



**South Salt Lake City Council
Work Meeting**

I, Sharla Bynum, City Council Chair, hereby determine that conducting the City Council meeting at an anchor location presents a substantial risk to the health and safety of those who may be present at the anchor location. The World Health Organization, the President of the United States, The Governor of Utah, the County Health Department and Mayor, and the Mayor of South Salt Lake City have all recognized a global pandemic exists related to the new strain of the coronavirus, SARS- CoV-2. Due to the State of emergency caused by the global pandemic, I find that conducting a meeting at an anchor location under the current state of public health emergency constitutes a substantial risk to the health and safety of those who may be present at the location.

CITY COUNCIL

MEMBERS:

- LEANNE HUFF
- COREY THOMAS
- SHARLA BYNUM
- PORTIA MILA
- SHANE SIWIK
- NATALIE PINKNEY
- RAY DEWOLFE

Dated: September 3, 2020

Signed: _____ /s/ Sharla Bynum

Public notice is hereby given that the South Salt Lake City Council will hold a Work Meeting on **Wednesday, September 30, 2020**. This meeting will be an electronic meeting commencing at **5:30 p.m.**, or as soon thereafter as possible. There will be no Council Members at the anchor location of South Salt Lake City Hall.

Conducting: Sharla Bynum, Council Chair

MATTERS FOR DISCUSSION:

- 1. Police Department Policy Discussion Hannah Vickery & Chief Carruth

Adjourn

Posted September 25, 2020

Please click the link below to join the webinar:
<https://zoom.us/j/95802733537?pwd=QUhLcmNmUjRjTUwyOURQLzZLaJydz09>
 Passcode: 330625
 Or iPhone one-tap :
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 Dial(for higher quality, dial a number based on your current location):
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 Webinar ID: 958 0273 3537
 International numbers available: <https://zoom.us/j/95802733537>

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CITY OF SOUTH SALT LAKE
CITY COUNCIL WORK MEETING

COUNCIL MEETING Wednesday September 30, 2020
5:30 p.m.

CITY OFFICES 220 East Morris Avenue #200
South Salt Lake, Utah 84115

PRESIDING Council Chair Sharla Bynum
CONDUCTING Council Chair Sharla Bynum

COUNCIL MEMBERS PRESENT:
Sharla Bynum, Ray deWolfe, LeAnne Huff, Portia Mila (logged in at 5:47),
Natalie Pinkney, Shane Siwik and Corey Thomas

STAFF PRESENT:
Mayor Cherie Wood
Hannah Vickery, City Attorney
Jack Carruth, Police Chief
Terry Addison, Fire Chief
Lindsey Edwards, Homeless Outreach & Strategies Director
Aaron Wiet, Parks and Recreation Director
Kelli Meranda, Promise South Salt Lake Director
Sean Lewis, Deputy Community Development Director
Dave Alexander, Streets Division Manager
Cody Coggle, Police Sergeant
Chris Taylor, Police Officer
Julie Taylor, Public Relations Coordinator
BJ Allen, GIS Specialist/IT
Danielle Croyle, Public Information Officer
Calvin Henninger, Staff Writer
Craig Burton, City Recorder
Ariel Andrus, Deputy City Recorder

Matters for Discussion

- 1. Police Department Policy Discussion.** City Attorney, Hannah Vickery, presented use of force policy information to the City Council. A copy is attached and incorporated by this reference.

Police Chief, Jack Carruth, presented police policy information to the City Council. A copy is attached and incorporated by this reference.

Council Member Pinkney asked if the policy banning police choke holds also bans kneeling on an individual's neck or back.

Chief Carruth said house bill 5007 and the State code prohibits knee on the neck or any other hold that would prevent breathing.

Council Member Huff commented that it may not be up to the police to respond to mental health calls and there may need to be a section of the police department trained in responding to mental health calls.

Council Member deWolfe asked if Chief Carruth believes it is up to the police to evolve into a de-escalation entity with more training in mental health or is it up to the community to fund those resources to help bridge the gap.

Chief Carruth said it would take a specialized set of officers to respond to mental health calls but those resources aren't available. The police department has evolved to be the department that responds to situations that may need de-escalation such as a mental health crisis. Police work is a 24-hour job and the mental health resources aren't always available.

Council Member Pinkney asked how the South Salt Lake police department prevents discrimination against someone of a different color or different cultural background.

