



Vacaville Police Department

John Carli, Chief of Police

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MEMORANDUM

To: Chief Carli
Through: Captain Schmutzler
From: Lieutenant Whitehouse
Date: July 8, 2020
Subject: Response to Attorney General Becerra's police reform recommendations

Chief Carli,

On June 15, 2020, California Attorney General Javier Becerra issued an agenda for police reform and improving use-of-force procedures. AG Becerra proposes the following:

- **Intervention:** All agencies should have a policy requiring officers to intervene to stop another officer from using excessive or unnecessary force;
- **Ban Chokeholds and Carotid Restraints:** All agencies should have a policy prohibiting the use of chokeholds, strangleholds, carotid restraints or other restraints, or body positioning that is designed to, or which may foreseeably result in, the cutting off of blood or oxygen to the person;
- **De-Escalation:** All agencies should require officers to de-escalate situations, when possible, before using force;
- **Proportionality:** All agencies should provide express guidance on proportionality to ensure officers understand the relationship that should exist between the force they use and the threat presented in a particular situation. The guidance may include adopting a spectrum, chart, or matrix, which can take the form of a graphical representation;
- **Verbal Warnings:** All agencies should require officers to give verbal warning, when feasible, before using force, whether lethal or less-lethal;
- **Moving Vehicles:** All agencies should prohibit officers from discharging a firearm at the operator or occupant of a moving vehicle unless the operator or occupant poses an imminent threat of death or serious bodily injury to the public or an officer. All agencies should also prohibit officers from discharging a firearm from their moving vehicle, providing only for exceptions that require such actions to end an imminent threat to human life;
- **Deadly Force As Last Resort:** Consistent with the core concepts of de-escalation, necessity, and proportionality, all agencies should require that deadly force be used only as a last resort when reasonable alternatives have been exhausted or are not feasible to protect the safety of the public and police officers;
- **Comprehensive Reporting:** All agencies should create a general order dedicated to use of force reporting and investigations, requiring comprehensive reporting that includes both uses of force and threats of force; and
- **Canine Use:** All agencies should discontinue the use of "find and bite" and "bite and hold" techniques and instead implement "find and bark" or "circle and bark" techniques, where canines are trained and deployed to alert by barking, rather than biting a suspect as a first response, and then circling and barking until the handler takes control.



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Currently, the Vacaville Police Department implements many of the proposed recommendations issued from the Attorney General's Office. Specifically:

- **Intervention**
 - Under our Responding to Resistance section, General Order 300.2.1 – Duty to Intercede states: *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.*
 - Not only does our policy require that officers intercede when witnessing inappropriate or unreasonable force, but also requires that officers report that use of force to a supervisor promptly.
- **Ban chokeholds and Carotid Restraints**
 - The Vacaville Police Department has long prohibited the use of “chokeholds.” However, application of the Carotid Control Hold or the Carotid Restraint remains in our Response to Resistance policy. Use of the Carotid Control Hold has been shown to be effective in restraining violent or combative individuals. Several factors contribute to our maintaining the Carotid Control Hold. These are:
 - The Carotid Control Hold is correctly trained to members of our organization. The Carotid Control Hold is a bi-valve, vascular restraint which does not impede an individual's airway, and when correctly applied does not cause injury to the recipient;
 - The Carotid Control Hold is fairly restrictive in that it is only applied when the officer “... reasonably believes that the need to control the individual outweighs the risk of applying a carotid control hold.” The Carotid Control Hold is generally not to be used on pregnant females, elderly individuals, obvious juveniles, or individuals who have Down Syndrome, neck deformities or obvious neck injuries;
 - The Carotid Control Hold may only be used to restrain a subject who is violent, combative, or physically resisting;
 - Removal of the Carotid Control Hold would remove an effective less-lethal option to officers and force them to use either much more intrusive force (baton, strikes, etc.) or resort to deadly force.
 - The Carotid Control Hold continues to be in our Responding to Resistance policy as General Order 300.3.5.
- **De-Escalation**
 - Vacaville Police Department personnel are trained extensively in de-escalation policies and procedures. In 2019, Vacaville Police personnel received approximately 26 hours of de-escalation training. In 2020, Vacaville Police personnel are set to receive 24 hours of de-escalation training.
 - The Attorney General's proposal in regards to de-escalation is vague. He is proposing the requirement for all officers to de-escalate “situations.” This is vague in that de-escalation can only be successful when both parties are amenable to de-escalating the situation. If officers respond to a situation and the subject is not amenable to de-escalating the situation, it rarely occurs.
 - De-escalation is a central tenet in several Vacaville Police Department policies including Responding to Resistance (GO 300), Electronic Control Device (GO 310), Mental Illness Commitments (GO 418), and Crisis Intervention Incidents (GO 466).



