



AUBURN POLICE DEPARTMENT

RYAN L. KINNAN, CHIEF OF POLICE
1215 LINCOLN WAY, AUBURN, CA 95603
Office (530) 823-4237 / FAX (530) 823-4224



DATE: June 11, 2020
TO: The Auburn Community
FROM: Ryan L. Kinnan, Chief of Police
SUBJECT: Auburn Police Department Use of Force Policies

The men and women of the Auburn Police Department take great pride in our profession and service to the community. We do not take lightly the sanctity of life and ensuring the fair treatment of everyone we come into contact with. We understand we are in a noble profession, which our community holds us to higher standards and has greater expectations than many other professions; “With great power comes great responsibility”.

The use of force by law enforcement has once again become a major topic of discussion in our country, region, and community as a result of a gross misuse and application of force by a Minneapolis police officer. As the Chief of Police, a father, and as a person, I was appalled by what we all witnessed by the Minneapolis police officer and his gross abuse of power. In addition, this incident has sparked protests and rioting throughout our country for what many see as social injustices within our minority communities, specifically the African-American community.

As of June 10, 2020, our officers have responded to 11,334 calls for service and made 182 arrests. Out of all these calls for service, officers were required to use force to make the arrest on four occasions. These results in use of force being applied than less once percent (0.035%) of the time when responding to calls and two percent (2.20%) of the time when making an arrest.

I am aware of a recent campaign regarding police policies, specifically the call to reform police use of force. The campaign makes claims that adopting the reforms and/or changes to eight uses of force areas in law enforcement would significantly reduce the number of people killed by law enforcement. It should be noted this current campaign, as with many others are community activist groups that are not subject matter experts of policing, police policies or procedures, or police use of force.

The purpose of this memorandum is to bring attention to the current policies and procedures and state law guiding the principles and conduct of the Auburn Police Department as it relates to use of force incidents. You will find our policies and procedures fall in line with best practices already identified in today’s law enforcement profession.



PROTECTION — SERVICE — CONCERN — TRANSPARENCY



The Auburn Police Department is committed to serving and supporting our community through education, crime prevention, transparency, and mentoring. We realize that our success is directly related to a collaborated effort with our entire community.

The recent campaign has brought forward further discussion on the following use of force concerns. You will find each area of interest in bold followed by the explanation of each topic as provided by the campaign:

1. Ban chokeholds and strangleholds
2. Require de-escalation
3. Require a warning before shooting
4. Duty to intervene
5. Ban shooting at moving vehicles
6. Require a use of force continuum
7. Exhaust all other means before shooting
8. Require comprehensive reporting

Ban chokeholds and strangleholds. As explained by the campaign, “Allowing officers to choke or strangle civilians, in many cases where less lethal force could be used instead, results in the unnecessary death or serious injury of civilians.”

The Auburn Police Department does not authorize chokeholds or strangleholds. However, the department subscribes to the appropriate use of the neck compression hold, referred to as the carotid control hold. The use of the carotid control hold is rare and only used in extreme situations that may not have risen to the level of deadly force; but has risen above lesser force options such as batons or tasers, which in these instances would be inadequate to take control of an aggressive, extremely violent suspect. Auburn police officers’ receive annual training on the use of this tactic. That being said, the carotid control hold has not been used by the Auburn Police Department in the past five years.

The use of the carotid control hold should not be used when there are other reasonable uses of force options available. As noted in our policy on this topic, the use of the control hold must meet several criteria, specifically someone who is violent or physically resisting or the subject has demonstrated the intention to be violent with the appearance to have the potential to harm him/herself or others.

The following is the excerpt from the Department’s policy and procedure manual related to the carotid control hold:

300.3.4 CAROTID CONTROL HOLD

The proper application of the carotid control hold may be effective in restraining a violent or combative individual. However, due to the potential for injury, the use of the carotid control hold is subject to the following:

- (a) *The officer shall have successfully completed certified training or Department approved training in the use and application of the carotid control hold.*



(b) The carotid control hold may only be used when circumstances perceived by the officer at the time indicate that such application reasonably appears necessary to control a person in any of the following circumstances:

- 1. The subject is violent or physically resisting.*
- 2. The subject, by words or actions, has demonstrated an intention to be violent and reasonably appears to have the potential to harm officers, him/herself or others.*

(c) The application of a carotid control hold on the following individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective, or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of applying a carotid control hold:

- 1. Females who are known to be pregnant*
- 2. Elderly individuals*
- 3. Obvious juveniles*
- 4. Individuals who appear to have Down syndrome or who appear to have obvious neck deformities or malformations, or visible neck injuries.*

(d) Any individual who has had the carotid control hold applied, regardless of whether he/ she was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel and should be monitored until examined by paramedics or other appropriate medical personnel.

(e) The officer shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid control hold and whether the subject lost consciousness as a result.

(f) Any officer attempting or applying the carotid control hold shall promptly notify a supervisor of the use or attempted use of such hold.

(g) The use or attempted use of the carotid control hold shall be thoroughly documented by the officer in any related reports.

