



**DEPARTMENT OF PUBLIC SAFETY  
POLICIES & PROCEDURES**



**PROCEDURAL MANUAL**

**OPR: 01a**

**EFFECTIVE**

**DATE:**

**10/22/2021**

**ORIGINAL**

**ISSUED ON:**

**10/06/2021**

**SUBJECT: OPR: 01a PROCEDURAL MANUAL**

**REVISION NO:**

**1**

## **1.0 PURPOSE**

The purpose of this procedural manual is to New Mexico Department of Public Safety personnel with the procedures surrounding the use of force. Refer to department training materials for specific techniques related to using force. Refer to *OPR: 01 Use of Force* for department policy on the use of force.

## **2.0 REFERENCES**

- A. NMLEA Use of Force Training Curriculum
- B. Section 30-2-6, Justifiable Homicide by Public Officer or Public Employee, NMSA 1978
- C. CALEA Chapter 1- Law Enforcement Role and Authority
- D. IACP National Law Enforcement Policy Center
- E. Police Chief- June 1996 "Excited Delirium A Two-Fold Problem", Lt. Alan W. Benner, PhD, San Francisco Police Department, S. Marshall Isaacs, M.D., San Francisco Department of Health
- F. Police Use of Force: A Line Officer's Guide, by Thomas T. Gillespie, Darrel Hart, and John Boren (1998)
- G. [Force] Response to Resistance New Mexico Law Enforcement Academy Core Curriculum (Instructor Course) - NMDPS Accreditation Number: NM16122
- H. Version "2" Study Aid: Understanding the 4th Amendment's Objective Reasonableness Standard and Qualified Immunity (© Copyright September 13, 2019, by LAAW International, LLC. All rights reserved.)
- I. TASER Conducted Energy Weapon (CEW) Use Guidelines (© 2019 Axon Enterprise, Inc.)
- J. Governmental Entity Liability Legal Update - Deadly Force: Defining "SBI" in the Context of the Fourth Amendment (July 2020), by Mildred O'Linn, Tony Sain, and Lynn Carpenter.
- K. *Murphy v. City of Farmington*, CIV 19-0639 RB/JFR (US District Court, D. New Mexico)

### 3.0 TRAINING REQUIREMENTS

**A. Annual Requirements: No less than every year, officers shall receive refresher training on:**

1. Department policies related to Use of Force (OPR: 01, OPR: 29, OPR 33, OPR 05, OPR 08), which includes when an officer can and cannot use various levels and types of force.
2. Officers shall receive refresher training with all approved less lethal tools that the officers are authorized to carry, which includes when officer can and cannot use various levels and types of force.
3. Officers shall receive refresher training on control holds and weaponless techniques, which includes when officer can and cannot use various levels and types of force.
4. Officers shall receive training on recognizing signs and symptoms of *excited delirium*.

### 4.0 DEFINITIONS

- A. Active Resistance** – Physically evasive movements to defeat an officer's attempt to control, including bracing, tensing, pulling away, running away, or physically displaying an intent to avoid being taken into custody.
- B. Area Denial** – Intent to prevent a person from occupying or traversing a certain area, whether that space is inside or outside.
- C. Assaultive** – An attempt to commit a battery upon the person of another. Any unlawful act, threatening or menacing conduct, which causes another person to reasonably believe that he is in danger of receiving an immediate battery (30-3-1 NMSA 1978).
- D. Canine or K-9** – A specially trained dog assigned to a DPS commissioned officer.
- E. Chemical Agents** – Chemical agents designed and manufactured for law enforcement purposes, which are approved and issued by the Department of Public Safety.
- F. Deadly Force** – The degree of force which is likely to cause death or great bodily harm.
- G. De Minimis Force** – The use of such a small amount of force that it creates a minimal risk of injury when used in an objectively reasonable manner.
- H. Exigent Circumstances** – Those circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or public, the destruction of relevant evidence, or the escape of a suspect.

