

SANTA CRUZ POLICE DEPARTMENT



PROFESSIONAL STANDARDS

INVESTIGATION # 2022-012

SERGEANT ERICH HOPPE

COMPLAINANT:

INTERNAL MEMORANDUM FROM DEPUTY CHIEF BUSH

SCPD CASE NUMBER: 21S-07869

SUBJECT EMPLOYEE(S):

NAME: VANESSA SHATTO

INVOLVED CITIZEN:

NAME: [REDACTED]

DATE OF BIRTH: [REDACTED]

DATE FILED:

AUGUST 6, 2022

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**CONFIDENTIAL M E M O R A N D U M
POLICE DEPARTMENT**

TO: Vanessa Shatto, Police Officer - Operations
FROM: Jose Garcia, Deputy Police Chief - Operations
DATE: December 1, 2022
SUBJECT: Notice of Intent to Discipline (50 Hour Suspension + 24 Hours Training)

I. INTRODUCTION

Pursuant to *Skelly v. State Personnel Board (1975) 15 Cal.3d 194*, I am proposing you be suspended from your position as Police Officer with the City of Santa Cruz for 50 hours and undergo 24 hours of additional training. This Notice of Intent to Discipline is specifically based on the following violation of City policy but need not be based upon a finding that you have violated each and every one of the provisions, or committed each and every action set forth herein. Rather, your violation of any one of the following policies, individually or collectively, would result in my rendering of this disciplinary action in the manner set forth below.

II. VIOLATED CITY AND DEPARTMENTAL RULES, REGULATIONS, AND POLICES.

In accordance with Rule 8.3 of the City of Santa Cruz Personnel Rules, this disciplinary action is being proposed for the following causes.

8.3: Causes for Disciplinary Action

Disciplinary action may be taken against any employee for reasons which may include, but not be limited to:

- d. Misconduct or negligence which causes damage to the City or public property.
- e. Inexcusable neglect of duty.
- n. Offensive treatment of the public or other employee.
- s. Violation of any provision of the Personnel Rules and Regulations, Municipal Code, department rules and regulations, and administrative directives.

As outlined in the Internal Affairs Investigation IA #2022-012 (IA #2022-012), and discussed below, you neglected your duty and engaged in misconduct including offensive treatment of the public which violated the following rules, regulations, and policies of the City and Department.

Santa Cruz Police Department Policy Manual

1. Policy 320.3.2 – GENERAL CONDUCT SUBJECT TO DISCIPLINARY ACTION

Any member of employee of the Santa Cruz Police Department whose personal actions reflect, or may reflect if known, against the reputation of the law enforcement profession, the Police Department or the City of Santa Cruz, or who commits an offense punishable under the laws or statutes of the United States, the State, or local ordinances, or violates any provision of the Rules and Regulations of the City of Santa Cruz or of the Department including, but not limited to, General Orders, Training Bulletins/Procedures, memorandums and/or disobeys any lawful order or is incompetent to perform assigned duties is subject to disciplinary action.

2. Policy 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).

3. 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. See the Report Preparation Policy for additional circumstances that may require documentation.

4. Policy 300.5.1 NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made 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.
- (f) Any application of a restraint device other than handcuffs, shackles, or belly chains.
- (h) An individual was struck or kicked.
- (i) An individual alleges unreasonable force was used or that any of the above has occurred.

III. FACTS UPON WHICH THE PROPOSED DISCIPLINE IS BASED

As discussed below, and detailed within IA #2022-012, your actions violated the aforementioned rules and policies. The entire IA Report and supporting exhibits are incorporated herein and attached as an Exhibit.

a. You Engaged In Offensive and Vulgar Treatment of [REDACTED] Which Reflected Poorly on the Department and the City.

