a long history of racist violence against black and brown communities, our local community is asking its policymakers and government officials to do the work of analyzing policies and practices to prevent future tragedies. I believe this – especially in light of this Council’s stated commitment to diversity and inclusion – to be reasonable, warranted, and just.

I would like to sponsor a community request by asking Council to agendize a discussion of policies and practices in policing, including the following:

- Information from the Chico Police Department regarding:
 - The Chico Police Department’s official policies around use of force, and whether they are in compliance with the definition in AB 392 regarding use of lethal force
 - An accounting of the number of current police officers trained in evidence-based, 40-hour, Memphis Model Crisis Intervention Training (CIT)
 - An accounting of the number of current police officers trained in other models of CIT, including the number of hours dedicated to this training per officer
 - An accounting of the number of police officers and staff who have been trained in Implicit Bias, including the number of hours dedicated to this training per CPD officer and staff member
- Implementing any changes to use of force policies to align with state law (AB 392)
- Exploring and implementing additional policies that have been proven to increase both the safety of officers and the safety of the community at large -- with particular focus on the eight well-documented policies proven to significantly decrease incidences of use of force by police officers. For reference, visit <https://8cantwait.org>.
- A plan for getting all officers trained in evidence-based, 40-hour Memphis Model Crisis Intervention and De-Escalation, which may include:
 - An analysis of the current model/plan utilized by the Chico Police Department to implement this training
 - Tying training to specialty pay, so that training requirements must be met before specialty pay is offered
 - Cost analysis of department-wide implementation within a two year time frame, and aligning the police department budget to meet these goals
 - Requiring all new hires to complete this training prior to beginning work with the Department
- Further discussion and review of Police Community Advisory Board function and adapting this function to better meet community needs, and exploring community oversight

Finally, as we are looking at implementation of new policies and practices within our police department, I would like for us to also honor our Diversity Action Plan by implementing a comprehensive plan for Implicit Bias Training to be implemented organization-wide for all City staff, including:

- Identifying a vendor to regularly offer this training
- Making a certain number of hours a requirement during the first year of employment
- A plan for getting all staff trained in Implicit Bias, and refresher training once every two years

While this discussion and implementation has been a stated priority of several sitting Councilmembers for a long time, it is time to take an active role in this work. We do this by setting a standard and implementing plans and policies that will move us forward, so that we can build more trust between our organization and our diverse community, demonstrate recognition of a legacy of racism in our history and institutions, and seek to repair this harm using data-driven models.

I respectfully request the Council hear this issue and take action to support this community-driven effort.

Warmly,

ALEX BROWN

Vice Mayor, City of Chico

alex.brown@chicoca.gov

incorporates *Graham's* "totality of the circumstances" test, and requires those judging an officer's use of force do so by placing themselves in the officer's shoes at the time the officer utilized force, rather than with the benefit of infallible hindsight.

AB 392 took effect on January 1, 2020. The Chico Police Department promptly updated its Use of Force Policy, documented in the Department's Policy Manual at Policy 300. As you can see from Section 300.3 on Use of Force, Section 300.3.2 on Factors Used to Determine the Reasonableness of Force, and Section 300.4 on Deadly Force Applications, Penal Code 835a is repeatedly cited as support for the standards included in the CPD Policy, and in fact in most instances, tracks the language of Penal Code 835a verbatim.

For example, CPD **Section 300.4 Deadly Force Applications** tracks the language of Penal Code 835a. The section first makes clear that officers should first evaluate the use of "other reasonably available resources and techniques" before using deadly force, when "safe and feasible to do so under the totality of the circumstances." Citing Penal Code § 835a, deadly force is only justified in the following circumstances:

- “(a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is **an imminent threat of death or serious bodily injury to the officer or another person.**

- (b) An officer may use deadly force **to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury**, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.” (emphasis added)

The section further clarifies for subsection (a) that the standard is whether and objectively reasonable officer would believe the person poses an imminent threat of death or serious bodily injury to the officer or another person. An "imminent" threat of death or serious bodily injury is then defined as when "based on the totality of the circumstances, a reasonable officer in 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 officer or another person.” It is, again, reinforced in this section that this is an *objective* standard looking at a reasonable officer in the same circumstances — “[a]n officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention.”

