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**SUBJECT: TASER**

**EFFECTIVE DATE: 01/07/2015**

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**PURPOSE AND SCOPE**

This Policy provides guidelines for the issuance and use of Taser devices. It is used for the management and administrative needs of the Dubuque County Sheriff's Office only. It is not intended to impose a higher standard of care for purposes of civil liabilities on employees or Dubuque County. Violations are administrative in nature and investigations are conducted through administrative proceedings only.

**POLICY**

The Taser device is intended to control a violent or a potentially violent individual, while minimizing the risk of injury. The appropriate use of such a device should result in fewer injuries to officers and suspects.

**ISSUANCE AND CARRYING TASER DEVICES**

Personnel who have completed Department approved training may be issued the Taser for use during their current assignment. Officers shall only use the Taser and cartridges that have been issued by the Department. The device shall be carried as part of a Taser trained officer's equipment while working in an enforcement capacity.

The Taser shall be worn in an approved holster.

- When the Taser device is carried as part of an officer's equipment, the Taser device shall be carried on the weak side, opposite the duty firearm in a cross-draw configuration in a manner that would only allow for a strong-hand draw.
- All Taser devices shall be clearly and distinctly marked to differentiate them from the duty weapon and any other device.
- Whenever practical, officers should carry a total of two or more Taser device cartridges on their person when carrying a Taser device.
- Officers shall be responsible for ensuring that their issued Taser device is properly maintained and in good working order at all times.
- No changes, alterations, modifications or substitutions shall be made to the TASER. Repairs shall only be made by those authorized by TASER.
- Officers should never hold both a firearm and the Taser device at the same time unless lethal force is justified.

**VERBAL AND VISUAL WARNINGS**

A verbal warning of the intended use of the Taser device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances.

The purpose of the warning is to:

- Provide the individual with a reasonable opportunity to voluntarily comply.
- Provide other officers and individuals with a warning that the Taser device may be deployed.

The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair his/her vision.

The fact that a verbal or other warning was given or the reasons it was not given shall be documented by the officer deploying the Taser device in the related report.

**USE OF THE TASER DEVICE**

The Taser device has limitations and restrictions requiring consideration before its use. It should only be used when its operator can safely approach the subject within the operational range of the device. Although the Taser device is

generally effective in controlling most individuals, officers should be aware that the device may not achieve the intended results and be prepared with other options.

The Taser does not replace the use of firearms when an imminent threat with a high probability of serious injury or death exists. For example: a subject is pointing a firearm at another; a subject is aggressing and within striking distance with a knife.

### **APPLICATION OF THE TASER DEVICE**

The Taser device may be used in any of the following circumstances, when the circumstances perceived by the officer at the time indicate that such application is reasonably necessary to control a person:

- The subject is violent or is physically resisting.
- The subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, him/herself or others.

Mere flight from a pursuing officer, without other known circumstances or factors, is not good cause for the use of the Taser device to apprehend an individual.

### **SPECIAL DEPLOYMENT CONSIDERATIONS**

The use of the Taser device on certain individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the device.

This includes:

- Individuals who are known to be pregnant.
- Persons confined to a wheelchair
- On a person holding or pointing a firearm
- Elderly individuals or obvious juveniles.
- On small children or other Individuals with obviously low body mass.
- Individuals who are handcuffed or otherwise restrained.
- Individuals who have been recently sprayed with a flammable chemical agent or who are otherwise in close proximity to any known combustible vapor or flammable material, including alcohol-based oleoresin capsicum spray (OC, Pepper Spray).
- Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).
- On persons who have been severely injured in an accident, or involved in an accident and exhibiting signs of head injuries, dazed, difficulty in breathing, unconsciousness and the like.
- On persons known to be or who should be known to be “at risk” (e.g. persons with apparent debilitating illnesses, neuromuscular disorders, infirmities, heart problems, serious ill health, exhibiting signs of “excited delirium” and drug addicts.

Because the application of the Taser device in the drive-stun mode (i.e., direct contact without probes) relies primarily on pain compliance, the use of the drive-stun mode generally should be limited to supplementing the probe-mode to complete the circuit, or as a distraction technique to gain separation between officers and the subject, thereby giving officers time and distance to consider other force options or actions.

### **TARGETING CONSIDERATIONS**

Reasonable efforts should be made to target lower center mass and avoid the head, neck, chest and groin. If the dynamics of a situation or officer’s safety do not permit the officer to limit the application of the Taser device probes to a precise target area, officers should monitor the condition of the subject if one or more probes strike the head, neck, chest or groin until the subject is examined by paramedics or other medical personnel.

### **MULTIPLE APPLICATIONS OF THE TASER DEVICE**

Officers should apply the Taser device for only one standard cycle and then evaluate the situation before applying any subsequent cycles. Multiple applications of the Taser device against a single individual are generally not

recommended and should be avoided unless the officer reasonably believes that the need to control the individual outweighs the potentially increased risk posed by multiple applications.

If the first application of the Taser device appears to be ineffective in gaining control of an individual, the officer should consider certain factors before additional applications of the Taser device, including:

- Whether the probes are making proper contact.
- Whether the individual has the ability and has been given a reasonable opportunity to comply.
- Whether verbal commands, other options or tactics may be more effective.

Officers should generally not intentionally apply more than one Taser device at a time against a single subject.

### **DANGEROUS ANIMALS**

The Taser device may be deployed against an animal as part of a plan to deal with a potentially dangerous animal, such as a dog, if the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.

### **OFF-DUTY CONSIDERATIONS**

Officers are not authorized to carry department Taser devices while off-duty.

Officers shall ensure that Taser devices are secured while in their homes, vehicles or any other area under their control, in a manner that will keep the device inaccessible to others.

### **DOCUMENTATION**

All Taser discharges shall be documented in the related arrest/crime report. Accidental discharges of a Taser cartridge will also be documented. Any report documenting the discharge of a Taser will include the Taser serial number, the cartridge serial number (if used), and an explanation of the circumstances surrounding the discharge. The onboard Taser memory may be downloaded through the data port by trained personnel and provided to the deputy for reference. The deputy deploying Taser shall not download their own log, and this task will be accomplished by either another supervisor or trained TASER personnel. As with any use of force, additional documentation methods should be considered if practicable, such as recorded statements and photographs of injuries (or lack thereof). Notification shall also be made to a supervisor in compliance with the Use of Force Policy.

### **REPORTING**

Members about to use, or who have used a TASER device will ensure that the shift supervisor is notified as soon as practicable. When possible, and circumstances allow, members shall notify the shift supervisor prior to deployment and seek permission.

When deployed, Taser should be downloaded as soon as possible to document deployment times and durations.

Members who have used the TASER will document in the case report as soon as possible and before the end of their work shift the following information:

- Identification of all personnel firing Taser devices.
- Identification of all witnesses.
- Medical care provided to the subject.
- Observations of the subject's physical and physiological actions.
- Any known or suspected drug use, intoxication or other medical problems.