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- The Vacaville Police Department is fully in compliance with Penal Code § 835a, which lists requirements for the use of reasonable and necessary deadly force.
- **Proportionality**
 - Proportionality is directly addressed in our Responding to Resistance policy (GO 300.3) which states, “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).”
 - A “Use of Force Continuum” is a somewhat nebulous and inexact concept. In the past, the Use of Force Continuum was seen as similar to a “Ladder of Force” beginning with command presence, and ending with use of deadly force. Officers were expected to “work their way up the ladder” prior to utilizing deadly force. Industry best practice has evolved based upon federal and state court decisions, use of force options are now in the shape of a “wheel,” and officers are expected to utilize the minimum amount of force necessary to effect the arrest or stop the threat by choosing the force which would reasonably be necessary and effective. This is consistent with our policy and new state law.
 - Vacaville Police Department Defensive Tactics instructors teach officers to constantly evaluate the use of force being applied to determine both it’s reasonableness, as well as it’s effectiveness. If a specific use of force is determined to be in-effective, or unreasonable (given the subject’s actions or compliance), then the use of force is adjusted to meet the immediate threat or circumstance.
 - The 9th Circuit Court of Appeals has clearly ruled on this issue. In regards to Officers use of deadly force (i.e. firearm):
 - “Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission... Officers thus need not avail themselves of the least intrusive means of responding to an exigent situation; they need only act within that range of conduct we identify as reasonable.”
 - Scott v. Henrich, 39F.3d912 (9th Cir. 1994)
- **Verbal Warnings**
 - Unilaterally requiring a warning be given before the use of force may be desirable but is often impractical given the extreme circumstances that police officers face when facing imminently deadly or dangerous threats. These issues have been scrutinized by the courts who have recognized the complexity of such oversimplified expectations that mandate such a strict requirement. The courts have given clear direction on the reasonableness of such practices. Our training includes such warnings, however it does not require them, depending on the circumstances. Pursuant to our current Use of Force policy (G.O. 300), when applying deadly force to stop a fleeing subject:
 - “An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person 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 any other person if the subject is not immediately apprehended. **Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.**”
- **Moving Vehicles**



- The shooting at (or from) a moving vehicle is discouraged. However, it is not specifically banned from our policy based on the threat posed to officers and the general public if the vehicle is the instrumentality of the deadly threat, which is being used against the officers or citizens. While these occurrences are rare, it is impractical to impose an exclusive restriction in all cases where officers are faced with imminent deadly threats. The shooting at (or from) a moving vehicle policy is outlined below:
 - *“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.”*
 - The current policies employed by the Vacaville Police Department meet the reforms and policies proposed by the Attorney General.
- **Deadly Force as Last Resort**
 - The Vacaville Police Department Response to Resistance policy states that officers will only use the “force necessary to effect the arrest.” Therefore, excessive force will always be wrong and against department policy. The Vacaville Police Department has a significant number of less than lethal procedures and equipment to ensure that appropriate non-lethal means are employed to avert the use of a firearm or other deadly force. Vacaville Police Department personnel use the following non-lethal means and equipment to attempt to avert lethal measures:
 - Notification by Dispatch that the police are enroute;
 - Command presence;
 - Verbal interaction / Tactical Communication (Verbal Judo);
 - Pain compliance techniques (control holds);
 - Oleoresin Capsicum spray(OC);
 - Baton impact weapons;
 - Electronic Control Devices (Tasers);
 - Pepper Projectile Systems (Pepper-Ball guns);
 - Kinetic Energy projectile systems (Bean-bag shotguns);
 - 40 mm. direct impact rounds (foam tipped projectiles);
 - Finally, lethal force as a last resort.
- **Comprehensive Reporting**
 - Response to Resistance by Vacaville Police Officers is comprehensively reported. In addition, uses of force are evaluated and comprehensively reviewed at all supervisory levels (Sergeant, Watch Commander and Bureau Commander). In all cases, supervisory notification is required, and medical assistance is sought when appropriate. In the event of a significant use of force by an officer (significant applications of force) are defined as follows:
 - The application caused a visible injury.
 - The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.



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- The individual subjected to the force complained of injury or continuing pain.
- The individual indicates intent to pursue litigation.
- Any application of an Electronic Control Device device or other control device.
- Any application of a restraint device other than handcuffs, shackles or belly chains.
- The individual subjected to the force was rendered unconscious.
- An individual was struck or kicked.
- An individual alleges any of the above has occurred.
- In each of these listed examples, the application of force is documented by all involved parties.
- **Canine Use**
 - Vacaville Police Department General Order 319 provides guidelines and guidance for the use and deployment of Vacaville Police Department Canines. Due to the high potential for liability that Canines pose, the use of Canines by the Vacaville Police Department is strictly regulated and controlled. Canines may only be deployed to apprehend subjects in the following circumstances:
 - There is a reasonable belief the suspect poses an imminent threat of violence or serious harm to the public, any officer or the handler.
 - The suspect is physically resisting or threatening to resist arrest and the use of a canine reasonably appears to be necessary to overcome such resistance.
 - The suspect is believed to be concealed in an area where entry by other than the canine would pose a threat to the safety of officers or the public.
 - As indicated above, employing a Canine is only done in response to a direct, potentially dangerous individual. The “find and bark” or “circle and bark” requirement would place officers in a potentially more dangerous position, in that it would alert the individual that the police are attempting to take them into custody, and officers would need to secure the Canine while a potentially violent or dangerous individual is not distracted by the Canine. Employing “find and bark” or “circle and bark” techniques place the Canine and officers in a much more dangerous situation.

The Vacaville Police Department employs and implements many of the reforms proposed by the Attorney General’s Office. The instances where we do not employ the reforms proposed, there is a valid and exceptional reason. Notably, several of the Attorney General’s proposals would place officers in a much more dangerous situation and drastically raise the potential for lethal force.