Senate Bill 230 (“SB 230”) also passed in 2019. This law requires each law enforcement agency to maintain a policy that provides guidelines on the use of force and to make their use of force policy accessible to the public by January 1, 2021. The law describes 20 criteria each law enforcement policy must include, for example: guidelines on the use of force; utilizing de-escalation techniques and other alternatives to force when feasible; specific guidelines for the application of deadly force; an obligation to report potential excessive force; an obligation for an officer to intercede when observing another officer using force that is clearly beyond that which is necessary; training standards; and factors for evaluating and reviewing all use of force incidents. These requirements are codified in Government Code 7286. As part of SB230, the Legislature provided that the intent of the bill was to establish the minimum standard for policies and reporting procedures for law enforcement agencies’ use of force. It also requires the Commission on Peace Officer Standards and Training (“POST”) to implement a course on the use of force and develop uniform, minimum guidelines for use of force for law enforcement agencies to adopt.

CPD’s Policy Manual, which includes its use of force policy, is posted on the City of Chico website. As required by SB 230, it includes throughout guidelines on the use of force and alternatives to deadly force (e.g., CPD 300.3 Use of Force, 300.3.2 Factors Used to Determine the Reasonableness of Force, 300.4 Deadly Force Applications); a duty to intercede (CPD 300.2.1); and reporting requirements, which includes internal reporting as well as reporting to the California Department of Justice (CPD 300.5).

It should also be noted that CPD has taken action in response to recent calls for statewide and national police reform, even though not currently mandated by law. For example, CPD recently updated its policy on the Carotid Control Hold, found in CPD 300.3.4, stating the carotid control hold is “not an authorized less lethal technique and should only be utilized during deadly force situations and in accordance with Policy 300.4 Deadly Force Applications.”

Issue	CPD Policy 300	Penal Code § 835a	Comment
<p>Policy</p>	<p>CPD 300.2 Policy</p> <p>“The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.”</p> <p>“Officers must have a true understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.”</p> <p>“The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.”</p>	<p>835a (1):</p> <p>“That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.”</p> <p>835a (2): “As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. 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 to an objectively reasonable officer.”</p> <p>835a (4): “That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or</p>	

Issue	CPD Policy 300	Penal Code § 835a	Comment
		<p>perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.”</p> <p>835a (5): “That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.”</p>	

Issue	CPD Policy 300	Penal Code § 835a	Comment
Definitions			
“Deadly force”	CPD 300.1.1 Definitions “‘Deadly force – 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 (Penal Code § 835a).”	PC 835a €(1): “‘Deadly force’ means 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.”	
“Imminent”	CPD 300.4(b)(2d paragraph): “An ‘imminent’ threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in 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 officer or another person. <u>An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).</u> ” (underlining added)	PC 835a €(2): “A threat of death or serious bodily injury is ‘imminent’ when, based on the totality of the circumstances, a reasonable officer in 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. <u>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.</u> ” (underlining added)	

Issue	CPD Policy 300	Penal Code § 835a	Comment
<p>“Totality of circumstances”</p>	<p>CPD does not include a definition of “totality of the circumstances.”</p> <p>CPD 300.3 Use of Force states that “Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).”</p> <p>CPD 300.4 Deadly Force Applications states that “If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate use of other reasonably available resources and techniques when determining whether to use deadly force.”</p> <p>CPD 300.4 further states: “An ‘imminent’ threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in 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 officer or another person.”</p>	<p>PC 835a(c)(1), a peace officer is “justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (A) to defend against an imminent threat of death or serious bodily injury to the officer or another person. . . .”</p> <p>PC 835a (e)(3) defines “totality of the circumstances” to mean “all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.”</p>	

Issue	CPD Policy 300	Penal Code § 835a	Comment
	<p>CPD 300.3.2 Factors Used to Determine the Reasonableness of Force includes 19 factors to consider (though this is not an exclusive list) when determining whether to apply force and evaluating whether an officer has used reasonable force. These include as factors the conduct of the officer and the conduct of the subject leading up to the use of deadly force from PC 835a (e)(3), as included in CPD 300.3.2 (b) and (d), (f) and (g). A number of these factors are also pulled from the findings and declarations in PC 835a(a).</p>		