The shift supervisor shall:

- Respond to the scene when a TASER has been used, or is about to be used
- Ensure the photographs are taken of the site or the probe impacts and any related injuries; when possible photographs should be taken before the probes are removed and immediately after removal
- Document and photograph all visible injuries to any and all persons
- Ensure the incident is properly documented in the case report
- Ensure the probes are removed from the skin by a TASER device certified member or medical personnel

- Ensure that qualified EMS and/or other appropriate medical personnel are notified and asked to respond to the scene if there is cause to believe a person is suffering or has suffered an adverse reaction, has been injured, or pre-deployment behavior would suggest the possibility of an unusual or adverse reaction.
- Ensure that the TASER is downloaded to document deployment time and duration. In the event that a supervisor deploys the TASER, this task will be accomplished either by another supervisor or a TASER certified instructor.

### **MEDICAL TREATMENT**

Only TASER certified deputies are authorized to remove probes. Used Taser device probes shall be treated as a sharps biohazard, similar to a used hypodermic needle, and handled appropriately. Universal precautions should be taken. All persons who have been struck by Taser device probes or who have been subjected to the electric discharge of the device shall be medically assessed prior to booking.

Additionally, any such individual who falls under any of the following categories should, as soon as practicable, be examined by paramedics or other qualified medical personnel:

- The person is suspected of being under the influence of controlled substances and/or alcohol.
- The person may be pregnant.
- The person reasonably appears to be in need of medical attention.
- The Taser device probes are lodged in a sensitive area (e.g., groin, female breast, head, face, neck).
- The person requests medical treatment.

Any individual exhibiting signs of distress or who is exposed to multiple or prolonged applications (i.e., more than 15 seconds) shall be transported to a medical facility for examination or medically evaluated prior to booking. If any individual refuses medical attention, such a refusal should be witnessed by another officer and/or medical personnel and shall be fully documented in related reports. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible. The transporting officer shall inform any person providing medical care or receiving custody that the individual has been subjected to the application of the Taser device.

In custody individuals will be under constant visual observation for a period of not less than 30 minutes post exposure, while personnel look for and assess the possibility of adverse effects. Once incarcerated, visual observations will occur no less than once every 30 minutes for the following 24 hours or until released from custody.

If any of the following behaviors are observed, individuals will be transported to the hospital for evaluation and treatment by qualified medical personnel:

- Bizarre or violent behavior
- Signs of overheating
- Slurring or slowness of speech
- Self-mutilation
- Breathing pattern disturbances or loss of consciousness
- Signs of unusual physical distress
- Any signs of excited delirium (e.g., bizarre behavior, extreme physical strength, impervious to pain)
- The subject requests medical attention
- The person is a juvenile or person of small stature

### **SUPERVISOR RESPONSIBILITIES**

When possible, supervisors should respond to calls when they reasonably believe there is likelihood the Taser device may be used. A supervisor should respond to all incidents where the Taser device was activated. A supervisor should review each incident where a person has been exposed to an activation of the Taser device. The device's onboard memory should be downloaded through the data port by a supervisor or other trained personnel and saved with the related arrest/crime report. Photographs of probe sites should be taken and witnesses interviewed.

Post deployment, new cartridges should be issued as soon as possible by a supervisor or Taser instructor.

## **TRAINING**

Personnel who are authorized to carry the Taser device shall be permitted to do so only after successfully completing the initial department- approved training.

Proficiency training for personnel who have been issued Taser devices should occur every year. A reassessment of an officer's knowledge and/or practical skill may be required at times if deemed appropriate by the training officer. All training and proficiency for Taser devices will be documented in the officer's training file.

Command staff, supervisors and investigators should receive Taser device training as appropriate for the investigations they conduct and review. The training officer is responsible for ensuring that all members who carry Taser devices have received initial and annual proficiency training. Periodic audits should be used for verification.

Application of Taser devices during training could result in injury to personnel and should not be mandatory for certification.

The training officer should ensure that all training includes:

- Manufacturer guidelines and recommendations.
- A review of this policy.
- A review of the Use of Force Policy.
- Performing weak-hand draws or cross-draws to reduce the possibility of accidentally drawing and firing a firearm.
- Target area considerations, to include techniques or options to reduce the accidental application of probes near the head, neck, chest and groin.
- Handcuffing a subject during the application of the Taser device and transitioning to other force options.
- De-escalation techniques.
- Restraint techniques that do not impair respiration.

## **Definitions:<sup>1</sup>**

1. (PERF) “**Active Aggression**” means a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.<sup>2</sup>
2. “**Active Resistance**”
  - a. (PERF) A subject’s physical actions to defeat an officer’s attempt at control and to avoid being taken into custody. Verbal statements alone do not constitute active resistance.<sup>3</sup>
  - b. (DOJ) “means a subject attempts to attack or does attack an officer; exhibits aggressive behavior (e.g., lunging toward the officer, striking the officer with hands, fists, kicks or any instrument that may be perceived as a weapon such as knife or stick); or exhibits defensive resistance (e.g., attempts to leave the scene, flee, hide from detection, or pull away from the officer's grasp). Verbal statements, bracing, or tensing alone do not constitute active resistance.”<sup>4</sup>

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<sup>1</sup> The singular is also the plural, the plural includes the singular, and the masculine is also the feminine.

<sup>2</sup> 2011 Electronic Control Weapon Guidelines, A joint project of Police Executive Research Forum and Community Oriented Policing Services, U.S Department of Justice, page 41.

<sup>3</sup> 2011 Electronic Control Weapon Guidelines, A joint project of Police Executive Research Forum and Community Oriented Policing Services, U.S Department of Justice, page 41.

3. (DOJ) “**Apprehension**” means the arrest, capture, or taking into custody of a person.<sup>5</sup>
4. (DOJ) “**Arrest**” is the taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him. An arrest is a restraint of greater scope or duration than an investigatory stop or detention. An arrest is lawful when supported by probable cause.<sup>6</sup>
5. “**ARD**” refers to “arrest-related death.” ARD is not synonymous with in-custody death (ICD).
6. (DOJ) “**Body cavity search**” means any visual or physical inspection of a person’s genital or anal region with or without any physical contact with or intrusion into a body cavity.<sup>7</sup> “Body cavity search” does not include the subject’s mouth or nostrils.
7. (DOJ) “**CEW**” means a Conducted Electrical Weapon. [CEW is synonymous with “ECW” which means “Electronic Control Weapon,” or “ECD” which means “Electronic Control Device”]
  - a. In probe mode a weapon designed primarily to discharge electrical charges into a subject that will cause involuntary muscle contractions and overrides the subject's voluntary motor responses.<sup>8</sup>
8. (DOJ) “**CEW Application**” [or “**ECW**” or “**ECD**” **application**”] means the contact and delivery of electrical impulse to a subject with a CEW [ECW].<sup>9</sup>
9. (DOJ) “**Critical firearm discharge**” means a discharge of a firearm by a Department officer, including discharges where no person or animal is struck. Range and training firings, destruction of animals, and off-duty hunting discharges where no person is struck are not critical firearms discharges.<sup>10</sup>
10. (DOJ) “**Custodial Interrogation**” means words or actions on the part of an officer that the officer knows or should know are reasonably likely to elicit an incriminating response, after a person has been taken into custody.<sup>11</sup>

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<sup>4</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 4.