On December 12, 2021, you were dispatched to a temporary homeless shelter at the National Guard Armory. On site, you encountered [REDACTED]. Due to [REDACTED]'s suicidal behavior, he was detained and transferred to the hospital. Your interaction with [REDACTED] during this transfer was unprofessional and unbecoming. A review of Body Worn Camera ("BWC") footage revealed the following offensive behavior:

- While securing handcuffs on [REDACTED] and assisting him into a wheelchair, he stated "I'm handicapped." You replied "I don't care if you're handicapped";
- [REDACTED] stated "Don't grab me like that, bitch" as you held onto his right forearm. You replied "Actually, I prefer the word cunt, so thank you;"
- [REDACTED] said "Bring me my shit," apparently referencing his belongings, as you began wheeling him out of the shelter. You replied "Oh, I don't give a shit about your shit" and continued wheeling him out.
- After [REDACTED] spit on your forearm, you placed a spit mask on him. He asked "Why?" You replied "Cuz you're a dick." [REDACTED] stated "Because you're a bitch." You again replied "I prefer the word cunt."
- During the process of transferring [REDACTED] from his wheelchair to your patrol vehicle, you applied an unnecessary arm-bar technique by holding the chain of his handcuffs in a raised position behind his back. As [REDACTED] cried "Ow, ow, ow" you stated: "That's for spitting on me."

You documented the spitting as an assault and battery in your official report with a recommendation that the report be forwarded to the District Attorney's Office for warrant recommendation. Afterwards, the District Attorney's Office reviewed the BWC footage. The District Attorney's Office conveyed to Deputy Chief Bush significant concerns over how you comported yourself and the language used during this interaction. The fact that an outside agency voiced concerns is disconcerting. As discussed further, I agree with the District Attorney's concerns.

b. Your Use of Force When Utilizing an Arm-Bar Technique Against [REDACTED] Was Outside of Policy

You and Officer Wilkins attempted to transfer [REDACTED] from his wheelchair into the back of your patrol vehicle by lifting him by his upper arms. [REDACTED] claimed to be unable to walk or stand. You were unable to complete the transfer without his assistance. [REDACTED] was lowered to a seated position on the ground next to the patrol vehicle. As he was seated on the ground, you maintained a grasp of his handcuffs and held his arms behind his back while stating "That's for spitting on me." This action caused both of [REDACTED]'s arms to be extended and raised in an arm-bar position for several seconds and appeared to cause him pain—as indicated by his crying "Ow, Ow, Ow." As the investigation confirmed, this use of force was not necessary and did not further any legitimate law enforcement purpose. [REDACTED] was handcuffed, spit-masked, and seated on the ground. He was not actively resisting at the time.

c. You Failed to Properly Report and Notify Your Supervisor That You Utilized an Arm-Bar Technique and Delivered an Open Handed Strike to the Side of [REDACTED]'s Head.

While transferring [REDACTED] he initially spat and it struck your right arm. After he initially spat, the investigation revealed that [REDACTED] lunged his head toward your direction. In response you struck [REDACTED] with an open right hand to the left side of his head, pushing his head down and to his right. Here, the strike was effective in that [REDACTED] was unable to spit on you again. Although this action was found reasonable, you failed to document this use of force in your report in accordance with Policy 300.5. You also failed to report the above mentioned Arm-Bar technique in any report. Furthermore, you failed to notify your supervisor regarding use of either the open-handed strike or the arm-bar technique. Such negligence of duty exposes the City to significant liability and undermines your credibility.

IV. RECOMMENDED DISCIPLINARY ACTION (SUSPENSION)

My recommendation that you be suspended and participate in additional training is based on the above facts, as well as, your previous disciplinary record. [REDACTED] [REDACTED] is incorporated by reference into this Notice and attached as an exhibit.

Officer Shatto, you have been a sworn Police Officer for the Department since 2018. You are entrusted to serve selflessly and compassionately, through collaboration and innovation. The Department's specific Mission is to be transparent and responsive, while striving for excellence. Our Values demand that every officer exude professionalism through knowledge and respect. You are not adhering to the core Mission or the Values of this Department. [REDACTED]

[REDACTED]. Unfortunately, this behavior continues.