Issue	CPD Policy 300	Penal Code § 835a	Comment
<p>Less than deadly force</p>	<p>CPD 300.4: “If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force.”</p> <p>This is a preamble to 300.4 that is covered in great detail in 300.3, and which clearly states that officers “shall only use that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event”</p>	<p>835a (2): “As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. 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 to an objectively reasonable officer.”</p> <p>835a (3): “That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.”</p> <p>835a (b): “Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.”</p>	

<p>Imminent threat of death or serious bodily injury</p>	<p>CPD 300.4 (a): “The use of deadly force is only justified in the following circumstances (Penal Code): (a) An officer may use deadly force to protect his/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.”</p> <p>CPD 300.4, second paragraph: “Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death of serious bodily injury to the officer or to another person (Penal Code § 835a).”</p> <p>CPD 300.4, third paragraph: ““An ‘imminent’ threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in 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 officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).”</p>	<p>PC835a (c): “[A] peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (A) to defend against an imminent threat of death or serious bodily injury to the officer or to another person.”</p> <p>PC835a (c)(2): “A peace 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 peace officer or to another person.”</p>	
---	--	---	--

Issue	CPD Policy 300	Penal Code § 835a	Comment
<p>Apprehension of fleeing person</p>	<p>CPD 300.4: “The use of deadly force is only justified in the following circumstances (Penal Code): . . . (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.”</p> <p>CPD 300.4, second paragraph: “Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death of serious bodily injury to the officer or to another person (Penal Code § 835a).”</p> <p>CPD 300.4, third paragraph: ““An ‘imminent’ threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the</p>	<p>PC835a (c)(1): “[A] peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: . . . (B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.”</p>	

Issue	CPD Policy 300	Penal Code § 835a	Comment
	<p>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 officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a)."</p>		
<p>No duty to first retreat</p>	<p>CPD 300.3.1: "Any peace officer may use objectively reasonable force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. Retreat does not mean tactical repositioning or other de-escalation techniques (Penal Code 835a)."</p>	<p>PC835a(d): "A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, 'retreat' does not mean tactical repositioning or other de-escalation tactics."</p>	

Issue	CPD Policy 300	Penal Code § 835a	Comment
Additional safeguards			
Intervention of officers	CPD 300.2.1 Duty to Intercede “Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.”	N/A	
Pain Compliance Techniques	CPD 300.3.3 “Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training . . . (c) The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.”		

Issue	CPD Policy 300	Penal Code § 835a	Comment
Carotid Control Hold	CPD 300.3.4: “Carotid Control Hold. The carotid control hold is not an authorized less lethal technique and should only be utilized during deadly force situations and in accordance with Policy 300.4; Deadly Force Applications.”		
Shooting at or From Moving Vehicles	CPD 300.4.1 “Shots fired at or from a moving vehicle are rarely effective. . . . An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.”		
Reporting Use of Force	CPD 300.5 “Any use of force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident”		

Use of Force

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly force - 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 (Penal Code § 835a).

Force - The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

300.2.1 DUTY TO INTERCEDE

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably

Chico Police Department

Chico PD CA Policy Manual

Use of Force

appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use objectively reasonable force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. Retreat does not mean tactical repositioning or other de-escalation techniques (Penal Code § 835a).

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include but are not limited to:

- (a) The apparent immediacy and severity of the threat to officers or others (Penal Code § 835a).
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The conduct of the involved officer (Penal Code § 835a).
- (e) The effects of drugs or alcohol.
- (f) The individual's apparent mental state or capacity (Penal Code § 835a).
- (g) The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).

Chico Police Department

Chico PD CA Policy Manual

Use of Force

- (h) Proximity of weapons or dangerous improvised devices.
- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).
- (k) Seriousness of the suspected offense or reason for contact with the individual.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

300.3.3 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the person can comply with the direction or orders of the officer.
- (c) Whether the person has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.4 CAROTID CONTROL HOLD

The carotid control hold is not an authorized less lethal technique and should only be utilized during deadly force situations and in accordance with Policy 300.4; DEADLY FORCE APPLICATIONS.

300.3.5 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers

Chico Police Department

Chico PD CA Policy Manual

Use of Force

should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Chico Police Department for this specific purpose.