<sup>5</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 4.

<sup>6</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 4.

<sup>7</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 5.

<sup>8</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 6.

<sup>9</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 6.

<sup>10</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 6.

<sup>11</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 6.

11. **“Deadly force”**
  - a. is that quantum of force that poses a substantial risk of causing serious bodily harm or death.
  - b. Force that is not reasonably likely to cause death or serious physical injury, but unexpectedly results in death or serious injury is not considered deadly force.
    - i. The discharging of a firearm at a person is always considered deadly force except when an officer is discharging a less-than-lethal option approved pursuant to policy.
12. **“Detainee”** refers to a person who is housed in a detention center, correctional facility, or other facility for the incarceration (temporary or long-term) of individuals.
13. **“Demographic Category”** means age, race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity.<sup>12</sup>
14. **“Department”** means the Dubuque County Sheriff’s Office.
15. **“Discipline”** means a personnel action for violation of an established law, regulation, rule, or Department policy, including an admonishment, written reprimand, suspension, demotion, or dismissal.<sup>13</sup>
16. (DOJ) **“Discriminatory policing”** means selective enforcement or non-enforcement of the law, including the selecting or rejecting of particular policing tactics or strategies based on membership in a demographic category. Discriminatory policing does not include using race, ethnicity, or any other status in any reliable and recent suspect-specific description.<sup>14</sup>
17. **“EDP”** means a person who is an “Emotionally Disturbed Person.”
18. (DOJ) **“EWS”** means Early Warning System.<sup>15</sup>
19. **“Excessive Force”** is any use of force in excess of what the correctly applied legal standards allow.
20. (PERF) **“Excited Delirium”** [or **“Excited Delirium Syndrome”** (ExDS)] is a state of extreme mental and physiological excitement, characterized by behaviors and symptoms such as extreme agitation, elevated body temperature (hyperthermia), watering eyes (epiphoria), hostility, exceptional strength, and endurance without fatigue.<sup>16</sup>

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<sup>12</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 6.

<sup>13</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 6.

<sup>14</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 6.

<sup>15</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 7.

<sup>16</sup> 2011 Electronic Control Weapon Guidelines, A joint project of Police Executive Research Forum and Community Oriented Policing Services, U.S Department of Justice, page 42.

21. **“Exigent Circumstances”** are
  - a. (PERF) circumstances that would cause a reasonable person to believe that prompt and unusual action is necessary to prevent physical injury to self or others.<sup>17</sup>
    - i. Including destruction of evidence where there is insufficient time to acquire appropriate warrant.
22. **“Firearm”** means
  - a. (DOJ) a pistol, revolver, shotgun, carbine, or machine gun, as well as any instrument capable of discharging a bullet or shot.<sup>18</sup>
    - i. Including any “device” capable of discharging a bullet or shot.
23. (PERF) **“Fleeing”** is an active attempt by a person to avoid apprehension by a law enforcement officer through evasive actions while attempting to leave the scene.<sup>19</sup>
24. **“Force options”** refers globally to all use of force options an officer may have, threaten, apply, or use.
25. **“Force recipient”** refers to a person the officer intends to use, or uses, force upon.
26. (DOJ) **“Force Statement”** means a written statement documenting a use of force.<sup>20</sup>
27. **“Fourth Amendment”** refers to the Fourth Amendment to the United States (“U.S.”) Constitution.
28. **“Fourth Amendment Standard”** refers to the “objective reasonableness” seizure standard of the Fourth Amendment to the U.S. Constitution.
29. **“FTO”** means Field Training Officer.
30. **“Great bodily harm”** is serious physical injury creating a substantial risk of death; causes serious, permanent disfigurement; or results in long-term loss or impairment of the function of any bodily member or organ.
31. **“ICD”** means “In-Custody Death.” ICD is not synonymous with Arrest-Related Death (ARD).
32. **“Immediate”** means happening or done without delay, happening or existing now, or important now. Synonyms for “immediate” include: instantaneous, instant, split-second, straightaway.

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<sup>17</sup> 2011 Electronic Control Weapon Guidelines, A joint project of Police Executive Research Forum and Community Oriented Policing Services, U.S Department of Justice, page 42.

<sup>18</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 7.

<sup>19</sup> 2011 Electronic Control Weapon Guidelines, A joint project of Police Executive Research Forum and Community Oriented Policing Services, U.S Department of Justice, page 42.

<sup>20</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 7.

33. **“Immediate threat”** is a threat that is reasonably foreseeable to occur or is occurring forthwith (meaning now).
34. **“Imminent”** means impending or about to occur; is an event that is about to occur at any moment, happening very soon. Synonyms for “imminent” include: impending, looming, pending, threatening, around the corner. Imminent does not mean immediate or instantaneous, but that an action is impending. Thus, a subject may pose an imminent danger even if he is not at that very moment pointing a weapon at another person. For example, imminent danger may exist if an officer has reason to believe any of the following:
- a. A subject possesses a weapon or is attempting to gain access to a weapon under circumstances indicating an intention to use it against another person.
  - b. A subject is armed and running to gain the tactical advantage of cover.
  - c. A subject with the capability to inflicting bodily injury, serious bodily injury, or death is demonstrating an intention to do so.
  - d. A subject is attempting to escape from the vicinity of a violent confrontation in which he inflicted or attempted to inflict bodily injury, serious bodily injury, or death.
35. (DOJ) **“Interview”** means questioning for the purpose of eliciting facts or information.<sup>21</sup>
36. (DOJ) **“Investigatory stop”** or **“investigatory detention”** means a temporary restraint where the subject of the stop or detention reasonably believes that s/he is not free to leave. An investigatory stop or detention may be a pedestrian, vehicle, or bicycle stop.<sup>22</sup>
37. **“Less intrusive force options”** means
- a. an objectively reasonable force option that is a lower quantum of force (reasonably foreseeable risk of injury) than the force option the officer uses.
  - b. any force employed using specialized equipment that is designed to induce pain or temporarily incapacitate a person and is not reasonably likely to produce death or serious injury, including, but not limited to irritants (Oleoresin Capsicum (OC spray), CN, CS, or blends), Conducted Electrical Weapons (CEWs), impact weapons, and bean bag projectiles.
38. **“Less-lethal force”** or **“less-than-lethal force”** means
- a. (DOJ) force employed that is neither likely nor intended to cause death or serious injury.<sup>23</sup>

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<sup>21</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 7.

<sup>22</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 7.

<sup>23</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 7.