- I. **CEW Coordinator** – The person(s) assigned by the Chief to track and review all CEW applications for policy, training, and equipment issues. This person shall also be responsible for coordinating the training, issuance, and repair of Conducted Energy Weapons (CEWs) as needed.
- J. **Clearly Established Law** – statute or clearly established constitutional rights by the New Mexico Court of Appeals, the New Mexico Supreme Court, the United States Supreme Court, the 10<sup>th</sup> Circuit Court of Appeals, the United States District Court for the District of New Mexico, or a right that is clearly established by the "weight of authority from other courts." A "reasonable official would understand that what he is doing violates that right." - Fisher v. City of Las Cruces
- K. **Excited Delirium** – Excited Delirium is a descriptive phrase used by medical researchers to describe the extreme end of a continuum of drug abuse effects, which normally manifests itself in violent behavior of an individual, who is likely to act in a bizarre and manic way.
- L. **Great Bodily Harm** – An injury to a person which creates a high probability of death; or which causes serious disfigurement; or which results in permanent or protracted loss or impairment of the function of any member or organ of the body.
- M. **Imminent** – Likely to occur at any time in the immediate future and often without warning.
- N. **Intermediate Force** – Force with a significant risk of injury, without causing great bodily harm or death.
- O. **Less-Lethal Force** – Any use of force other than that which is considered deadly force. This includes use of any weaponless physical force or use of less lethal tool. Less lethal force is not intended or expected to cause death or great bodily harm; but intended to control, restrain another, or to overcome resistance.
- P. **Less-Lethal Devices** – A less lethal device has the potential for causing tissue damage but a low potential of resulting in great bodily harm or death when used properly. Less-lethal devices include, but are not limited to chemical agents, conducted energy weapons (CEW), department approved expandable baton, straight baton, canine, beanbag shotguns or other tools that use less lethal munitions, weapons of opportunity, or vehicles.
- Q. **Less-Lethal Munitions** – Munitions including, but not limited to bean bag rounds, rubber pellet rounds, rubber slug rounds, wooden baton rounds, foam projectiles, stinger balls, and pepper balls, which are designed to incapacitate without causing death or great bodily harm.
- R. **Objectively Reasonable** – A reasonable amount of force used to bring a situation or resistive subject under control, given the totality of the circumstances, and considering that officers are often forced to make split second decisions in situations that are tense, uncertain, and rapidly evolving.

The officer has a reasonable belief, based on articulable facts, that the subject displays the intent, ability, means, and opportunity to be actively resistant, assaultive, or otherwise endanger someone.

Reasonableness "must be assessed in light of the particular circumstances against the standard of whether a man of reasonable caution is warranted in believing that the action taken was appropriate." -Terry v. Ohio. Pp. 21-22

- S. Passive Resistance** – non-compliant behavior that offers no form of active physical resistance, including but not limited to verbal resistance, unresponsiveness to directions, sitting, laying down, or allowing body to go limp.
- T. Probable Cause** – The meaning of "probable cause" has been developed in cases where an officer has reasonable grounds to believe that a crime has been or is being committed. -Terry v. Ohio  
  
"In dealing with probable cause, . . . as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." -Brinegar v. United States, 338 U.S. 160, 175, cited in Terry v. Ohio.
- U. Questionable Force Incident** – an incident involving a question of whether a show of force or a use of force violated policy or the law; and that incident may require further investigation by Standards Bureau or the Investigations Bureau.
- V. Show of Force** – Presentation of any tool, of either less-lethal or lethal, used with intent to bring a situation or resistive subject under control. A show of force is not a use of force, but it must be objectively reasonable under the totality of the circumstances, considering that officers are often forced to make split-second decisions in situations that are tense, uncertain, and rapidly evolving. - McDonald v. Haskins
- W. Totality of Circumstances** – assessment of the whole picture that gives the officer a particularized suspicion, based on all the circumstances. The officer draws inferences and makes deductions - inferences and deductions that might well elude an untrained person, to make an assessment that the individual being stopped is engaged in wrongdoing. - US v Cortez
- X. Standards Bureau Use of Force Subject Matter Expert** – A certified Use of Force instructor assigned to the Standards Bureau, who is responsible for reviewing NMSP use of force incidents. The Use of Force Instructor certification must meet the same standards as those set for members of the Use of Force Advisory Group.
- Y. Use of Force Advisory Group** – A select group of subject matter experts who advise the New Mexico State Police on use of force.
- Z. Use of Force Packet** – An entry in the department's database (Blue Team Database) containing the details of a use of force. The entry includes supporting

documentation, photographs, and any audio/video recordings that are not otherwise stored in the department's video management database. A copy of all submitted materials shall be retained in the district as well.

## **5.0 USE OF FORCE PROCEDURES**

### **A. De-escalation: De-escalation techniques may include, but are not limited to:**

1. Moving to a safer position
2. Establishing communication from a safe position
3. Use of verbal techniques to promote rational decision making

### **B. Excited Delirium**

When practical, for persons with obvious signs or symptoms of a mental health or medical emergency, including but not limited to *excited delirium*, officers should call for backup and medical personnel before contacting the individual.