300.4 DEADLY FORCE APPLICATIONS

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force. The use of deadly force is only justified in the following circumstances (Penal Code § 835a):

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself, 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 to another person (Penal Code § 835a).

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in 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 officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the

Chico Police Department

Chico PD CA Policy Manual

Use of Force

circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or law.

300.5.1 NOTIFICATION TO SUPERVISORS

Any member using force shall notify their supervisor as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of a TASER device or control device.
- (f) Any application of a restraint device other than handcuffs, shackles, belly chains, or department issued full body restraint system.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges any of the above has occurred.

300.5.2 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. See the Records policy.

300.6 MEDICAL CONSIDERATION

Prior to booking or release, medical clearance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious, or was subject to force that would lead a reasonable officer to conclude the subject experienced more than just momentary discomfort, such as but not limited to strike(s), kicks, or unconventional takedowns. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a

Chico Police Department

Chico PD CA Policy Manual

Use of Force

description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

300.7 SUPERVISOR RESPONSIBILITY

When a supervisor is notified of an incident in which there has been a reportable application of force, the supervisor should:

- (a) Respond to the scene and obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties, or persons who were subject to force that would lead a reasonable officer to conclude the subject experienced more than just momentary discomfort, such as but not limited to strike(s), kicks, or unconventional takedowns are medically cleared.
- (c) If appropriate, separately obtain a Mirandized and recorded interview with the subject upon whom force was applied. If the involved subject has invoked his/her Miranda rights, all attempts to obtain a statement concerning the use of force shall be discontinued.
- (d) Ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. Appropriate photographs shall be taken, regardless of visible injury or complaint of pain, in circumstances where the application of force would lead a reasonable officer to conclude the subject experienced more than just momentary discomfort, such as but not limited to strike(s), kicks, or unconventional takedowns. These photographs should be retained until all potential for civil litigation has expired.
- (e) Identify any witnesses not already included in related reports.
- (f) Review and approve all related reports.
- (g) Determine if there is any indication that the subject may pursue civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- (h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.
- (i) Complete a use of force review

Chico Police Department

Chico PD CA Policy Manual

Use of Force

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit. In the event that a supervisor uses force, an uninvolved supervisor of equal or greater rank, as determined by the involved member's supervisor, shall be assigned to complete a use of force review.

300.7.1 WATCH COMMANDER RESPONSIBILITY

The Watch Commander shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to address any training issues.

300.8 TRAINING

Officers will receive periodic training on this policy and demonstrate their knowledge and understanding.

300.9 USE OF FORCE ANALYSIS

At least annually, the Use of Force Commander should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police. The report should not contain the names of officers, suspects or case numbers, and should include:

- (a) The identification of any trends in the use of force by members.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.

Deadly Force Investigations

302.1 PURPOSE AND SCOPE

This policy establishes a process for the Chico Police Department to review the use of force by its employees.

This review process shall be in addition to any other review or investigation that may be conducted by any outside or multi-agency entity having jurisdiction over the investigation or evaluation of the use of deadly force.

302.2 POLICY

The Chico Police Department will objectively evaluate the use of force by its members to ensure that their authority is used lawfully, appropriately and is consistent with training and policy.

302.2.1 RESPONSIBILITIES OF A DEADLY FORCE ADMINISTRATIVE INVESTIGATION

An administrative investigation is conducted to determine and review the circumstances of an incident involving deadly force, as it relates primarily to department policy.

As with all administrative investigations, deadly force investigations will be conducted independent of the criminal investigation.

Upon completion, the administrative investigation shall be submitted to the Division Commander of the involved employee.

302.3 REMOVAL FROM LINE DUTY ASSIGNMENT

Generally, whenever an employee's actions or use of force in an official capacity, or while using department equipment, results in death or very serious injury to another, that employee will be placed in a temporary administrative assignment pending an administrative review. The Chief of Police may exercise discretion and choose not to place an employee in an administrative assignment in any case.

302.4 REVIEW BOARD

The Chico Police Department is charged with the important responsibility of objectively evaluating the use of deadly force. It is the policy of this department to both convene the Butte County Officer Involved Critical Incident Response Team and to initiate an administrative investigation when the use of deadly force by an employee is used. This does not preclude the activation of the Protocol Team or the initiation of an administrative investigation for other critical incidents involving department employees.