- b. any physical exertion or device that is used to restrain or control another which is not reasonably likely to cause death or serious injury.
39. (PERF/DOJ) “**Less-lethal weapon**” means any apprehension or restraint tool that, when used as designed and intended, is less likely to cause death or serious injury than a conventional police lethal weapon (*e.g.*, firearm).<sup>24, 25</sup>
40. (DOJ) “**Lethal force**” means any use of force likely to cause death or serious physical injury, (*e.g.*, the use of a firearm, neck hold, or strike to the head, neck, or throat with a hard object).<sup>26</sup>
41. (DOJ) “**LEP**” means “**Limited English Proficient,**” and refers to a person who does not speak English as his/her primary language and has a limited ability to read, write, speak, or understand English. LEP individuals may be competent in certain types of communication (*e.g.*, speaking or understanding), but still be LEP for other purposes (*e.g.*, reading or writing).<sup>27</sup>
42. (DOJ) “**LGBT**” means Lesbian, Gay, Bisexual, and Transgender.<sup>28</sup>
43. (DOJ) “**Neck hold**” means one of the following types of holds:
- (1) arm-bar control hold, a hold that inhibits breathing by compression of the airway in the neck;
  - (2) carotid restraint hold, a hold that inhibits blood flow by compression of the blood vessels in the neck;
  - (3) a lateral vascular neck constraint<sup>29</sup>; or
  - (4) a hold with a knee or other object to the back of a prone subject's neck.
- A neck hold shall be considered lethal force.<sup>30</sup>
44. “**Non-deadly force**” is that quantum of force not likely or intended to cause death or great bodily harm.
45. (DOJ) “**Non-disciplinary corrective action**” means action other than discipline taken by a supervisor to enable or encourage an officer to improve his or her performance.<sup>31</sup>

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<sup>24</sup> 2011 Electronic Control Weapon Guidelines, A joint project of Police Executive Research Forum and Community Oriented Policing Services, U.S Department of Justice, page 43.

<sup>25</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 7.

<sup>26</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 8.

<sup>27</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 8.

<sup>28</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 8.

<sup>29</sup> It is believed that the DOJ is referring to the Lateral Vascular Neck Restraint (LVNR®)

<sup>30</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 8.

46. **“OC”** means “Oleoresin Capsicum” or pepper spray. “OC” also generically includes combination of sprays that contain oleoresin capsicum and are intended for use as a force option. Other such irritants (including CN, CS, and blends) are generally considered similar to OC.
47. **“Objectives for using force”** [This is NOT found in the law – this is simply an instructional paradigm developed by Michael Brave.] is a possibly helpful framing paradigm to assist officers in making a use of force or force option decision, and includes the officers’ objectives or reasons for using the force under the reasonably perceived circumstances of the force option’s use. In *Scott v. Harris* the U.S. Supreme Court stated “in judging whether [officer’s] actions were reasonable, we must consider the risk of bodily harm that [officer’s] actions posed to [suspect] in light of the threat to the public that [officer] was trying to eliminate.”<sup>32</sup> These officers’ objectives for using force include, but are not limited to:
- a. **“Defensive force”** is force used on a force recipient because he is reasonably perceived as an immediate threat of harm.
  - b. **“Capture force”** is force used on a force recipient because he is attempting to flee or fleeing from a crime and the officer is justified in grounding the subject, tackling the subject on the current surface, or using another force option to attempt to capture the subject, or prevent or halt the subject’s flight.
  - c. **“Restraint force”** is force used to facilitate restraint (including when subject is turtling).
  - d. **“Compliance force”** is force used solely to gain the subject’s volitional compliance to officers’ lawful commands or directives. The subject is not reasonably perceived to be an immediate threat or a flight risk.
  - e. **“Distraction force”** is force is used to facilitate restraint or medical care of an Emotionally Disturbed Person (EDP), a person in Serious Psychological Distress (SPD), a cognitively or other mentally impaired or challenged person, or a person actively resisting receiving medical care.
  - f. **“Other force”** is any other lawful objective for using force that is not included above.
48. **“Officer”** means a law enforcement officer, and usually an officer of this Department.
49. **“Officers”** are law enforcement, correctional, or detention personnel, who are trained and authorized by the Department to carry and use any force or force options under the authority of this Department.
50. **“Passive resistance”** means

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<sup>31</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 8.

<sup>32</sup> *Scott v. Harris*, 550 U.S. 372, 383 (2007).

- a. (PERF) physical actions that do not prevent the officer’s attempt to control, for example, a person who remains in a limp-prone position, passive demonstrators, etc.<sup>33</sup>
  - b. (DOJ) “behavior that is unresponsive to police verbal communication or direction (e.g., ignoring or disregarding police attempts at verbal communication or control; going limp; or failing to physically respond or move) and verbal resistance (e.g., verbally rejecting police verbal communication or direction; telling the officer that he or she will not comply with police direction, to leave alone, or not bother him or her). Bracing, tensing, linking arms, or verbally signaling an intention to avoid or prevent being taken into custody constitutes passive resistance.”<sup>34</sup>
51. **“Person” or “Subject”** means any human affected by an officer’s use of force.
52. **“Policies and procedures”** means
- a. (DOJ) written regulations, or directives regardless of the name of the regulation or directive, describing the duties, functions, and obligations of Department officers and/or employees, and providing specific direction in how to fulfill those duties, functions, or obligations.<sup>35</sup>
  - b. written policies, procedures, rules, regulations, directives, or guidelines regardless of the name of the regulation or directive, describing the duties, functions, and obligations of Department officers and/or employees, and providing specific direction in how to fulfill those duties, functions, or obligations.
53. **“Possibility”** is the degree of certainty that an event may or may not happen. A mere hunch. A quantum of knowledge or belief less than reasonable suspicion. A “possibility” is insufficient to form a reasonable belief.
54. **“Positional Asphyxia”** means
- a. (PERF) a death that occurs when a subject’s body position interferes with breathing, either when the chest is restricted from expanding properly or when the position of the subject’s head obstructs the airway.<sup>36</sup>
  - b. Positional asphyxia considerations include:
    - i. Current scientific literature does not support a significant risk of positional asphyxia in law enforcement restraint.

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<sup>33</sup> 2011 Electronic Control Weapon Guidelines, A joint project of Police Executive Research Forum and Community Oriented Policing Services, U.S Department of Justice, page 43.

<sup>34</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 9.

<sup>35</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 9.

<sup>36</sup> 2011 Electronic Control Weapon Guidelines, A joint project of Police Executive Research Forum and Community Oriented Policing Services, U.S Department of Justice, page 43.

- ii. Some medical professionals speculate (not supported by scientific literature) that any respiratory inhibition may cause or contribute to a person’s inability to correct physiologic imbalance through respiration.
55. (DOJ) **“Probable cause”** means that the facts and circumstances known to the officer at the time would justify a prudent person in believing that the suspect committed or was committing an offense.<sup>37</sup>
56. **“Quantum of force”** means the objectively reasonably foreseeable (to the officer) effects and injuries on the force recipient of a chosen force option, under the totality of the circumstances of the force option use.
57. **“Reasonable”** means fair, proper, or moderate under the circumstances. As used herein “reasonable” is used in reference to the “objective reasonableness” standard of the Fourth Amendment.
58. **“Reasonable belief”** or **“Reason to believe”**
- a. The facts or circumstances, which would cause a reasonable person to act or think in a similar way under similar circumstances.
  - b. A belief supported by objective factors. Greater than a possibility.
  - c. As support for a use of force under the Fourth Amendment’s objective reasonableness standard: “a simple statement by an officer that he fears for his safety or the safety of others is not enough; there must be objective factors to justify such a concern.”<sup>38</sup>
59. (DOJ) **“Reasonable force”** means force that is objectively reasonable under the circumstances and the minimum amount of force necessary to effect an arrest or protect the officer or other person.<sup>39</sup>
60. **“Reasonable force”** or **“Reasonable”** (as used with force use) with regard to the Fourth Amendment’s **“objectively reasonable”** seizure/force standard is that quantum (or amount) of force that is “objectively reasonable force” as that term is applied in the Fourth Amendment’s objective reasonableness seizure (including force) standard.
- a. **Balancing Test (*Graham*<sup>40</sup>):** reasonableness inquiry requires a careful balancing of the nature and quality of the intrusion (use of force) on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.
  - b. **Risk/Benefit Balancing Test (*Scott*<sup>41</sup>):** In judging whether the officer’s actions were reasonable, we must consider the risk of bodily harm that officer’s actions posed to the

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<sup>37</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 9.