As a member of the Santa Cruz Police Department you are held to the highest standards. To successfully perform your responsibilities, you must not only treat the public with the utmost respect, you must document necessary encounters thoroughly and accurately. While I recognize that [REDACTED] was being difficult, handling vexing citizens with professionalism is exactly what we are trained and expected to do. As a valued member of this Department, you can appreciate how this interaction reflects negatively on all Santa Cruz Police Officers. Simply put, your behavior during this interaction was offensive and in violation of Personnel Rules and Department Policy.

First, the vulgarity you continue to utilize during citizen interactions must come to an end. The Department will not accept any Officer making offensive statements such as: "*I prefer Cunt*" and "*because you are a dick.*" [REDACTED]

[REDACTED]. Your interactions with [REDACTED] violates the same Cannons of Ethics [REDACTED]. Your repeated behavior is disconcerting to the Department and must come to an end. For this reason, a significant suspension is not only merited, it is demanded.

Second, the suggestion that any use of force, or application of a restraining device/spit mask, is being utilized as a means of retaliation is offensive and reflects negatively on the entire City. Your captured statement of "That's for spitting on me" as you applied the arm-bar technique is beyond troubling. There is never justification for such a retaliatory statement. Santa Cruz aims to be at the forefront of modern policing. Our core Values are put in place to ensure we are an active example of best police practices. The Department will not tolerate any behavior that suggests that a use of force is exerted as a means of retribution. While [REDACTED] was being difficult at times, it is imperative that an Officer takes the high-ground and keeps emotions in check. To be clear, if similar behavior occurs in the future, you will be terminated.

Next, while the open hand-strike was justified, the arm-bar technique was unreasonable and violated Policy 300.3. As the IA revealed, there was simply no justification to utilize the arm-bar technique. The BWC Footage and numerous eyewitness accounts confirm that [REDACTED] was not actively resisting at the time the technique was applied. Given the totality of the circumstances, there was no legitimate law enforcement purpose.

Lastly, neither the open-hand strike nor the arm-bar technique was properly documented in accordance with Policy 300.5. In fact, you failed to even notify your supervisors regarding the use of force per Policy 300.5.1. During your IA, you admitted that you should have documented the open handed strike. [REDACTED]'s act of crying "Ow, ow, ow" while the arm-bar technique was utilized indicates that he was experiencing more than momentary discomfort. Again, I recognize that [REDACTED]'s behavior was vexing and frustrating. As the IA revealed, it was reasonable

for you to perceive that he was about to spit-on you. For that reason, your open-handing strike to his head was justified in order to prevent him from doing so. However, such action must be properly documented and reported to a supervisor. The Department expects transparency and the public demands it. All justifiable uses of force must be well documented and reported. The fact that [REDACTED] makes this suspension necessary and prudent.

As Santa Cruz Police Officers, we must be held to the highest standards even when faced with difficult situations. The conduct described in this Notice is unacceptable under any circumstances, but is particularly concerning because you have [REDACTED].

You clearly knew that your actions violated City and Department rules, regulations, and policies.

In all these instances, you failed to display the professional conduct in keeping with the highest standards of the City and the Department. To be clear, you are directed to cease all behaviors described in this Notice and any similar behavior. I encourage you to reflect upon the seriousness of what you have done and the harm that you have caused. In addition, you are directed to refrain from any action that might be perceived as retaliation against others who may have cooperated in the investigation into this matter. Failure to do so will result in additional disciplinary action up to and including termination of employment.

