

Use of Force Policy WISHLIST

*Guiding document provided by ACLU NorCal to community partners (Communities United for Restorative Youth Justice; East Oakland Collective; Ella Baker Center; MISSSEY; Anti-Police Terror Project; Just Cities; American Friends Service Committee; Coalition for Police Accountability) in July 2020

Policy Subject	Proposed language	Rationale	Support?
Values statement	Explicit policy values of: human life and protecting people over property. Diversion from the criminal justice system leads to the healthiest outcomes for individual and community. Emphasis on public service in all training, recruitment, public interactions over militarization, control, surveillance.	De-emphasize militarization, control, and surveillance in all elements of policing from recruitment to training AB 846 (Burke) proposed changes to POST training. This bill would also require every department or agency that employs peace officers to review the job descriptions used in the recruitment and hiring of those peace officers and to make changes that deemphasize the paramilitary aspects of the job and place more emphasis on community interaction and collaborative problem solving	
Use of Force	Delineate use of police as a method of force as well Defer certain calls for community responders and social services		
De-escalation	De-escalation: means use of crisis interventions and exhausting all other feasible options before use of force; include distance, cover, and/or time options	Required by SB 230	

	Beyond de-escalation? Retreat and do not get involved. Defer to community responders or social workers. Suggested have step matrix to direct what types of calls should be directed where.	AB 1709 (Weber) is expansion of AB 392	
Proportionality	UOF must be proportional to actual threat meaning only the level of force necessary and no less lethal/injurious force could achieve the same result. Immediate discontinuation/decrease in force as threat decreases/control gained.	Required by SB 230 AB 1709 (Weber) is expansion of AB 392	
Duty to Report fellow officers	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. 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. Include citizen oversight in reporting structure. Retaliation protections	Required by SB 230 AB 1022 (Holden) proposes requiring officers to immediately report potential excessive force, and to intercede when present and observing an officer using excessive force. AB 1291 (Salas) proposes reporting requirements from agencies to POST about disciplined and separated officers	
Drawing Firearm	Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.	AB 392 AB 1709 (Weber) is expansion of AB 392	

Pointing a Firearm	Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.	AB 392 AB 1709 (Weber) is expansion of AB 392	
Bystanders & Surroundings	Officers required to consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before drawing a firearm, pointing, and/or discharging a firearm.	AB 1709 (Weber) is expansion of AB 392	
Duty to Intercede	An officer must intercede to stop or prevent the unnecessary use of force by another officer and immediately report that use or attempted use of excessive force.	AB 1022 (Holden) proposes requiring officers to immediately report potential excessive force, and to intercede when present and observing an officer using excessive force.	
Weapons to apply force	Comprehensive listing of methods and devices dis/allowed for the application of force and specific guidelines regarding approved methods and situations for use	AB 392 AB 1709 (Weber) is expansion of AB 392 Military Equipment policy proposed to Police Commission	
Zero tolerance for racist, bias behavior	Officers are required to carry out duties, including use of force, in a manner that is fair and unbiased. Termination for sustained finding of unauthorized lethal use of force; sexual assault against fellow officer and/or civilian; dishonesty; and Bane Act or other civil rights statutory violations. Reporting of bases for termination/discipline to POST and other law enforcement agencies	Oakland City Council resolution adopted 6/16/2020 establishing “zero-tolerance policy for City employees with respect to racist practices, behaviors, actions, and/or association and affiliation with white supremacist groups, organizations or cells” and specifically directing City Administrator to not hire and to terminate those found in violation.	

		<p>AB 846 (Burke) proposed changes to POST training to include bias and set officer disqualifications and decertification standards for 3 instances of misconduct or more)</p> <p>SB 731 (Bradford) proposed decertification standards incorporating the Bane Act</p> <p>SB 1421 and SB 776 (Skinner) expansion bill</p>	
Review of Use of Force	<p>Clear process and include role of citizen oversight.</p> <p>Independent investigation?</p> <p>List of factors to consider upon review/evaluation of a UOF incident</p> <p>Public reporting on the number of incidents, time of investigation, outcome of investigations, types of force involved, and settlements paid by City related to UOF</p>	<p>Review process required by SB 230</p> <p>AB 1314 (McCarty) proposes annual public posting requirements of legal settlements paid for UOF</p> <p>AB 1506 (McCarty) proposes mandate that all lethal uses of force resulting in death be independently investigated by Cal DOJ and establishes new investigatory unit</p> <p>SB 776 (Skinner) proposes expansion to SB 1421 allowing disclosure of records relating to any use of force, discharge of firearm by officer, sustained findings of sexual assault or dishonesty under the CPRA</p>	
Duty to provide medical attention	<p>Officers required to promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident. Include persons where injury is known or visible, where</p>	<p>Required SB 230;</p> <p>AB 2054 (Kamlager) CRISES Act</p>	