<sup>38</sup> *Deorle v. Rutherford*, 272 F.3d 1272, 1281 (9th Cir. 2001).

<sup>39</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 9.

<sup>40</sup> *Graham v. Connor*, 490 U.S. 386, 396 (1989).

<sup>41</sup> *Scott v. Harris*, 550 U.S. 372, 383 (2007).

subject in light of the threat to the public posed by the subject that the officer was trying to eliminate.

- c. **Reasonableness at the Moment Force is Used (*Graham*<sup>42</sup>):** reasonableness test considers that officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving, about the amount of force that is appropriate in a particular situation.
- d. **Reasonableness Test (*Graham*<sup>43</sup>):** requires careful attention to the facts and circumstances of each particular use of force, including [but not limited to]:
  - i. whether the subject poses an immediate threat to the safety of officers or others;
  - ii. whether the subject is actively resisting arrest;
  - iii. circumstances are tense, uncertain, or rapidly evolving (“pace” of the events) requiring “split-second judgments”;
  - iv. the severity of the crime at issue; and
  - v. attempting to evade [seizure] by flight.
- e. **Reasonable Officer’s Perspective (*Graham*<sup>44</sup>):** the “reasonableness” of a particular use of force must be judged from the perspective of an objectively reasonable officer on the scene, rather than with the 20/20 vision of hindsight.
- f. **Objective Test (*Graham*<sup>45</sup>):** whether the officer’s actions are “objectively reasonable” in light of the facts and circumstances **confronting them, without regard to their underlying intent or motivation. Because an officer’s** actions in a Fourth Amendment excessive force case are evaluated under an objective standard, an officer's belief as to what was happening is irrelevant, and, instead, what is relevant is whether an objectively reasonable officer would have believed the facts to be as the officer believed them to be and whether an objectively reasonable officer would have determined the use of force was lawful under those facts.<sup>46</sup>
- g. **Each Force Application Must Be Justified:** Each strike, hit, kick, joint lock, take down, use of weapon, firearm, OC use, force application, CEW trigger pull or 5-second CEW cycle or application, etc., must be legally justified.
- h. **All Force Must be Unambiguously Justified in Officer’s Reports/Statements:** Any factor used to justify an officer’s use of or escalation of force on a force recipient must be explained. Obviously there is no perfect force or other officer report. There are always areas where a critic of the officer’s force will find something that was not completely, clearly, or unambiguously included within the officer’s force or incident

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<sup>42</sup> *Graham v. Connor*, 490 U.S. 386, 396 (1989).

<sup>43</sup> *Graham v. Connor*, 490 U.S. 386, 396 (1989).

<sup>44</sup> *Graham v. Connor*, 490 U.S. 386, 396 (1989).

<sup>45</sup> *Graham v. Connor*, 490 U.S. 386, 397 (1989).

<sup>46</sup> *Shekleton v. Eichenberger*, 677 F.3d 361, 365, fn4 (C.A.8 (Iowa), May 3, 2012).

report. Officers are expected to make reasonable efforts to produce high-quality reports. Also, it is understood that officers will by time necessity need to triage the depth and complexity of their reports. Meaning, a report of simply placing handcuffs on a non-resistive subject – without appreciation of injury – is expected to be far less detailed (and time consuming) than a report involving a significant application of force options and associated arrest-related death.

- i. **Balancing.** In determining the objective reasonableness of an officer’s use of force, the nature and quality of the intrusion on the individual’s Fourth Amendment interests must be balanced against the importance of the governmental interests alleged to justify the intrusion.<sup>47</sup>
- j. **Misuse of Power.** “[T]he Fourth Amendment addresses ‘misuse of power,’ not the accidental effects of otherwise lawful conduct.”<sup>48</sup>
- k. **Objective reasonableness** of an officer’s use of force is based on:
  - i. the totality of the facts and circumstances known or reasonably perceived by the officer, including, but not limited to:
    - 1) The *Graham v. Connor*<sup>49</sup> factors (in the risk-of-injury priority order of *Chew v. Gates*<sup>50</sup>):
      - (a) is the person an immediate threat;
      - (b) is the person actively resisting;
      - (c) are the circumstances created by the person tense, uncertain, or rapidly evolving [the pace or pacing of the events];
      - (d) what is the severity of the crime at issue; and
      - (e) is the person attempting to evade seizure (trying to get away) by flight.
    - 2) Other factors include, but are not limited to:
      - (a) is the person exhibiting serious psychological distress (SPD).
      - (b) are there other less intrusive reasonable force option alternatives available<sup>51</sup>.
      - (c) what is/are the subject’s health, mental condition, or other relevant

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<sup>47</sup> *Scott v. Harris*, 550 U.S. 372, 383 (2007).

<sup>48</sup> *Brower v. County of Inyo*, 489 U.S. 593, 596 (1989); *Milstead v. Kibler*, 243 F.3d 157 (C.A.4 (Va.) March 15, 2001).

<sup>49</sup> *Graham v. Connor*, 490 U.S. 386, 396 (1989).

<sup>50</sup> *Chew v. Gates*, 27 F.3d 1432 (C.A.9 (Cal.), June 27, 1994), *cert. denied*, 513 U.S. 1148 (1995).

<sup>51</sup> “[T]he availability of alternative methods of capturing or subduing a suspect may be a factor to consider.” *Chew v. Gates*, 27 F.3d 1432, 1441 n. 5 (C.A.9 (Cal.), June 27, 1994). Court may also consider “the availability of alternative methods of capturing or subduing a suspect.” (*Smith v. City of Hemet*, 394 F.3d 689, 701 (C.A.9 (Cal.) Jan. 9, 2005))

frailties<sup>52</sup>.