All administrative investigations will be conducted in strict compliance with existing laws and department policies (refer to policy 1020).



AB-392 Peace officers: deadly force. (2019-2020)

SHARE THIS:



Date Published: 08/19/2019 09:00 PM

Assembly Bill No. 392

CHAPTER 170

An act to amend Sections 196 and 835a of the Penal Code, relating to peace officers.

[Approved by Governor August 19, 2019. Filed with Secretary of State August 19, 2019.
]

LEGISLATIVE COUNSEL'S DIGEST

AB 392, Weber. Peace officers: deadly force.

Existing law authorizes a peace officer to make an arrest pursuant to a warrant or based upon probable cause, as specified. Under existing law, an arrest is made by the actual restraint of the person or by submission to the custody of the arresting officer.

Existing law authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Existing law does not require an officer to retreat or desist from an attempt to make an arrest because of resistance or threatened resistance of the person being arrested.

Under existing law, a homicide committed by a peace officer is justifiable when necessarily committed in arresting a person who has committed a felony and the person is fleeing or resisting such arrest.

Existing case law deems such a homicide to be a seizure under the Fourth Amendment of the Constitution of the United States, and as such, requires the actions to be reasonable.

This bill would redefine the circumstances under which a homicide by a peace officer is deemed justifiable to include when the officer reasonably believes, based on the totality of the circumstances, that deadly force is necessary 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 a felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless the person is immediately apprehended.

The bill would also affirmatively prescribe the circumstances under which a peace officer is authorized to use deadly force to effect an arrest, to prevent escape, or to overcome resistance.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 196 of the Penal Code is amended to read:

196. Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under either of the following circumstances:

(a) In obedience to any judgment of a competent court.

(b) When the homicide results from a peace officer's use of force that is in compliance with Section 835a.

SEC. 2. Section 835a of the Penal Code is amended to read:

835a. (a) The Legislature finds and declares all of the following:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. 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 to an objectively reasonable officer.

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

(4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

(b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

(c) (1) Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.

(B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

(2) A peace 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 peace officer or to another person.

(d) A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, "retreat" does not mean tactical repositioning or other deescalation tactics.

(e) For purposes of this section, the following definitions shall apply:

(1) "Deadly force" means 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.

(2) A threat of death or serious bodily injury is "imminent" when, based on the totality of the circumstances, a reasonable officer in 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.

(3) "Totality of the circumstances" means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.

**SB-230 Law enforcement: use of deadly force: training: policies.** (2019-2020)

SHARE THIS:



Date Published: 09/17/2019 02:00 PM

Senate Bill No. 230

CHAPTER 285

An act to add Chapter 17.4 (commencing with Section 7286) to Division 7 of Title 1 of the Government Code, and to add Section 13519.10 to the Penal Code, relating to law enforcement.

[Approved by Governor September 12, 2019. Filed with Secretary of State September 12, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 230, Caballero. Law enforcement: use of deadly force: training: policies.

(1) Existing law requires each law enforcement agency to annually furnish specified information to the Department of Justice regarding the use of force by a peace officer. Existing law requires the Department of Justice, once per year, to update a summary of information contained in the reports received on its internet website. Existing law requires a department or agency that employs peace officers or custodial officers to establish a procedure to investigate complaints by members of the public against those officers.

This bill would, by no later than January 1, 2021, require each law enforcement agency to maintain a policy that provides guidelines on the use of force, utilizing deescalation techniques and other alternatives to force when feasible, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents, among other things. The bill would require each agency to make their use of force policy accessible to the public. By imposing additional duties on local agencies, this bill would create a state-mandated local program.

(2) Existing law establishes the Commission on Peace Officer Standards and Training in the Department of Justice and requires the commission to adopt rules establishing minimum standards regarding the recruitment of peace officers. Existing law requires the commission to develop guidelines and implement courses of instruction regarding racial profiling, domestic violence, hate crimes, vehicle pursuits, and human trafficking, among others.

This bill would require the commission to implement a course or courses of instruction for the regular and periodic training of law enforcement officers in the use of force. The bill would require the commission to develop uniform, minimum guidelines for adoption and promulgation by California law enforcement agencies for the use of force, as specified. The bill would require law enforcement agencies to adopt and promulgate a use of force policy and would state the intent of the Legislature that each law enforcement agency adopt, promulgate, and require regular and periodic training consistent with the agency's policy that complies with the guidelines developed under this bill.