Chief Carruth said that he can say in good faith that discrimination is not happening in South Salt Lake but this is also the reason the Citizen Review Board is being discussed to show the public that discrimination is not happening.

Council Member Pinkney asked if there was a common situation where officers were using use of force.

Chief Carruth said the most common situation where use of force is used is when an individual resists arrest and that can happen in any type of call.

Chief Carruth ended his presentation with discussing the type of incident tracking the police department uses and how this helps keep track of use of force situations. He also gave an overview of what is considered use of force.

Council Chair Bynum and Council Member Siwik would like to hear more about property forfeitures and no knock warrants. Those items will be heard at an upcoming meeting.

Council Member Pinkney would like to hear more about the militarization of the police as well as prison pipeline to schools.

The meeting adjourned at 7:04 p.m.

/s/ Sharla Bynum
Sharla Bynum, Council Chair

/s/ Craig D. Burton
Craig D. Burton, City Recorder

Use of Force

PRESENTED BY THE CITY ATTORNEY'S OFFICE

SEPTEMBER 2020



Police Objectives in Using Force

Arresting and Detaining suspected law breakers

Acting in Self Defense

Protecting Others

Use of Force Doctrine

Judicial Doctrine

Civil litigation for damages or injunctive relief under 42 USC 1983 is the main vehicle for generating the legal doctrine

- Supreme Court
- Lower courts

4th Amendment: To be free from unreasonable searches and seizures

- Use of force is a seizure under the 4th amendment

The Courts assess whether the use of force was *Reasonable*

How Do Courts Define Reasonableness?

Tennessee v. Garner

- Facts
 - 8th grade Eric Gardner fleeing house reported to have a prowler inside
 - Officer pursued Garner to a 6ft high chain link fence and with the aid of a flashlight saw his face and hands
 - Officer was reasonably sure and figured Garner was unarmed
 - Garner crouched at the base of the fence and officer called out, "Police, Halt."
 - Convinced that Garner would escape over the fence, Officer shot Garner when he was climbing over the fence hitting him in the back of the head
- Legal Standard
 - Court balanced the nature and quality of fourth amendment intrusion against the importance of the governmental interests alleged to justify the intrusion
 - Court looked at policies of 45 PD which prohibited deadly force against nonviolent suspects
- Outcome
 - Court ruled that use of deadly force against fleeing, nonviolent felons violates the 4th Amendment

Seminal Case

Graham v. Connor

- Facts

- Graham, a diabetic, hastily entered and left a convenience store to purchase orange juice to counteract oncoming insulin reaction.
- Officer was suspicious about the quick entry and exit and made an investigatory stop.
- Graham alerted officers to his condition, yet they still handcuffed him on the side of the road after he ran around the car twice, sat on the curb, and passed out believing he was drunk
- Graham suffered a broken foot, cuts on wrist, bruised forehead, and injured shoulder

- Legal Standard

- Objective reasonableness under the 4th amendment
- Court did not look at PD policies
- Instead, determined reasonableness based on the perspective of a reasonable officer on the scene, rather than 20/20 hindsight, and acknowledging officers often forced to make split second judgments in circumstances that are tense and uncertain and rapidly evolving
- Looked at factors: severity of crime at issue, whether suspect poses an immediate threat to the safety of the officer or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight

Graham v. Connor

1989 Supreme Court Case

Leading Case on Use of Force

Legal Standard: Objective Reasonableness under 4th Amendment

What is Reasonable?

Imprecise definition

- Excessive force principles are only laid out at a general level

While it is not completely clear what legal role a Police Department Policy plays in determining reasonableness, it is often something looked at and discussed as part of 1983 actions.

Generally, a violation of a clear and specific policy is treated as unreasonable use of force

In Utah, we do have specific State Statutes that will also guide decisions

Best Practices for Policies in light of Graham

Trend to use the factors from Graham in use of force policies nationally to guide police discretion on when it is reasonable to employ force

Nearly every case subsequent to Graham has applied the factors

- Graham is the settled and exclusive framework for analyzing whether the force used in making a seizure complies with the 4th Amendment
- Heavily fact dependent

Writing Policies in light of Graham

Challenges

- Imprecise Legal Definition
- Fact specific

Consider why the force is being used

- Effect an Arrest, or
- Self Defense/Defense of Others

Consideration of Legal Liability of Policies

Want policies to be clear enough to enforce violations

Want officers to comply with policies (human nature)

Want to respect everyone's constitutional rights

Questions?