- 3) Additional factors include, but are not limited to:
    - (a) number of officers versus number of subjects;
    - (b) availability of additional officers to respond/assist;
    - (c) subject's proximity to potential weapons;
    - (d) age, size, gender, relative strength, of officer(s) and subject(s);
    - (e) special knowledge or skill level;
    - (f) injury or exhaustion;
    - (g) mental illness;
    - (h) drug usage;
    - (i) prior contacts or knowledge; and
    - (j) environmental factors.
  - ii. from the perspective of a reasonable officer on the scene.
  - iii. at the moment the force is used.
61. **“Reasonably appears necessary”** means facts and circumstances, including the reasonable inferences drawn therefrom, known to an officer at the time the officer uses force, that would cause a reasonable officer to believe that the degree of force is lawful.
  62. **“Reasonably perceived”** means a fact or belief supported by more information or knowledge than a possibility or mere hunch.
  63. (DOJ) **“Reasonable suspicion”** means articulable facts that, within the totality of the circumstances, lead an officer to reasonably suspect that criminal activity has been or is about to be committed.<sup>53</sup>
  64. **“Response to Resistance”** means an officer's response to a person's resistance to the officer's efforts to accomplish lawful objectives, including, but not limited to: defense of self or others, capture, control, restraint, or compliance. Response to resistance also includes distractionary force employed to assist with providing of medical assistance (*e.g.* transition from hard to soft restraints).
  65. (DOJ) **“Seizure”** or **“detention”** occurs when an officer's words or actions would convey to a reasonable person that he or she is not free to leave.<sup>54</sup>

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<sup>52</sup> *Deorle v. Rutherford*, 272 F.3d 1272, 1282-83 (C.A.9 (Cal.) March 16, 2001); *Franklin v. Foxworth*, 31 F.3d 873, 876 (C.A.9 (Or.) August 2, 1994).

<sup>53</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 9.

66. (PERF) “**Serious Bodily Harm**” is an injury to a person that, either at the time of the actual injury or at a later time, involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of any part or organ of the body, as well as any breaks, fractures, or burns of the third degree.<sup>55</sup>
67. “**Serious bodily injury**” is a bodily injury which creates a substantial risk of: death or substantial loss or impairment of the function of any bodily member or organ; substantial impairment of health; or substantial disfigurement.
68. (DOJ) “**Serious physical injury**” means physical injury that creates a substantial risk of death; causes death or serious and protracted disfigurement; or causes impairment of the function of any bodily organ or limb.<sup>56</sup>
69. (DOJ) “**Serious use of force**” means:
- a. all uses of lethal force by a Department officer;
  - b. all critical firearm discharges by a Department officer;
  - c. all uses of force by a Department officer resulting in serious physical injury or requiring hospitalization;
  - d. all neck holds;
  - e. all uses of force by a Department officer resulting in a loss of consciousness;
  - f. all canine bites;
  - g. more than two applications of an ECW on an individual during a single interaction, regardless of the mode or duration of the application, and whether the applications are by the same or different officers, or ECW application for longer than 15 seconds, whether continuous or consecutive; and
  - h. any strike, blow, kick, ECW application, or similar use of force against a handcuffed subject.<sup>57</sup>
70. (DOJ) “**Service firearm**” means any firearm issued to sworn personnel by the Department.<sup>58</sup>

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<sup>54</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 10.

<sup>55</sup> 2011 Electronic Control Weapon Guidelines, A joint project of Police Executive Research Forum and Community Oriented Policing Services, U.S Department of Justice, page 43.

<sup>56</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 10.

<sup>57</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 10.

<sup>58</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 10.

71. **“Societal perceptions and concerns creating need for elevated justification factors”** or **“Special populations”** include the following factors involving groups of people from which the general public commonly assumes that individuals are not capable of being an imminent threat of death and/or serious bodily harm, or that these people should be treated more sensitively and compassionately by officers. Officers understand that the realities are that individuals from each of these groups do commit violent crimes, can be an imminent threat of death and/or serious bodily harm to officers, others, and themselves, can be so resistive that the use of force is eminently justified, etc. However, since society generally places individuals within these groups into perceived protected classes, officers using force on one of these individuals will foreseeably be placed under heightened scrutiny and will likely be required to provide additional justification for the use of force. These groups include, but may not be limited to:
- a. **Children or Minors.** When officers use force on a child, [as defined by applicable state law], the younger the child, the greater the justification that will be required for the officers’ application of force. However, officers’ judicious use of force has saved the lives of numerous children who presented imminent threats of death or serious bodily injury to themselves, others, and officers, immediately prior to the force use. Often these children were armed with edged weapons and threatening imminent use. Also, as with restraints, just because a subject is a “child,” does not automatically mean that the person is not an imminent threat or danger to him/herself, others, or officers. In some situations the utilization of a particular force option is less potentially injurious to the child than other force tools and/or techniques, e.g. if officers were to place a strong wrist lock or arm bar on a small child there is a risk of a spiral break to the child’s appendage. In such a case, a CEW may be a better force choice.
  - b. **Seniors.** Seniors are often not seen as serious threats. However, there are many situations where seniors pose substantial threats to officers, others, family members, and/or themselves. As circumstances reasonably permit, officers shall take into account a subject’s frailties or obvious vulnerabilities or conditions.
  - c. **Restrained subjects.** If subjects are no longer an immediate threat, and are restrained, subdued, and compliant, force should generally not be used. However, just because subjects are restrained (by handcuffs or other means) does not necessarily mean that they are subdued, or no longer a serious immediate threat to officers, others, and/or themselves. If subjects continue to be threats to officers, others, and/or themselves, then officers may utilize objectively reasonable force.
  - d. **Persons in serious psychological distress (SPD) or cognitively challenged.**
  - e. **Persons cognitively impaired or challenged.**
  - f. **Persons in known medical distress.**
  - g. **Passive subjects who are being seized:** A “passive” subject is one who is to be seized because legal justification exists to seize the subject and officers are attempting to seize the person, and the person is passively resisting the seizure. A “passive resisting” subject does not include a subject who is exhibiting active resistance (e.g., flailing,

jerking, etc.) or where officers can articulate an immediate threat of active resistance. [Department option - choose one of the following policy choices]:

- i. Use of objectively reasonable force above unresisted handcuffing is not allowed on purely passive subjects. (OR)
- ii. The use of objectively reasonable force is allowed on passively resistant subjects. If officers use force on a passive resisting person the officers' justification requirement is escalated.
  - 1) However, the Department does not forbid the use of objectively reasonable force on all passive persons.
    - (a) As an example, if an officer is attempting to arrest a very large person – weighing 300+ pounds – and the subject is refusing to move, get up, get out of the car, etc., then the officer may, (when reasonably safe to do so) after giving the person warning and a reasonable opportunity to volitionally comply, of the imminent use of force in an attempt to gain voluntary compliance with the officers' lawful orders, and after (when reasonably safe to do so) giving the subject a chance to comply, the officer may use force to attempt to gain compliance. Also, if safety to the officers or others may be compromised by providing warning of the imminent use of force, then the officers may appropriately decide not to give warning of the imminent force application.

72. **SPD.** Refers to a person in “serious psychological distress.”

73. “**Special consideration**” means a consideration of:

- a. the potential additional risk of harm posed by a specific force option (quantum of force) against a member of a special population; and
- b. whether other types of force with reasonably foreseeable lower quantum of force are reasonably available to effectuate custody of or facilitate control over a member of a special population while still preserving the safety of that person, third parties, and the responding officers.