This bill would make findings and declarations regarding the intent of the bill, as it pertains to law enforcement agencies' use of force policies, including that those policies may be introduced in legal proceedings and may be considered as a factor in determining the reasonableness of an officer's actions, but do not impose a legal duty on an officer to act in accordance with the policy.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) This bill would also make its provisions operative contingent on the enactment of Assembly Bill 392 of the 2019–20 Regular Session.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares:

(a) The highest priority of California law enforcement is safeguarding the life, dignity, and liberty of all persons, without prejudice to anyone.

(b) Law enforcement officers shall be guided by the principle of reverence for human life in all investigative, enforcement, and other contacts between officers and members of the public. When officers are called upon to detain or arrest a suspect who is uncooperative or actively resisting, may attempt to flee, poses a danger to others, or poses a danger to themselves, they should consider tactics and techniques that may persuade the suspect to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation safely.

(c) Vesting officers with the authority to use necessary force as determined by an objectively reasonable officer and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

(d) The authority to use force is a serious responsibility given to peace officers by the people who expect them to exercise that authority judiciously and with respect for human rights, dignity, and life.

(e) The intent of this act is to establish the minimum standard for policies and reporting procedures regarding California law enforcement agencies' use of force. The purpose of these use of force policies is to provide law enforcement agencies with guidance regarding the use and application of force to ensure such applications are used only to effect arrests or lawful detentions, overcome resistance, or bring a situation under legitimate control.

(f) No policy can anticipate every conceivable situation or exceptional circumstance which officers may face. In all circumstances, officers are expected to exercise sound judgment and critical decisionmaking when using force options.

(g) A law enforcement agency's use of force policies and training may be introduced as evidence in proceedings involving an officer's use of force. The policies and training may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.

(h) Every instance in which a firearm is discharged, including exceptional circumstances, shall be reviewed by the department on a case-by-case basis to evaluate all facts and to determine if the incident is within policy and in accordance with training.

SEC. 2. Chapter 17.4 (commencing with Section 7286) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 17.4. Law Enforcement Use of Force Policies

7286. (a) For the purposes of this section:

(1) "Deadly force" means any use of force that creates a substantial risk of causing death or serious bodily injury. Deadly force includes, but is not limited to, the discharge of a firearm.

(2) "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.

(3) "Law enforcement agency" means any police department, sheriff's department, district attorney, county probation department, transit agency police department, school district police department, the police department of any campus of the University of California, the California State University, or community college, the Department of the California Highway Patrol, the Department of Fish and Wildlife, and the Department of Justice.

(b) Each law enforcement agency shall, by no later than January 1, 2021, maintain a policy that provides a minimum standard on the use of force. Each agency's policy shall include all of the following:

(1) A requirement that officers utilize deescalation techniques, crisis intervention tactics, and other alternatives to force when feasible.

(2) A requirement that an officer 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.

(3) A requirement that officers report potential excessive force to a superior officer when present and observing another officer using force that the 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.

(4) Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.

(5) A requirement that officers consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.

(6) Procedures for disclosing public records in accordance with Section 832.7.

(7) Procedures for the filing, investigation, and reporting of citizen complaints regarding use of force incidents.

(8) A requirement that an officer 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.

(9) Comprehensive and specific guidelines regarding approved methods and devices available for the application of force.

(10) An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is fair and unbiased.

(11) Comprehensive and specific guidelines for the application of deadly force.

(12) Comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident, including reporting use of force incidents to the Department of Justice in compliance with Section 12525.2.

(13) The role of supervisors in the review of use of force applications.

(14) A requirement that officers promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so.

(15) Training standards and requirements relating to demonstrated knowledge and understanding of the law enforcement agency's use of force policy by officers, investigators, and supervisors.

(16) Training and guidelines regarding vulnerable populations, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.

(17) Comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted.

(18) Factors for evaluating and reviewing all use of force incidents.

(19) Minimum training and course titles required to meet the objectives in the use of force policy.

(20) A requirement for the regular review and updating of the policy to reflect developing practices and procedures.