	lethal use of force deployed, and where person complains of injury/requests medical attention. If call concerns mental health, substance abuse, domestic violence, homelessness, or property damage, need for medical attention must be assessed at dispatch to divert to first responders or community safety network.	AB 1709 (Weber) is expansion of AB 392	
Training on UOF	<p>Clear standards and requirements that include demonstrated knowledge and understanding of agency's use of force policy by officers, investigators, and supervisors. Must include guidelines regarding vulnerable populations, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.</p> <p>Mandate any temp or contract workers with police dept to receive training.</p> <p>Cannot request mutual aid from agencies with conflicting training.</p>	<p>Required by SB 230</p> <p>AB 392</p> <p>AB 846 (Burke) proposed changes to POST training to include bias and set officer disqualifications and decertification standards for 3 instances of misconduct or more)</p>	
Shooting at moving vehicles prohibited	Shooting at moving vehicles is prohibited in all instances	SB 230	
Time and opportunity to respond	Allow adequate time and opportunity to respond to commands especially in incidents of expected, apparent, and/or known disabilities (including mental and pregnancy) and/or incapacity.		
911 diversion	Presumptive no need for police presence/lethal force when responding to any calls for community and intimate partner violence, mental health issues, homelessness, substance use, and climate and natural disasters which should be first addressed by community responders	<p>Connects to CRISIS Act</p> <p>SB 773 (Skinner): revise composition of state 911 Advisory Board</p>	

	Affirmative diversion to mental health and/or community services		
Use of Force for Fleeing individuals	uses of force to punish individuals for fleeing or resisting arrest are prohibited in all instances	Required by SB 230 AB 392	
Use of Force on people who are danger to self	Uses of all types of force against individuals who pose a threat to only themselves are prohibited in all instances. De-escalation more required if indications of "I want the police to kill me"	Required by SB 230 AB 392	
Uses of Force that cause Airway Obstruction	Chokeholds, Carotid restraints, and any other restraint of the airway is prohibited in all instances because the risk of death is too great	City Council Resolution passed on 6/30/2020 directing Commission to draft a complete ban. AB 1196 (Gibson) proposed – chokeholds and carotid restraints	
Use of chemical agents	Chemical agents including teargas and CS gas are prohibited in all instances, including for crowd control	City Council 6/16/2020 passed resolution directing Commission to draft a ban on use during pandemic City of Berkeley enacted full ban 6/10/2020 and in mutual aid situations June 2020: Federal Judge in Seattle grants an injunction on tear gas use until Sept. 30, 2020 June 19, 2020: Federal Judge Spero granted prelim and temp injunctions against City of Oakland using tear gas, flash bangs and rubber bullets on protesters	

		<p>The 1925 Geneva Protocol categorized tear gas as a chemical warfare agent and banned its use in war shortly after World War I</p> <p>In 1993, nations could begin signing the U.N.'s Chemical Weapons Convention (CWC) that outlawed the use of riot control agents in warfare</p> <p>AB 66 (Gonzalez, Kalra) proposed to prohibit teargas and rubber bullets</p>	
Rubber Bullets prohibited	Rubber Bullets are prohibited in all instances because the threat to life is too great	<p>June 19, 2020: Federal Judge Spero granted prelim and temp injunctions against City of Oakland using tear gas, flash bangs and rubber bullets on protesters</p> <p>AB 66 (Gonzalez, Kalra) proposed to prohibit teargas and rubber bullets</p>	
Warning Shots	Warning shots are prohibited in all instances		
Use of Force on restrained persons	Uses of Force on restrained persons are presumed unnecessary and unlawful		
Tasers or conducted electrical weapons	Uses of force with tasers or other conducted electrical weapons is prohibited in all instances		
Canines	Uses of force with canines are prohibited in all instances		
Uses of Force on demonstrators	Prohibit using force on individuals engaged in, or members of the press covering, a lawful assembly or protest. Expressly includes positioning tactics like kettling crowds.	<p>1st amendment</p> <p>June 19, 2020: Federal Judge Spero granted prelim and temp injunctions against City of Oakland using tear gas,</p>	

	<p>Use of force to preserve/protect solely property is presumed unnecessary and unlawful</p>	<p>flash bangs and rubber bullets on protesters</p> <p>AB 1652 (Wicks) proposes to ban using force on individuals engaged in, or members of the press covering, a lawful assembly or protest. Intentional violations mandate officer suspension.</p> <p>SB 629 (McGuire) proposes to ensure media access to protests and demonstrations. Violation would be a misdemeanor.</p>	