Use of Force -Arrest

77-7-7. Force in making arrest.

If a person is being arrested and flees or forcibly resists after being informed of the intention to make the arrest, the person arresting may use reasonable force to effect the arrest. Deadly force may be used only as provided in Section [76-2-404](#).

76-2-403. Force in arrest.

Any person is justified in using any force, except deadly force, which he reasonably believes to be necessary to effect an arrest or to defend himself or another from bodily harm while making an arrest.

UT: Law Enforcement Use of Deadly Force




76-2-404

Effecting an arrest/preventing escape from custody where Officer reasonably believes deadly force is necessary and officer has probable cause to believe suspect committed a felony offense involving infliction or threatened infliction of death/serious bodily injury, or officer has probably cause to believe the suspect poses a threat of death/serious bodily injury to officer or another

Officer Reasonably believes that use of deadly force is necessary to prevent death or serious bodily injury to officer/another person




City Council Presentation
Policy Review
Chief Jack Carruth

 IMMEDIATE HARM REDUCTION	 COMPREHENSIVE COMMUNITY SAFETY	 ABOLITION
USE OF FORCE POLICIES	DIVEST FROM POLICE	FUND COMMUNITY SAFETY
DEMILITARIZATION	INVEST IN COMMUNITY, INCLUDING HOUSING, JOBS AND EDUCATION	MOVE MONEY TO ALTERNATIVES
DOJ CONSENT DECREES	PAY LIVING WAGES	END THE CARCERAL STATE
POLICE UNION CONTRACTS	DRAMATICALLY REDUCE JAIL & PRISON POPULATIONS	RESOURCE HEALTHY COMMUNITY PRACTICES & NEEDS
	RESTORATIVE JUSTICE	



BAN CHOKEHOLDS & STRANGLEHOLDS



- ▶ Allowing officers to choke or strangle civilians results in the unnecessary death or serious injury of civilians. Both chokeholds and all other neck restraints must be banned in all cases.

- ▶ **The South Salt Lake Police Department does not authorize the Lateral Vascular Neck Restraint (LVNR) or “Choke or Strangleholds” as an approved department use of force.**

300.3.4 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 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 South Salt Lake Police Department for this specific purpose.

UTAH STATE CODE 53-13-115

Section 53-13-115 - Peace officer restraint prohibition

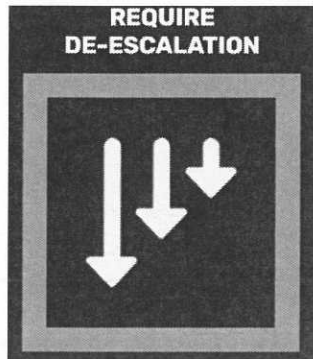
- (1) A peace officer may not restrain a person by the application of a knee applying pressure to the neck or throat of a person.
- (2) A violation of this section shall be referred separately to the county or district attorney for review, and to the Peace Officer Standards and Training Council for investigation.
- (3) A violation of this section is a third degree felony.
- (4) If the violation results in:(a) serious bodily injury or loss of consciousness, it is a second degree felony; or(b) death, it is a first degree felony.

H.B. 5007 signed by Governor Gary Herbert on June 25, 2020

Peace Officer Amendments

- Prohibits Utah Peace Officers Standards and Training from:

(b) may not include the use of chokeholds, carotid restraints, or any act that impedes the breathing or circulation of blood likely to produce a loss of consciousness, as a valid method of restraint.



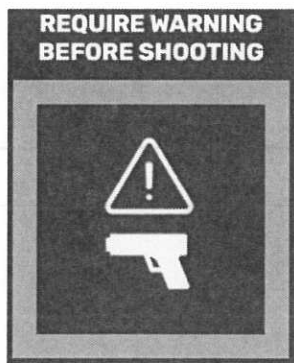
Require officers to de-escalate situations, where possible, by communicating with subjects, maintaining distance, and otherwise eliminating the need to use force.

300.3.5 ALTERNATIVE TACTICS – DE-ESCALATION

When circumstances reasonably permit, officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion).

300.3.1 USE OF FORCE TO EFFECT AN ARREST

An officer may use reasonable force to effect arrest if the person being arrested flees or forcibly resists after being informed of the intent to make the arrest. (Utah Code 77-7-7).



REQUIRE OFFICERS TO GIVE A VERBAL WARNING IN ALL SITUATIONS BEFORE USING DEADLY FORCE.