V. EFFECTIVE DATE OF PROPOSED SUSPENSION AND TRAINING

The effective date of your proposed suspension is December 12, 2022 unless you request a Skelly Hearing. If a Skelly Hearing is requested, the effective date will be held in abeyance pending the pre-disciplinary hearing outcome pursuant to the Skelly Procedure outlined Section VI of this letter. If my recommendation remains unchanged following completion of the pre-disciplinary review in this matter, your suspension will be effective following the completion of the pre-disciplinary process and the issuance of the written final notice of your suspension. Your training will take place upon return from your suspension.

VI. RIGHT TO RESPOND TO PROPOSED SUSPENSION

Pursuant to *Skelly v. State Personnel Board* and Section 25.02 of the Memorandum of Understanding between the City of Santa Cruz and Santa Cruz Police Officers' Association, you are entitled to access any known written materials, reports or documents upon which this proposed suspension is based. If you decide to exercise your right to respond to the charges (Skelly hearing), you shall advise the Chief of Police of that desire within five (5) working days from receipt of this notice. The Chief of Police shall then schedule the Skelly hearing within five (5) working days of your notification. You may request an extension of the time to respond for justifiable reasons. Failure to respond within the time specified will result in the employee's waiver of their procedural rights and final action will be taken. If you need a copy of any materials relied upon, please contact me within (5) working days.

Although the Skelly Hearing is an informal evidentiary hearing, you have the right to have a representative of your choice at the conference, should you choose to respond orally.

Your failure to timely provide a written response or to request a pre-disciplinary conference will constitute a waiver of your right to provide a response prior to the imposition of the discipline.

Jose Garcia
Santa Cruz Deputy Police Chief

EXHIBITS:

- A. City of Santa Cruz Personnel Rules, Rule 8
- B. Santa Cruz Police Department Policy Manual Policy 300
- C. [REDACTED]
- D. Memorandum of Understanding Between City of Santa Cruz and Santa Cruz Police Officer Association—Section 25
- E. Internal Affairs Investigation Case No. 2022-012
 - 1. BWC Footage (provided upon request)
 - 2. Audio of Internal Affairs Interviews (provided upon request)



A handwritten signature in blue ink, followed by the date 12/01/2022, all enclosed within a large, sweeping blue bracket.

Rule 8: Discipline

Rule 8: Disciplinary Action

8.1: Definition

8.2: General

8.3: Causes for Disciplinary Action

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8.1: Definition

Disciplinary action shall mean discharge, demotion, reduction in salary, suspension and/or written reprimand.

8.2: General

The City Manager, all appointing authorities, and management and supervisory employees may take disciplinary action against an employee under his or her control subject to this rule and the appropriate provisions of any Memorandum of Understanding.

8.3: Causes for Disciplinary Action

Disciplinary action may be taken against any employee for reasons which may include, but not be limited to:

- a. Fraud in securing employment
- b. Refusal to take or subscribe to any oath which is required by law in connection with employment.
- c. Unauthorized soliciting on City property.
- d. Misconduct or negligence which causes damage to the City or public property.
- e. Inexcusable neglect of duty.
- f. Refusal or failure to perform work assigned.
- g. Disobedience of proper authority.
- h. Violation of safety rules.
- i. Tardiness.
- j. Use of sick leave in a manner not authorized by City rules or labor agreements.
- k. Unauthorized leave of absence.
- l. Falsification of time cards or City records.
- m. Theft, unauthorized use or misuse of City property.
- n. Offensive treatment of the public or other employee.

- o. Fighting.
- p. Assault.
- q. Consuming, possessing, or being under the influence of alcoholic beverages, non-prescription or unauthorized narcotics, or dangerous drugs during working hours and on City property or worksite.
- r. Conviction, including pleas of guilty or nolo contendere, of a felony or misdemeanor if the conviction has a rational relationship to the employee's position.
- s. Violation of any provision of the Personnel Rules and Regulations, Municipal Code, department rules and regulations, and administrative directives.

June 2002

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 (Government Code § 7286).

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques and Conducted Energy Device policies.

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).

Feasible - 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 (Government Code § 7286(a)).