### **C. Subjects in the Prone Position**

1. When a subject is placed into a prone position to be handcuffed, the officer must move that person into a recovery position as soon as it is safe to do so, once that person is handcuffed.
2. When a subject is actively resisting or assaultive, an officer may use a face down stabilization technique or officer(s) bodyweight to control that person.
3. If a face down stabilization technique or body weight is used to control an actively resisting or assaultive subject, the officer must move that person into a recovery position as soon as possible when the subject is no longer actively resisting, and it is safe to do so.

### **D. Less Lethal Force: Control Holds and Weaponless Techniques (Physical Force)**

1. Weaponless techniques may include the officer's strength to take physical control of a subject; including lifting/carrying, control holds, and techniques to direct movement and/or immobilize a resisting subject. These techniques are not intermediate force because they are intended to control, restrain, or overcome resistance without a significant risk of injury.
2. Vascular neck restraints (choke holds) are deadly force, due to the risk of great bodily harm. See the use of deadly force section below.

### **E. Less lethal tools and techniques of intermediate force, including CEW's, batons, chemical agents, less lethal munitions, and vehicle to vehicle contact:**

1. Shall NOT be used in the following circumstances:
  - i. In a punitive manner
  - ii. On cooperative subjects.
  - iii. On subjects who are merely passively resisting - when there is NO immediate safety risk (immediate danger) to the officer, to the subject, or to another individual.

2. These tools must be used for their intended purpose, unless exigent circumstances exist for the officer to modify its use, or the officer has been trained to use the tool in that modified way.
3. CEW's
  - i. When practical, give a verbal warning before using the CEW to avoid sympathetic fire.
  - ii. The CEW may also be used in certain circumstances in "drive-stun" mode as a pain compliance tool.
    - a. Avoid repeated drive stuns if compliance is not achieved, particularly with the mentally ill.
  - iii. CEW use with elevated risk factors for injury or great bodily harm must be objectively reasonable under the totality of circumstances. The elevated risk factors include:
    - a. Higher risk populations: children under eighty (80) pounds, obviously pregnant women, elderly, low body mass (exceptionally thin).
    - b. Known medical conditions, such as: heart disease, pacemaker, or other device sensitive to electrical current, seizure history, apparent debilitating illnesses, persons in wheelchairs.
    - c. Any environment with a risk of uncontrolled falls from elevated positions or structures, in water, or running on hard surfaces.
    - d. Operating machinery or form of transportation (car, motorcycle, bicycle, skateboard).
    - e. Presence of explosive or flammable vapors and substances.
  - iv. CEWs shall NOT be used in the following circumstances:
    - a. Officers shall NOT intentionally deploy the CEW to sensitive areas of the body to include the throat, eyes, face, and female breast.
    - b. The CEW shall not be energized longer than is necessary to accomplish the lawful objective.
  - v. Post-Deployment Procedures
    - a. Contact EMS, if needed, to evaluate any possible injuries.
    - b. Photographs of the affected area should be taken before and after the probes are removed, if practical.
    - c. Subjects shall be treated as follows: If the probes penetrate the skin, only certified CEW users, paramedics, or emergency room staff may remove the probes, and this should be accomplished at the earliest opportunity.
    - d. If the officer removes the probes, the officer shall inspect the probes to ensure the barb is attached. If the barb remained in the subject, transport the subject to a medical facility to have the barb removed.
    - e. Officers shall provide first aid following removal of the probes by applying an antiseptic and a bandage to the probe sites, as appropriate.



- f. If the probes penetrate the skin on the face, head, neck, groin area, or female breasts, only medical personnel may remove the probes.
- 4. Chemical Agents
  - i. The officer who uses a chemical agent against a suspect is responsible for ensuring that the suspect receives first aid, in accordance with departmental training.
- 5. Less Lethal Munitions
  - i. When practical, give a verbal warning before using less lethal munitions to avoid sympathetic fire.
  - ii. Officers using less-lethal munitions shall contact EMS to evaluate any possible injuries.
  - iii. An officer will not use less-lethal munitions unless he/she is trained to use the less-lethal tool/munitions.
  - iv. Only those who are trained to use these tools and munitions may use these tools and munitions.
- 6. Specialized Intermediate Force Tools, Techniques, and Munitions
  - i. These tools, techniques, and munitions may be used by specialized units, including the Tactical Team, the Emergency Response Team, and other specialized teams that are responsible for the arrest of violent criminal offenders.
  - ii. These tools, techniques, and munitions shall be used according to the policies and procedures, including reporting procedures, established by the specific teams that use them.
  - iii. Only those who are trained to use these tools, techniques, and munitions may use these tools and munitions.