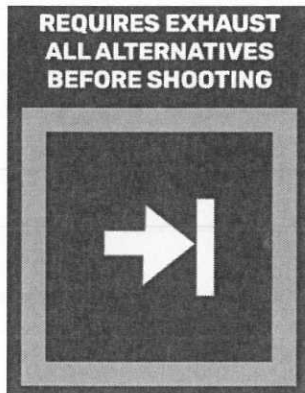
300.4 DEADLY FORCE APPLICATIONS

When reasonable, the officer shall, prior to the use of deadly force, make 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.

Use of deadly force is justified in the following circumstances involving imminent threat or imminent risk:

- (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.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the individual has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to him/herself or any other person if the individual is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes that the individual has a weapon or is attempting to access one and intends to use it against the officer or another person. An imminent danger may also exist if the individual is capable of causing serious bodily injury or death without a weapon, and the officer believes the individual intends to do so.



- ▶ Require officers to exhaust all other alternatives, including non-force and less lethal force options, prior to resorting to deadly force.

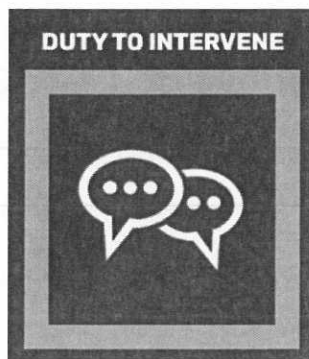
300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, including but not limited to;

- (a) The severity of the crime at issue.
- (b) Immediacy and severity of the threat to officers or others.
- (c) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (d) Officer/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (e) The effects of suspected drug or alcohol use.
- (f) The individual's mental state or capacity.
- (g) The individual's ability to understand and comply with officer commands.
- (h) Proximity of weapons or dangerous improvised devices.
- (i) The degree to which the individual 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.
- (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 individual 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 individual 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 individual or awareness of any propensity for violence.

- ▶ **Utah State Code 76-2-404 - Peace officer's use of deadly force**
- ▶ (1) A peace officer, or any person acting by the officer's command in providing aid and assistance, is justified in using deadly force when:
 - ▶ (a) the officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection 77-18-5.5(2), (3), or (4);
 - ▶ (b) effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and
 - ▶ (i) the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or
 - ▶ (ii) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others if apprehension is delayed; or
 - ▶ (c) the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person.
- ▶ (2) If feasible, a verbal warning should be given by the officer prior to any use of deadly force under Subsection (1)(b) or (1)(c).



REQUIRE OFFICERS TO INTERVENE AND STOP EXCESSIVE FORCE USED BY OTHER OFFICERS AND REPORT THESE INCIDENTS IMMEDIATELY TO A SUPERVISOR.

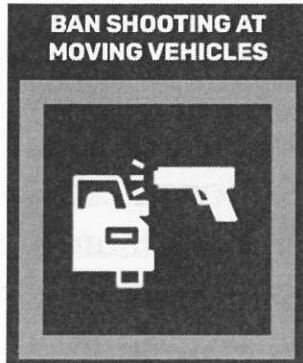
300.2.1 DUTY TO INTERCEDE AND REPORT

Any officer present and observing another law enforcement officer or a member 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.

Any officer who observes another law enforcement officer or a member use force that is potentially beyond that which is objectively reasonable under the circumstances should report these observations to a supervisor as soon as feasible.

300.2.2 PERSPECTIVE

When observing or reporting 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.

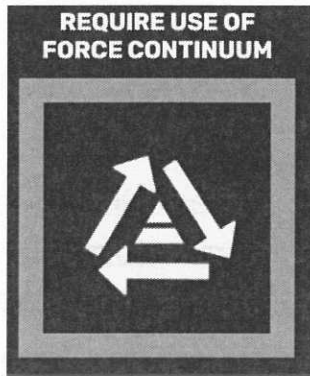


Ban officers from shooting at moving vehicles in all cases, which is regarded as a particularly dangerous and ineffective tactic. While some departments may restrict shooting at vehicles to particular situations, these loopholes allow for police to continue killing in situations that are all too common. 62 people were killed by police last year in these situations. This must be categorically banned.

300.4.1 MOVING VEHICLES

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 imminent 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.



Establish a Force Continuum that restricts the most severe types of force to the most extreme situations and creates clear policy restrictions on the use of each police weapon and tactic.