(c) Each law enforcement agency shall make their use of force policy adopted pursuant to this section accessible to the public.

(d) This section does not supersede the collective bargaining procedures established pursuant to the Myers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4), the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4), or the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4).

SEC. 3. Section 13519.10 is added to the Penal Code, immediately following Section 13519.9, to read:

13519.10. (a) (1) The commission shall implement a course or courses of instruction for the regular and periodic training of law enforcement officers in the use of force and shall also develop uniform, minimum guidelines for adoption and promulgation by California law enforcement agencies for use of force. The guidelines and course of instruction shall stress that the use of force by law enforcement personnel is of important concern to the community and law enforcement and that law enforcement should safeguard life, dignity, and liberty of all persons, without prejudice to anyone. These guidelines shall be a resource for each agency executive to use in the creation of the use of force policy that the agency is required to adopt and promulgate pursuant to Section 7286 of the Government Code, and that reflects the needs of the agency, the jurisdiction it serves, and the law.

(2) As used in this section, "law enforcement officer" includes any peace officer of a local police or sheriff's department or the California Highway Patrol, or of any other law enforcement agency authorized by law to use force to effectuate an arrest.

(b) The course or courses of the regular basic course for law enforcement officers and the guidelines shall include all of the following:

(1) Legal standards for use of force.

(2) Duty to intercede.

(3) The use of objectively reasonable force.

(4) Supervisory responsibilities.

(5) Use of force review and analysis.

(6) Guidelines for the use of deadly force.

(7) State required reporting.

(8) Deescalation and interpersonal communication training, including tactical methods that use time, distance, cover, and concealment, to avoid escalating situations that lead to violence.

(9) Implicit and explicit bias and cultural competency.

(10) Skills including deescalation techniques to effectively, safely, and respectfully interact with people with disabilities or behavioral health issues.

(11) Use of force scenario training including simulations of low-frequency, high-risk situations and calls for service, shoot-or-don't-shoot situations, and real-time force option decisionmaking.

(12) Alternatives to the use of deadly force and physical force, so that deescalation tactics and less lethal alternatives are, where reasonably feasible, part of the decisionmaking process leading up to the consideration of deadly force.

(13) Mental health and policing, including bias and stigma.

(14) Using public service, including the rendering of first aid, to provide a positive point of contact between law enforcement officers and community members to increase trust and reduce conflicts.

(c) Law enforcement agencies are encouraged to include, as part of their advanced officer training program, periodic updates and training on use of force. The commission shall assist where possible.

(d) (1) The course or courses of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field on use of force. The groups and individuals shall include,

but not be limited to, law enforcement agencies, police academy instructors, subject matter experts, and members of the public.

(2) The commission, in consultation with these groups and individuals, shall review existing training programs to determine the ways in which use of force training may be included as part of ongoing programs.

(e) It is the intent of the Legislature that each law enforcement agency adopt, promulgate, and require regular and periodic training consistent with an agency's specific use of force policy that, at a minimum, complies with the guidelines developed under subdivisions (a) and (b).

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 5. This act shall take effect only if Assembly Bill 392 of the 2019–20 Regular Session is enacted and becomes operative.



CITY OF CHICO MEMORANDUM

TO: MARK ORME-CITY MANAGER
CHICO CITY COUNCIL

DATE: JUNE 10, 2020

FROM: MATTHEW MADDEN- INTERIM CHIEF OF POLICE

SUBJECT: USE OF FORCE

The City of Chico holds its police department to high standards of service delivery to the community. The Chico Police Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Communities across the nation are enraged by the killing of George Floyd at the hands of Minneapolis Police. This presents an opportunity for all law enforcement agencies to review policies and training in use of force. We are deeply saddened and disturbed by the tactics used in the killing of George Floyd. We do not train our officers to use these offensive tactics. In response to questions about our use of force policies and specifically those generated by the www.8cantwait.org which is sponsored by Campaign Zero, we are providing this information to assist the community in its understanding of the Chico Police Department's policies.

The Chico Police Department relies on the Lexipol policy platform to host our policy manual. Lexipol is the leading platform for comprehensive public safety and local government agency policy development, to ensure our staff have the most up-to-date resources to carry out their duties and ensure public safety. Lexipol's group of expert attorneys develop evidence-based, legally defensible policies. The Chico Police Department reviews and updates the policy manual every six months.