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.

Serious bodily injury - A serious impairment of physical condition, including but not limited to the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement (Penal Code § 243(f)(4)).

Totality of the circumstances - All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force (Penal Code § 835a).

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.

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300.2.1 DUTY TO INTERCEDE

Any officer present and observing another law enforcement officer or an employee using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, shall, when in a position to do so, intercede to prevent the use of unreasonable force.

Failure to intercede or report may result in discipline, up to and including termination.

When observing force used by a law enforcement officer, each officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject (Government Code § 7286(b)).

300.2.1 FAIR AND UNBIASED USE OF FORCE

Officers are expected to carry out their duties, including the use of force, in a manner that is fair and unbiased (Government Code § 7286(b)). See the Bias-Based Policing Policy for additional guidance.

300.2.3 DUTY TO REPORT EXCESSIVE FORCE

Any officer who observes a law enforcement officer or an employee use force that potentially exceeds what the officer reasonably believes to be necessary shall promptly report these observations to a supervisor as soon as feasible (Government Code § 7286(b)).

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 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. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

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 approved 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.

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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 ALTERNATIVE TACTICS - DE-ESCALATION

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, officers shall consider actions that may increase officer safety and may decrease the need for using force:

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)(1)). Such alternatives may include but are not limited to:

- (a) Attempts to de-escalate a situation.
- (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.
- (c) When circumstances present themselves officers shall consider the process of disengaging from the situation.

300.3.2 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).

300.3.3 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 (Government Code § 7286(b)). 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 (Penal Code § 835a).

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- (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 leading up to the use of force (Penal Code § 835a).
- (e) The effects of suspected 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 prior to and at the time force is used.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, bystanders, 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 immediate threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

300.3.4 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.

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300.3.5 RESTRICTIONS ON THE USE OF CAROTID CONTROL HOLD

Officers of this department are not authorized to use a carotid restraint hold. A carotid restraint means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person's neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person (Government Code § 7286.5).

300.3.6 RESTRICTIONS ON THE USE OF A CHOKE HOLD

Officers of this department are not authorized to use a choke hold. A choke hold means any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe (Government Code § 7286.5).

300.3.7 PERSONAL IMPACT WEAPONS; STRIKES AND PUNCHES

Strikes and punches are an approved use of force only when there is an objectively reasonable basis for use of force given the facts and totality of the circumstances. Any person using force must articulate the circumstances as objectively reasonable and apparently necessary under the totality of the circumstances, and that the use of force is proportionate to the severity of the crime, the threat posed by the suspect, and the suspect's level of resistance.

300.4 DEADLY FORCE APPLICATIONS

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify him/herself 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 (Penal Code 835a(5)(c)(1)(B)).

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

The use of deadly force is only justified when the officer reasonably believes it is necessary 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 immediate 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.

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 immediate threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

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An "immediate" 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 immediate threat. An immediate threat is one that from appearances is reasonably believed to require instant attention.

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective and may involve additional considerations and risks. When feasible, officers shall take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer shall 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 immediate threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others (Government Code § 7286(b)).

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

Officers may need to use deadly force against a vehicle and/or its driver if the vehicle is being used as a method of inflicting mass casualty.

300.4.2 DISPLAYING OF FIREARMS

Given that individuals might perceive the display of a firearm as a potential application of force, officers should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines (Government Code § 7286(b)):

- (a) If the officer does not initially perceive a threat but reasonably believes that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.
- (b) If the officer reasonably believes that a threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward such threat until the officer no longer perceives such threat.

Once it is reasonably safe to do so, officers should carefully secure all firearms.

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. See the Report Preparation Policy for additional circumstances that may require documentation.

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Use of Force

300.5.1 NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made 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, or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges unreasonable force was used or that 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 Unit Policy.

300.6 MEDICAL CONSIDERATION

Once it is reasonably safe to do so, properly trained officers should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident (Government Code § 7286(b)).