▶ 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 USE OF FORCE

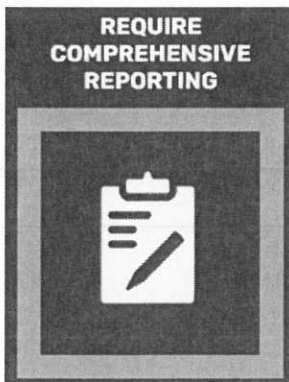
Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

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.

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 this 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 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.



Require officers to report each time they use force or threaten to use force against civilians. Comprehensive reporting includes requiring officers to report whenever they point a firearm at someone, in addition to all other types of force.

300.5.1 USE OF FORCE SUPERVISORY NOTIFICATION

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) When any Arrest Control Tactic (ACT) is used (beyond compliant handcuffing) to place a person into custody or to detain them for investigation.
- (b) When an officer discharges a firearm, points or displays (removed from holster) a firearm at any individual.
- (c) When an officer discharges, points or displays (low ready) a Taser at an individual.
- (d) When an officer discharges a pepper spray canister (Capsaicin) at or towards an individual.
- (e) When an officer intentionally damages the property of another to affect an arrest. (Damage to property under any other circumstance, shall be documented appropriately in the officer's written report.)

300.5.1 CONTINUED

- (f) When a Police Service Dog (PSD) is deployed for the purpose of apprehending a suspect(s) or when verbal warnings are given that a PSD will be deployed for the purpose or intent of apprehension.
- (g) Any other application of force that results in injury of a person or animal..
- (h) Medical attention shall be immediately requested to respond to assist treatment needs.

▶ 300.5.2 ON-DUTY SUPERVISORY USE OF FORCE REVIEW RESPONSIBILITIES

- ▶ In an effort to conduct a thorough review, the on-duty supervisor will conduct a review of all use of force incidents from his/her shift. Use of force review shall be initiated upon notification of incident, as soon as possible following the incident.
- ▶ The on-duty supervisor shall respond to the scene where the use of force was used. In the event the on-duty supervisor is unable to respond to the scene, the supervisor shall document the reason within the Use of Force Review.
- ▶ The on-duty supervisor shall gather all witness information and statements from any person who witnessed the incident. In the event a witness refuses to provide a statement the supervisor shall document their attempts to get a statement in the Use of Force Review.
- ▶ Obtain the basic facts from the involved officer(s). Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- ▶ The on-duty supervisor shall ensure any officer using force complete a detailed report of the incident, including description of the factors present in determining that the officer's use of force was reasonable. Documentation of the officer's use of force shall be set forth in a report drafted prior to the end of their shift, if practicable. If an officer is unable to complete a report prior to the end of their shift due to circumstances outside of the officer's control, the on duty supervisor shall ensure the report is drafted as soon as possible thereafter and document the reasons for the delay.
 - ▶ Notwithstanding the foregoing, an officer who is the subject of an OICI investigation (Policy-Officer Involved Shootings and Death) shall not be compelled to complete a detailed report of the incident.

300.5.2 CONTINUED

- ▶ Any officers involved or who witnesses a use of force the incident shall provide a supplemental report.
- ▶ The on-duty supervisor shall review all video (body and in-car camera footage) associated with the incident, and properly classify and retained.
- ▶ The on-duty supervisor shall immediately notify the appropriate Lieutenant of any use of force review.
- ▶ Ensure that any injured parties are examined and treated by medical personnel.
- ▶ Once any initial medical assessment has been completed or first aide has been rendered, ensure that photographs have been taken of any area involving visible injury or complaint of pain, as well as overall photographs of uninjured areas.
- ▶ Review and approval all related reports
- ▶ 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.

▶ **300.5.3 SECOND LEVEL OF SUPERVISOR USE OF FORCE REVIEW**

- ▶ a. All Use of Force Reviews will require two levels of review before final approval.
- ▶ b. The second level supervisor is expected to:
 1. The supervisor shall review the use of force documentation to determine whether there are policy, training, weapons/equipment, or discipline issues that should be addressed.
 2. The supervisor will forward a copy of all use of force reports up the chain of command for review and tracking.
 3. Incidents involving the discharge of a firearm shall be immediately forwarded through the chain of command for review in accordance with Officer-Involved Shooting and Death Policy.
 4. If any use of force is initially determined by a supervisor to be found to be unreasonable or there is evidence of determined to be a policy violation, the Chief's Office (Chief of Police and/or Deputy Chief of Police) will be immediately notified.