74. “**Special populations**” see “**Societal perceptions and concerns creating need for elevated justification factors.**”

75. (DOJ) “**Strip search**” means any search of an individual requiring the removal or rearrangement of some or all clothing to permit visual inspection of the suspect's groin, genital area, buttocks, female breasts, or undergarments covering these areas.<sup>59</sup>

76. (DOJ) “**Supervisor**” means a sworn Department employee at the rank of sergeant or above (or anyone acting in those capacities) and non-sworn Department personnel with oversight responsibility for other officers.<sup>60</sup>

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<sup>59</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 10.

77. **“Turtling”** means that subjects in a prone position are attempting to keep or are keeping their arms and hands in a position or positions to prevent officers’ attempts to capture, control, or restrain them. (*E.g.*, subjects who are holding their hands together under their bodies while lying on the ground in an attempt to prevent officers from successfully handcuffing or restraining them.)
78. (DOJ) **“Use of force”** means physical effort to compel compliance by an unwilling subject above unresisted handcuffing, including pointing a firearm at a person. A reportable use of force is any force above hand control or escort techniques applied for the purposes of handcuffing, or escort techniques that are not used as pressure point compliance techniques, do not result in injury or complaint of injury, and are not used to overcome resistance.<sup>61</sup>
79. **“UOF”** means “use of force.”
80. (DOJ) **“Use of force indicating apparent criminal conduct by an officer”** means force that a reasonable and trained supervisor would conclude could result in criminal charges due to the apparent circumstances of the use of force, such as the level of the force used as compared to the resistance encountered, or discrepancies in the use of force as described by the officer and the use of force as evidenced by any resulting injuries, witness statements, or other evidence.<sup>62</sup>
81. **“Use of Force Report”** means
- a. (DOJ) a written report documenting a supervisor’s investigation of a use of force.<sup>63</sup>
  - b. written, video, or other report documenting a use of force event.
82. (DOJ) **“VAW”** means violence against women.<sup>64</sup>
83. (DOJ) **“Vehicle stop”** means any instance where a Department officer directs a civilian operating a motor vehicle of any type to stop and the driver is detained for any length of time.<sup>65</sup>
84. **Volitional Compliance.** When an officer uses force for the sole purpose of attempting to gain voluntary compliance from a force recipient, the use of force includes the following:
- a. The force recipient is not reasonably perceived by officers to be:

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<sup>60</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 10.

<sup>61</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 11.

<sup>62</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 11.

<sup>63</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 11.

<sup>64</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 11.

<sup>65</sup> Consent Decree Regarding the New Orleans Police Department, Filed July 24, 2012, United States of America v. City of New Orleans, U.S.D.C., EDLA, Case 2:12-cv-019240-SM-JCW, page 11.

- i. An immediate threat, or
  - ii. Flight risk.
- b. The sole (only) purpose (objective) for the officer's use of force on the person is to persuade the force recipient to comply with the officer's lawful directive.

**Definitions:**

85. **"AFID"** "Anti-Felon Identification" system provides accountability for each use of the CEW via the dispersal of tiny unique coded tags every time a CEW is "probe deployed" – i.e., a cartridge is discharged.
86. **"Cartridge"** refers to a TASER cartridge or Smart cartridge as manufactured by TASER International, Inc. (TASER) specifically for use with a TASER CEW.
87. **"CEW"** "Conducted Electrical Weapon" means a handheld CEW as manufactured by TASER International, Inc. (TASER). The CEW is a hand-held unit that can be used in multiple modes, primarily including:
- a. **"Intimidation Presence"** means pointing a CEW at a person as an intimidator to attempt to achieve or to achieve volitional compliance. In this mode the CEW safety is in the SAFE mode and the LASER is not activated.
  - b. **"LASER Painting Intimidation"** means pointing a CEW at a person with the CEW ARMED (safety off) and with the LASER dot on the person, in order to attempt to achieve or to achieve volitional compliance.
  - c. **"Warning Arc Intimidation"** means causing a CEW to "arc" across the front electrodes as a show of intimidation, in order to attempt or to achieve or to achieve volitional compliance.
  - d. **"Drive-Stun"** means the front electrodes on the CEW, or an expended cartridge attached to the front of the CEW, are brought into immediate, direct, or close proximity, contact with a subject's body, or clothing.
    - i. "Drive-stun" only creates discomfort, due to the narrow spread of the CEW electrodes. It is highly unlikely that a drive-stun application will create any noticeable motor-skill dysfunction.
    - ii. Drive-stun quantum of force will – in part – be determined by the number of sets of electrodes on the CEW. [the X26/X26P CEWs have one set of electrodes, the X2 CEW has two sets of electrodes, and the X3 CEW has three sets of electrodes]. The greater the number of sets of electrodes the greater the quantum of force.
  - e. **"Probe Deployment"** or **"Probe Mode"** means utilizing compressed nitrogen gas to propel two (2) darts on wires from a cartridge. The CEW sends an electrical charge to the probes, via small wires, which – when a circuit is completed and maintained that is

capable of delivering an electrical charge to the subject – can disrupt the ability of the subject’s body’s to effectively communicate messages from the brain to the muscles. This electrical charge is likely (depending upon many factors, including the separation distance between the probes, i.e., the probe spread, probe placement, the thickness or layers of clothing on the person, etc.) to achieve or attempt to achieve motor-skill dysfunction.<sup>66</sup>

- f. **“Three-Point CEW Deployment”** means utilizing a CEW in drive-stun mode, after it has been probe deployed, to supplement the probe mode in order to complete the electrical circuit in an attempt to increase the effect or likelihood of incapacitation.<sup>67</sup>
88. **“CEW Records Custodian”** means the Department designated person responsible for collecting and maintaining CEW records.
89. **“CEW use”** means:
- a. **“CEW Displayed”** or **“CEW Brandished”** means the CEW is withdrawn from the holster and visible to the subject. The subject complies, or the incident concludes, without further use of the CEW.
  - b. **“CEW LASER Painted”** means the CEW’s LASER is activated and pointed in the direction of the subject and in response to the LASER painting the subject complies, or the incident concludes, without further use of the CEW.
  - c. **“CEW Demonstrated”** or **“CEW Arcing”** means the CEW is withdrawn from the holster, and in the case of the:
    - i. M26 CEW, X26 CEW, or X26P CEW, the TASER cartridge is removed and the electrical arcing is demonstrated to the subject to attempt to gain voluntary compliance;
    - ii. X2 CEW or X3 CEW, the officer depresses the ARC switch, causing the CEW to arc across the front electrodes (without deploying a Smart™ cartridge or applying the CEW to the person in drive-stun mode).
  - d. **“CEW Deployed”** means the CEW probes are expelled from an unexpended cartridge.
  - e. **“CEW Discharge”** means that the CEW trigger is pulled and an electrical charge is expelled from the CEW, regardless of whether an electrical circuit is completed or an electrical charge is delivered to a subject. CEW discharge can include:
    - i. Drive-stun discharge.
    - ii. Probe deployment, or probe mode discharge, or
    - iii. Three-point (or four-point) deployment discharge.

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<sup>66</sup> Ho J, Dawes D, Miner, J, Kunz S, Nelson R, Sweeney J. Conducted electrical weapon incapacitation during a goal-directed task as a function of probe spread. *Forensic Sci Med Pathol*. Apr 2012.