#### **F. Handcuffing**

- 1. Specific handcuffing procedures are outlined in OPR 33 – *Handcuffing*.
- 2. Arrestees shall be handcuffed behind their back, with the handcuffs double locked, unless there is a physical reason which prevents such action, including limited mobility, body mass, injury, etc.
- 3. Officers shall consider the fact that handcuffed persons cannot protect their head/face from impact when falling.
- 4. Other restraints, such as shackles, can be used when the arrestee remains assaultive or if there is a potential for fleeing. The officer shall clearly articulate the reason for use in an offense/incident report.

#### **G. Vehicles**

- 1. Officers shall not intentionally place themselves in the path of a vehicle.
- 2. When feasible, officers shall move out of the path of a moving vehicle to a position of cover.

## **H. Deadly Force**

1. Deadly Force Restrictions
  - i. When feasible, prior to using deadly force, officers shall identify themselves as law enforcement officers and state their intent to use deadly force.
  - ii. Warning shots are prohibited
  - iii. Discharging a firearm at or from a moving vehicle is prohibited if it presents an unreasonable risk to the officer or others, including others in the motor vehicle.
2. Deadly Force on Animals
  - i. Officers may use deadly force to destroy an animal that presents a threat to public safety or as a humanitarian measure where the animal is seriously injured and only when the officer reasonably believes that deadly force can be used without harm to the officer or others.
  - ii. A CAD entry will be required when an animal is destroyed.

## **I. Appropriate Medical Aid**

1. Ensure that first aid is made available if required or requested, and as quickly as reasonably possible.
2. Required medical aid includes contacting EMS for an unresponsive or unconscious subject, obvious severe injuries, or apparent medical distress.
3. Appropriate medical aid may include increased observation to detect obvious changes in condition, flushing chemical agents from the eyes, applying first aid, evaluation by paramedics, or immediate aid by medical professionals for more serious or life-threatening incidents.

## **6.0 ADMINISTRATIVE PROCEDURES**

### **A. Equipment**

1. NMSP officers shall carry and use only lethal and less lethal tools and ammunitions authorized by the New Mexico State Police armorer, or designee, unless exigent circumstances require the use of a weapon of opportunity.
2. The NMSP armorer or designee is responsible for the review, inspection, approval of department owned less-lethal tools prior to them being issued to field employees; and the removal of unsafe tools from the field.

**B. Less-lethal shotguns are designed strictly for use to deploy less-lethal munitions. These shotguns are to be clearly marked and labeled.**

### **C. CEW Carrying and Storage**

1. The device will be carried in an approved holster on the side of the body opposite to the service handgun
2. The device shall be carried fully armed with the safety on in preparation for immediate use, when authorized.



3. Officers authorized to use the device shall be issued a minimum of one (1) spare cartridge as a backup in case of cartridge failure, the need for redeployment, or in case the first cartridge's wires break during engagement.
4. The spare cartridge shall be stored and carried in a manner consistent with training.
  - i. The CEW shall not be left unattended, unless properly stored.
  - ii. Maintenance
  - iii. Each officer will perform a spark test at least once each week to ensure the CEW is charged and properly functioning. These spark tests will be performed in a safe manner and away from other individuals.
  - iv. If an officer's Digital Power Magazine (PPM) on the CEW reaches 20% or lower, it shall be replaced or recharged as appropriate. The used PPM will be turned over to the CEW coordinator to be used for training purposes.
  - v. Only agency approved battery sources shall be used in the CEW.
5. Maintenance
  - i. Each officer will perform a spark test at least once each week to ensure the CEW is charged and properly functioning. These spark tests will be performed in a safe manner and away from other individuals.
  - ii. If an officer's Digital Power Magazine (PPM) on the CEW reaches 20% or lower, it shall be replaced or recharged as appropriate. The used PPM will be turned over to the CEW coordinator to be used for training purposes.
  - iii. Only agency approved battery sources shall be used in the CEW.

## **7.0 USE OF FORCE TRAINING**

### **A. Authorized Use of Force Trainers**

1. Only currently certified Use of Force instructors, who have been trained in NMSP Use of Force curriculum during or after 2018, shall conduct use of force training.
2. Officers shall receive reality-based training that simulates realistic use of force situations to enhance officer discretion, judgment, and decision-making. This training may include written scenarios, interactive video simulation training (MILO), and interaction with role players, all which includes when officer can and cannot use various levels and types of force.
3. To renew a Use of Force Instructor certification, Use of Force instructors must pass a Use of Force Instructor Refresher class to teach Use of Force to the NMSP. The goal of this requirement is to ensure consistency in how Use of Force is taught to NMSP officers. Use of Force Master Instructors are exempt from this requirement if they have consistently taught accredited Use of Force / Use of Force Instructor / Use of Force Instructor Refresher classes that include the current DPS Use of Force policy during their certification period.