The appropriate use of this technique, gives officers another option before having to use deadly force. The banning of the carotid control hold deems it as deadly force making it equal to the use of a firearm, which does not make sense.

Regardless, this tool is not required to continue to provide a high level of service to our community. Officers receive on-going training and we will continue to obtain the equipment necessary to protect them and those we serve. A ban on the use of the carotid control hold has been issued to Auburn Police Department personnel and pending further guidelines from the California Police Officers Standards and Training (POST) and State legislation.



Require de-escalation. As explained by the campaign, “Require officers to de-escalate situations, where possible, by communicating with subjects, maintaining distance, and otherwise eliminating the need to use force.”

The use and implementation of de-escalation is ingrained in law enforcement and the Auburn Police Department beginning with the academy, our field training program, and on-going department training which officers receive annually. There are many facets of de-escalation and it is applicable to many parts of our role as police officers. We have multiple policies that provide guidance on de-escalation in certain situations, to include, but not limited to, mental illness, crisis intervention incidents, and civil disputes. For example our crisis intervention incident policy explains once an incident is deemed to be related to a mental health crisis, officers should look for ways to de-escalate the situation such as being patient, polite, and avoid overreacting, and to move slowly and in a non-threatening manner.

We conduct bi-annual communication training which includes de-escalation techniques; all of our field training officers receive a minimum of eight hours of supplemental Crisis Intervention Training. As we move forward with our planned training program all officers will receive at least eight hours of Crisis Intervention Training. We also conducted an in-house training with Alta Regional regarding de-escalation with developmentally delayed and/or autistic subjects in 2019.

Require a warning before shooting. As explained by the campaign, “Require officers to give a verbal warning, when possible, before shooting at a civilian.”

Uses of force incidents are typically dynamic and quickly evolving. Officers are expected to, when feasible; make reasonable efforts to identify themselves. Officers are typically uniformed and easily identifiable in their uniformed appearance, badge, and equipment. In addition, our patrol vehicles are clearly marked and clearly identifiable as law enforcement.

As you will see noted in the Department’s policy, officers shall make reasonable efforts to identify themselves and provide warnings of deadly force. As an example, if an officer is faced with an imminent threat to his/her life (i.e., being fired upon), they are not required, nor should they be, to warn the individual of the officer’s intent to apply deadly force in return to protect themselves or others.

Below is an excerpt from the Department’s policy and procedure manual as it relates to the warning before using deadly force:

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):



PROTECTION — SERVICE — CONCERN — TRANSPARENCY



The Auburn Police Department is committed to serving and supporting our community through education, crime prevention, transparency, and mentoring. We realize that our success is directly related to a collaborated effort with our entire community.

(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).

In addition, state legislation under AB 392 states the following:

“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.”

Duty to intervene. As explained by the campaign, “Require officers to intervene and stop excessive force used by other officers and report these incidents immediately to a supervisor.

The community expects officers to protect them from not only the criminal element but also from anyone who intend to do them harm. This unfortunately this includes those officers that negligently or grossly misuse their powers. This being said, we have recently witnessed three officers failing to intercede to save a man’s life.

The Auburn Police Department officers and staff are expected to immediately intervene and stop the unreasonable force and to report the excessive force to a supervisor. This expectation and policy are already a daily part of our operations.



The following is the excerpt from the Department's policy and procedure manual as it relates to the duty to intervene:

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.

Furthermore, Senate Bill 230 adopted by the state legislature last year states:

“SB 230 sets forth 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.”

Ban shooting at moving vehicle. Restrict officers from shooting at moving vehicles, which is regarded as a particularly dangerous and ineffective tactic.

Although movies and television will frequently depict officers shooting at and/or from moving vehicles, law enforcement has long recognized the shooting at and/or from moving vehicles is rarely effective and poses unnecessary dangers to the public.

As stated in our department policy, I am in agreement with their suggestion of restricting and limiting how an officer should respond to a threat from within a vehicle. The Auburn Police Department already has a policy in place providing the officers with guidance on their appropriate response to a moving vehicle being used as deadly force against them as well as attempting to get out of the way of the moving vehicle.



The following is the excerpt from the Department's policy and procedure manual as it relates to shooting at or from a moving vehicle:

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.

In addition, Senate Bill 230 requires:

“Comprehensive and specific guidelines for the application of deadly force,” which should include guidance on the limited situations that would warrant shooting at moving vehicles.”

Require a use of force continuum. Develop a force continuum that limits the types of force and/or weapons that can be used to respond to specific types of resistance.

Law enforcement has experienced a number of changes over the past several decades and the use and/or implementation of a use of force continuum has been one of those changes. The use of force continuum was a part of law enforcement in the 80's and 90's. The concept of the continuum was providing some guidelines to what level of force should be applied to a situation given the suspect's actions. This was an over simplification of the use of force and did not take into account a number of factors.

The force continuum identified a series of steps or levels of force beginning with officer presence/command presence. The rationale was the mere presence of an officer or number of officers may have the controlling effect upon a situation. As the officer moves along the continuum, the officer's response becomes more physical rising through the use of control holds, control devices, and ultimately rising to the level of deadly force. The officer would be able to move up and down the continuum in an effort to escalate and/or de-escalate the situation.