Prior to booking or release, medical assistance 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. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff, or medical staff at the jail. 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 description of the force used and any other circumstances the officer reasonably believes would

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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

A supervisor shall respond to any reported use of force as qualified in subsection 300.5.1 Notification to Supervisors. The responding supervisor is expected to (Government Code § 7286(b)):

- (a) 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 are examined and treated.
- (c) When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her *Miranda* rights, the following shall apply:
 1. The content of the interview should not be summarized or included in any related criminal charges.
 2. The fact that a recorded interview was conducted should be documented in a property or other report.
 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (e) Identify any witnesses not already included in related reports. Ensure that all witness interviews that were conducted were recorded.
- (f) Review and approve all related reports.
- (g) Determine if there is any indication that the subject may pursue civil litigation.
 1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.

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- (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) Ensure that prisoner transportation is not conducted by officers involved in the use of force. The transporting officer shall activate their body-worn camera and record during transportation.

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.

300.7.1 WATCH COMMANDER RESPONSIBILITY

The Watch Commander shall review each use of force report requiring medical attention other than medical clearance for the purpose of booking at the jail or significant injury involving any personnel within his/her command to ensure compliance with this policy and to address any training issues.

300.8 USE OF FORCE COMPLAINTS

The receipt, processing, and investigation of civilian complaints involving use of force incidents should be handled in accordance with the Personnel Complaints Policy (Government Code § 7286(b)).

300.9 TRAINING

Officers, investigators, rangers, community service officers, and supervisors will receive periodic training on this policy and demonstrate their knowledge and understanding (Government Code § 7286(b)).

Subject to available resources, the Training Manager should ensure that officers receive periodic training on de-escalation tactics, including alternatives to force.

Training should also include (Government Code § 7286(b)):

- (a) Guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities.
- (b) Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

300.10 ANIMALS

Officers are authorized to use deadly force against an animal in circumstances where the animal reasonably appears to pose an immediate threat to human safety and alternative methods to neutralize the threat are not Reasonably available or would likely be ineffective.

In circumstances in which officers have sufficient advanced notice that a potentially dangerous domestic animal (e.g. dog) may be encountered, such as in the serving of a search warrant, officers should develop reasonable contingency plans for dealing with the animal without the use of deadly force (e.g. fire extinguisher, Taser, OC Spray, animal control officer). Nothing in this policy shall

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prohibit any officer from resorting to deadly force to control a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impractical.

With the approval of a supervisor, an officer may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impractical (Penal Code § 597.1(e)). Injured animals (with the exception of dogs and cats) may only be euthanized after a reasonable search to locate the owner has been made (Penal Code § 597.1(b)). Injured dogs and cats found without their owners shall be taken to an appropriate veterinarian for determination of whether they should be treated or humanely destroyed.

300.11 POLICY REVIEW

The Chief of Police or the authorized designee should regularly review and update this policy to reflect developing practices and procedures (Government Code § 7286(b)).

300.12 POLICY AVAILABILITY

The Chief of Police or the authorized designee should ensure this policy is accessible to the public (Government Code § 7286(c)).

300.13 PUBLIC RECORDS REQUESTS

Requests for public records involving an officer's personnel records shall be processed in accordance with Penal Code § 832.7 and the Personnel Records and Records Maintenance and Release policies (Government Code § 7286(b)).

SECTION 25.00 - DISCIPLINARY APPEALS PROCEDURE

25.01 Definition

For the purposes of this article, disciplinary action shall mean suspension, demotion, disciplinary reduction in salary or discharge.

The appeal procedure described herein shall apply to cases of disciplinary action affecting regular employees. It shall not be applicable to probationary employees. Employees have the right to representation at any or all stages of the appeal process.