1. Require officers to de-escalate situations – (Policy 308.5 KINETIC ENERGY PROJECTILE GUIDELINES) This department is committed to reducing the potential for violent confrontations. Kinetic energy projectiles, when used properly, are less likely to result in death or serious physical injury and can be used in an attempt to de-escalate a potentially deadly situation.

2. Require officers to intervene – (Policy 300.2.1 DUTY TO INTERCEDE) Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

3. Require officers to give a verbal warning – (Policy 308.1.1 CONTROL DEVICES AND TECHNIQUES) Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices. Policy 309.4 VERBAL AND VISUAL WARNINGS A verbal warning of the intended use of the Electronic Control Device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to: Provide the individual with a reasonable opportunity to voluntarily comply. Provide other officers and individuals with a warning that the ECD may be deployed.

4. Restrict or prohibit chokeholds and strangleholds – Chokehold and strangleholds are **strictly prohibited** by the Chico Police Department. (Policy 300.3.4 CAROTID CONTROL HOLD) This control hold is neither a chokehold nor a stranglehold. It is used to restrain a violent or combative individual. We are currently conducting a comprehensive evaluation of this control hold to see if it is still or should be a viable option.

5. Prohibit officers from shooting at moving vehicles – (Policy 300.4.1 SHOOTING AT OR FROM MOVING VEHICLES) Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others. Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

6. Require officers to exhaust all of the options (before resorting to deadly force) – (Policy 300.4 DEADLY FORCE APPLICATIONS) If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force. The use of deadly force is only justified in the following circumstances (Penal Code § 835a). Refer to attached policy for further restrictions on the use of deadly force.

7. Use a continuum of force –(300.2 POLICY) The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties. Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties. The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests. (300.3.2 FACTORS USED TO

DETERMINE THE REASONABLENESS OF FORCE) When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit.

8. Required comprehensive reporting – (Policy 300.5 REPORTING THE USE OF FORCE) Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or law.

In addition, community members have voiced concern as to whether or not the Chico Police Department's Use of Force Policy is in line with AB 392. In October 2019, Lexipol updated our use of force policy due to legislative actions created by this bill. Effective January 1, 2020, our policy was updated and accepted by Chico Police Department which redefined the circumstances under which a homicide by a peace officer is deemed justifiable to include when the officer reasonably believes, based on the totality of the circumstances, that deadly force is necessary 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 a felony that threatened or resulted in death or serious bodily injury, or if the officer reasonable believes that the person will cause death or serious bodily injury to another unless the person is immediately apprehended.

There was also concern about the level of training in de-escalation that the Chico Police Department receives. Our training unit is currently putting together a comprehensive list of advanced training we have received, such as de-escalation, crisis intervention, principle policing, implicit bias and racial profiling. We do know that our police officers and dispatchers have over 10,000 hours of combined training in these areas.

Currently, the Chico Police Department has a cadre of three Crisis Intervention Training Officers that have been to train the trainer. They are currently active in our training program and had just conducted an 8 hour training for personnel prior to the Covid-19 pandemic. One of our instructors was invited to be a member on the Commission on POST advisory panel to establish curriculum on law enforcement response to mental illness and people in crisis. The course developed legislative mandate (SB 11) and is currently codified in Penal Code Section 13515.27(a).

The Chico Police Department currently has a staff member who is POST Master Trainer on Principle Policing, which focuses on Procedural Justice and Implicit Bias. We also have a use of force instructor who is certified to train racial profiling.

The final topic I would like to address is civilian oversight of the police department. The Chief of Police reports directly to the non-political, nonpartisan City Manager. Matters of employee discipline, including complaints, and the Chico Police Department's

disciplinary review are coordinated through the City's Human Resources Department and the City Attorney's Office; both entities are completely independent of the Chico Police Department.

The Chico Police Department is committed to working with our community so that our values and principles are aligned. We will be transparent and engaging as we move the Chico Police Department forward in a positive direction.

Respectfully,

A handwritten signature in blue ink that reads "Matthew M. Madden". The signature is fluid and cursive, with the first name "Matthew" being larger and more prominent than the last name "Madden".

Matthew Madden
Interim Chief of Police