The force continuum categorized a subject's behavior as passive compliance, passive resistance, active resistance, and active aggressor. Depending on the suspect's behavior their actions would fall within one of these four categories. The concept was each one of these levels corresponded to a response along the force continuum. The behavior of the suspect during a confrontation could vary throughout the situation and the officer could apply the reasonable amount of force to bring the situation under control.



In my opinion the negative of the continuum is the expectation that the officer must rise through each level of tools before using the next available option or the officer is somehow expected to meet resistance with the same level of force. If an officer is faced with someone wanting to physically fight them it should not be expected for the officer to have to use hand weapons to defend themselves and take the individual into custody. If an officer is faced with an armed individual they should not be expected to work their way through a series of steps, but be able to respond appropriately to the situation at hand.

The Auburn Police Department subscribes to what is now referred to as a “Use of Force Paradigm”. This model allows officers to utilize multiple force tactics at a time, based on the situation. There are five components of the paradigm; presence, communication, control techniques, control devices, and deadly force. While these components are progressive uses of force, it allows the officer to apply the appropriate component and amount of force necessary to control/stop the situation without requiring officers to move through a continuum of tools they know will not work.

Below is an excerpt from the Auburn Police Department Policy and Procedure Manual as it relates to the factors used to determine the reasonableness of force:

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).*
- (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.*

There are many variables that must be included in the discussion when an officer uses force. The Auburn Police Department provides our officers with a model that gives them guidance on the level of force they should apply. We ensure our officers are trained on a regular basis. The California Police Officer Standards and Training (POST) requires defensive tactics to be trained at minimum once every two years. We conduct our defensive tactics and arrest control tactics at least annually. This being said, we also make efforts to train on these tactics in different ways, such as on the range, during active shooter training, and regular briefing trainings.

Our use of force incidents are reviewed regularly and go through a series of reviews, including an annual review of use of force incidents. Immediately after a use of force incident, the officer's supervisor will review the incident to ensure compliance with our Use of Force Policy and to address any training issues.

Requires exhaust all alternatives before shooting. Require officers to exhaust all other reasonable means before resorting to deadly force.

Through my explanation of the force continuum and the use of force paradigm, I hope I have explained how dynamic uses of force incidents are and the myriad of factors that are involved. Law enforcement is trained in the basic academies, field training programs, and through on-going training to apply only that force which is objectively reasonable. Officers should attempt to use all reasonable methods of force, including their communication skills, to bring a situation under control prior to ever using deadly force.

Our use of force policy provides officers with the proper guidance on the appropriate use of force and factors to be applied to determine reasonableness.

The below excerpt from the California Police Chiefs Association related to the requirement to exhaust all alternatives before shooting:

“...this requirement was rejected in AB 392 debate because of the untenable position it puts officers and departments in, by permitting second-guessing of split-second decisions. Instead, the focus should be on training alternatives to deadly force, requirements on proportional force, and de-escalation requirements, all of which are contained in SB 230. If this requirement is implemented, an officer's decision concerning the use of force



alternative should be judged based upon the totality of the circumstances and reasonable officer standard in AB 392.”

Require comprehensive reporting. Require officers to report each time they use force or threaten to use force against civilians.

The Auburn Police Department currently has a policy that provides officers guidance on reporting each time they are involved in a use of force incident.

See the excerpt from Auburn Police Department’s Policy and Procedure Manual on Reporting the Use of Force:

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, our policy provides supervisors with guidance on how to respond to a use of force incident to obtain the basic facts of the case, ensure the injured parties are examined and treated, ensure all evidence is appropriately collected and retained, and to approve all related reports.

As has been described throughout this memorandum, the Auburn Police Department subscribes and implements law enforcement’s identified best practices. We continue relevant training of our personnel, provide them with proper and applicable equipment to better do their jobs, and ensure accountability through internal reviews and investigations.

The Auburn Police Department takes great pride in our responsibility to serve and protect all members of our community. It is recognized 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 our intention and objective to avoid or minimize injury in every encounter.

The Auburn Police Department recognizes accountability and communication to those we serve is imperative. As the Chief of Police I do not take these expectations and responsibilities lightly. As an organization we continue to improve our relationships with our community subscribing to the Community Oriented Policing and Problem Oriented Policing strategies. Building trust and our reputation with all aspects of our community is one of our highest priorities.



PROTECTION — SERVICE — CONCERN — TRANSPARENCY



The Auburn Police Department is committed to serving and supporting our community through education, crime prevention, transparency, and mentoring. We realize that our success is directly related to a collaborated effort with our entire community.

Auburn Police Department Use of Force Policies

June 11, 2020

Page 11 of 11

Regards,



Ryan L. Kinnan
Chief of Police



PROTECTION — SERVICE — CONCERN — TRANSPARENCY



The Auburn Police Department is committed to serving and supporting our community through education, crime prevention, transparency, and mentoring. We realize that our success is directly related to a collaborated effort with our entire community.