25.02 Pre-Action Procedure

Step I

Prior to imposing disciplinary action, the supervisor shall first provide the employee a preliminary written notice of the proposed action stating the effective date and the specific grounds and particular facts upon which the action will be taken. The employee shall have access to any known written materials, reports or documents upon which the action is based. If the employee decides to exercise their right to respond to the charges (*Skelly* hearing), they shall advise the Chief of Police of their desire to exercise their rights within five (5) working days from receipt of notice. The Chief of Police and the employee (or the employee's representative) shall then schedule the *Skelly* hearing within five (5) working days of the employee's notification of their request to have a *Skelly* hearing. If the Chief of Police is personally involved in the initial investigation and notice process, the City Manager or Human Resources Director shall appoint a designee to hear the response.

The employee may request an extension of the time to respond for justifiable reasons. Failure to respond within the time specified will result in the employee's waiver or their procedural rights and final action will be taken.

Step II

Following a review of a proposed disciplinary action, the Chief of Police, within five (5) working days of receiving the employee's response, shall render a written decision and send it by registered mail or personal delivery to the employee. A copy shall also be mailed to the employee's representative. The written decision will include the effective date of the disciplinary action.

The employee has the right, within five (5) working days after receiving the decision, to file a request for appeal with the City Manager. The appeal shall be a written statement, signed by the appellant, explaining the matter appealed from, stating the action desired by the appellant, with their reasons, therefore, and stating that the pre-action procedures have been exhausted.

25.03 Post-Action Appeal

Step III

If the employee files a timely appeal, the City Manager shall, within ten (10) working

days after receiving the appeal, designate a hearing officer who shall schedule a hearing not less than ten (10) working days from the date the appeal was received.

The hearing officer may conduct such independent investigation of the matter as they deem necessary. The appellant shall be given the opportunity to answer or present evidence in opposition to the findings of this independent investigation.

The appellant shall appear personally at the scheduled hearing unless physically unable to do so. The appellant or their representative may produce relevant oral or documentary evidence at the hearing.

Within fifteen (15) working days following the hearing, the hearing officer shall render a written decision to all parties involved. The hearing officer has the authority to affirm, repeal or modify the disciplinary action.

For discipline equivalent to the severity of suspension of three (3) days or less, there shall be no appeal beyond Step III and the City Manager's decision shall be final.

Step IV

If the appeal (except as exempted above) is not resolved to the satisfaction of the appellant at the conclusion of Step III, the employee may appeal the decision of the City Manager to a neutral arbitrator, provided it so informs the City Manager in writing within ten (10) working days following receipt of the City Manager's decision.

Within ten (10) working days from the date of receipt of the appeal, the parties may mutually agree on a neutral party from an independent source to serve as an arbitrator. In the event the parties fail to agree on the neutral party, they shall immediately thereafter jointly request the California State Mediation and Conciliation Service to submit to them a list of five (5) persons qualified and available to act as arbitrator.

If such a list is requested from the State Mediation and Conciliation Service, the parties within ten (10) working days of receipt of the list, shall mutually agree upon the person on the list who shall be the arbitrator. If one (1) person is not mutually agreed upon, the parties shall within ten (10) working days after receipt of the list of names alternately strike two (2) names from such list with the last remaining name to be the person serving as arbitrator. The party having first choice to strike a name from the list shall be determined by lot.

The arbitrator shall have no authority to add to, detract from, alter, amend, or modify any provision of this agreement, or impose on any party hereto a limitation or obligation not explicitly provided for in this agreement, or to alter any wage rate or wage structure. The decision of the arbitrator shall be rendered after the evidence and arguments are presented to them by the parties in the presence of each other and in post-hearing briefs, if necessary. The decision of the arbitrator shall be final and binding upon the parties.

The arbitrator is requested to expedite the decision as the parties normally expect a decision to be issued with fifteen (15) working days after the conclusion of the hearing.

The arbitrator's expenses shall be borne equally by the parties. Except that each party shall bear the cost of its own representation.