<sup>67</sup> Panescu D, Kroll M, Stratbucker R. Medical safety of TASER conducted energy weapon in a hybrid 3-point deployment mode. *Conf Proc IEEE Eng Med Biol Soc*. 2009;1:3191-3194.

**90. “Heightened CEW Application Risk Factors”** includes the following factors which, where reasonably apparent to and perceived by involved officers, require elevated justification of CEW application. Under the following conditions the risks of foreseeable direct or secondary injuries are foreseeably elevated, thus officers’ justification(s) for CEW application are also elevated. These elevated risk factors can only be given consideration when the factors are reasonably perceived by the officers:

**a. Presence of flammable liquids/fumes or explosive environments**

- i. The discharge of CEWs can ignite flammable liquids/fumes. CEWs deployment at subjects who are reasonably perceived by the officers to have recently come into contact with flammable liquids/fumes, or in environments where flammable liquids/fumes are known to be present, may result in secondary injuries/burns. Officers should be especially aware of this potential flammability issue when present in known meth lab environments and/or similar environments or conditions.
- ii. Other flammable environments include, but are not limited to: motor-vehicle crashes, airplane refueling areas, sewers, laboratories, petroleum fueling stations, etc.
  - 1) [A court has stated that] “the knowledge that vehicle accidents may result in gasoline spills, and the knowledge that using a [CEW] in the presence of flammable material causes a fire risk.” In such circumstances the use of a CEW resulting in significant injuries from combustion is the use of deadly force, and thus must be justified.<sup>68</sup>
- iii. However, even though a person who has come into contact with a flammable liquid creates a higher degree of potential risk for the subject, the officers, and third parties in the proximity of the subject, the totality of the circumstances may indicate that the subject may still be subjected to a CEW. As an example, a person is flailing a knife approximately twenty (20) feet from officers. The officers know that the person has come into contact with lighter fluid and still has the fluid on his clothing. The person now starts aggressively walking toward the officers. Even though the officers have deadly force (firearm) cover, the officers may still reasonably perceive a decision to try to stop this subject’s aggression with the CEW. And, the fact that the subject may have flammable liquid on his person does not create an absolute bar to the use of the CEW.

**b. Elevated positions.** Reasonable considerations and care need to be taken when deploying a CEW on a subject who is in or on an elevated position or in circumstances where a fall resulting from the CEW application may reasonably and foreseeably cause substantial injury or death. Obviously, the higher the elevation or the more foreseeable the secondary injury from falling, the greater the justification for the CEW application that will be required of the officers.

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<sup>68</sup> *Brown v. Burghart*, 2013 WL 1334183 (E.D.Pa. Apr 03, 2013).

- c. **Person operating moving vehicle or machinery.** The use of a CEW on a person operating a moving vehicle or machinery could result in severe secondary consequences. Therefore, any application of a CEW on a person operating a moving vehicle or machinery will foreseeably require elevated justification for the CEW use.
- d. **Person running (fleeing).** Subjects who are exposed to a CEW while running may foreseeably fall and be unable to catch themselves or lessen the impact or consequence of the fall as a result of the CEW exposure combined with the running (momentum). Since this fall will foreseeably be dynamic, the risks of secondary injuries (from the running momentum) will likely result in greater risk of injury. Therefore, elevated justification will be required for a CEW deployment on a running subject.
- e. **Pregnant female:**
  - i. Use of a CEW on a pregnant female may be alleged to cause injury to the woman and/or her fetus. Also, should a pregnant female fall onto her stomach during the CEW application, there is an enhanced risk of secondary injuries. Therefore, where officers deploying CEWs reasonably believe the female subject to be pregnant, greater justification for the CEW application will be required.
  - ii. Officers are not prohibited from using a CEW on a pregnant female in certain circumstances, as discussed in training. For example, officers encounter a crazed, violent, obviously pregnant female who appears to be under the influence of illegal drugs, alcohol, prescription medication, etc. She threatens to plunge a sharp object into her abdomen (and her baby). The officers facing this imminent threat may reasonably believe that the use of a CEW on this person may be a reasonable choice to attempt to save the lives of the fetus and the mother.
- f. **Swimming pool or other body of water.** If a person could reasonably and foreseeably fall into a swimming pool or body of water due to application of a CEW, the officers will need to have elevated justification for the CEW. The elevated risk is that the subject may not be able to prevent him or herself from drowning.
- g. **Intentional CEW application to sensitive areas.** If an officer intentionally applies a CEW to a subject's sensitive areas, greater justification will be required from the officer. It is understood that deployments against humans may be very dynamic in nature and the probes may impact unintended areas.
- h. **Frail or infirm individual.** If an officer uses a CEW on an obviously frail or infirm person greater justification will be required from the officer.
- i. **Non-standard repeated CEW applications.** The use of a CEW on a person results in some degree of physical exertion or stress (due to muscle contractions, discomfort, etc.). Repeated CEW discharges foreseeably result in cumulative and additional exertion and stress. A CEW incident may necessitate multiple CEW cycles or discharges. Multiple CEW discharges may require elevated justification(s) by the officers.

91. **Neuromuscular Incapacitation (NMI)**<sup>69</sup>. An electrically induced, primarily motor-nerve mediated, effect on the motor nervous system and skeletal muscles causing physical incapacitation. In the 2012 Ho study, incapacitation, in terms of effectively controlling the subject and preventing useful advancement towards a goal, was clearly dependent upon TASER [CEW] probe spread and increased as a function of such spread up to between 9 and 12 inches. The primary mechanism by which TASER CEWs are thought to operate is through the electrical stimulation of motor neuron axonal projections to skeletal muscles. Motor neurons within sufficiently strong electric fields established by the wire-tethered probes are stimulated at a sub-tetanic rate (19 pulses per second with the TASER X26) leading to involuntarily fused muscle contractions and therefore incapacitation of activated muscle groups.<sup>70</sup>
92. **Sensitive Areas.** These areas of a person’s body include the face, neck, head, throat, chest/breast, chest and area of the heart, groin, genitals, and female’s breast.
93. **Sudden Short-Term Discomfort.** CEW application generally causes an overwhelming instantaneous sensation of discomfort and can result in loss of voluntary muscle control. This overwhelming instantaneous discomfort usually ceases and dissipates almost immediately upon discontinuance of CEW discharge. The reason for the discomfort is usually associated with overwhelming activation of affected portions of the body’s sensory nervous system.
94. **“TASER”** means the company TASER International, Inc.

M26, Smart, X2, X26, and X26P are trademarks of TASER International, Inc., and TASER and X3 are registered trademarks of TASER International, Inc., registered in the U.S.

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<sup>69</sup> Ho J, Dawes D, Miner, J, Kunz S, Nelson R, Sweeney J. Conducted electrical weapon incapacitation during a goal-directed task as a function of probe spread. *Forensic Sci Med Pathol.* Apr 2012.

<sup>70</sup> Sweeney JD. Transcutaneous muscle stimulation. In: Kroll MW, Ho JD, editors. *TASER conducted weapons: physiology, pathology, and law.* New York: Springer; 2009. p. 51–62.