**B. Remedial Training**

1. Less lethal tools: if an officer is unable to demonstrate proficiency with a less lethal tool. The officer's district commander, the Training and Recruiting Bureau, and the Office of the Chief shall be notified without delay. The officer shall not carry that less lethal tool until that officer passes remedial training.
2. Remedial training timelines for less lethal tools shall be the same as those set forth for remedial firearms training documented in ADM: 13.
3. Officers who consistently demonstrate poor use of force judgement and decision-making skills shall be required to attend 8 hours of remedial Use of Force training.
4. Officers who continue to show poor use of force judgement and decision-making skills may be subject to departmental sanctions up to and including termination.

**8.0 REPORTING PROCEDURES**

- A. Any show of force, including the drawing of a less lethal tool or firearm, shall be indicated in the CAD. The explanation for the show of force shall be documented in the notes section of the CAD call, unless an Offense/Incident report is generated. The show of force would then be documented in the Offense/Incident report.
- B. A de minimus use of force must be documented on the CAD or in an O/I. De minimus use of force does not require a Use of Force Packet unless additional levels of force, including additional leverage or pain compliance, were used during the incident.
- C. The officer shall complete an Offense/Incident Report within 3 days for all less lethal uses of force other than de minimus force; and the officer shall put all required information into a Use of Force packet without delay.
- D. Each officer shall complete a Use of Force packet per incident. If multiple officers are involved in an incident, each officer shall do his/her own use of force packet for his/her involvement in that incident.
  1. The Use of Force Documentation Checklist attached to this policy may be used as a guide for documenting use of force incidents.
  2. The following shall be explained in the narrative sections:
    - i. The type and severity of the crime
    - ii. Any immediate threat to officers
    - iii. The perceived resistance of the subject
    - iv. The type of force used
    - v. How the use of force was effective
    - vi. If the use of force was not effective:
      - a. an explanation of how it was not effective
      - b. an explanation of the subject's continued resistance
      - c. an explanation of any additional use of force

- vii. type of injuries sustained by the subject and/or officer
- viii. Any medical aid that was given.

**E. Use of Deadly Force**

1. The officer shall notify a supervisor as soon as practical after the incident.
2. Use of deadly force shall be handled according to *OPR: 29 Investigation of Use of Force Incidents Resulting in Death or Great Bodily Harm*.
3. The Investigations Bureau will be responsible for coordinating the investigation as outlined in *OPR: 29*.
4. The Standards Bureau will handle the entry of the use of force information into the Use of Force Packet.
5. When deadly force is used to destroy an animal, the officer shall document the incident in CAD.

**F. Duty to Intervene:**

1. situations, such as an unreasonable use of force, may require immediate intervention.
2. Anyone, who becomes aware of a use of excessive force, including but not limited to a violation of the use of force policy and procedures, federal, state, or local law, *whether involving any NMSP employee or a Public Safety Associate*, shall contact an NMSP supervisor to report it.
3. "Other public safety/criminal justice associates might include, but is not limited to, members of task forces with which the agency works, members from other agencies with shared or concurrent jurisdictions, agency volunteers, or representatives from support organizations within the broader criminal justice system."
4. The supervisor shall handle the reporting of an excessive use of force as a complaint of civil rights violation according to *ADM:04 Internal Investigations*.

**G. Negligent (unintentional) Discharges (Firearms or CEW's) shall be handled according to ADM: 13 Carrying of Firearms**

**H. Reporting Requirements for Use of Force related training**

1. All training must comply with the use of force policy (OPR 01) and case law. The officer is responsible for determining whether any training that the officer receives, either formally or informally, falls within the Use of Force Policy.
2. All formal department use of force training on topics included in either the Use of Force Policy or this Procedural Manual shall be documented and reported to the Training and Recruiting Bureau.
3. The district commander shall provide written documentation to the Training and Recruiting Bureau for any agency personnel who fail to receive training required by this policy no later than January 31<sup>st</sup> of the following year. This documentation shall explain why the employee(s) was unable to meet the use of force training requirements.

**I. Annual reporting**

1. Standards Bureau shall complete a yearly analytical report documenting the departments use of force incidents, policies, and practices, to include assault and battery against commissioned officers.
2. A review of use of force incidents may reveal patterns or trends that could indicate officer safety issues, training needs, equipment upgrades, and/or policy modifications.
3. Recommendations shall be made to address officer safety needs. The process of collecting and reviewing these reports are critical to this analysis.
  - i. The report at a minimum, shall contain:
    - a. Date and time of incidents.
    - b. Types of encounters resulting in the use of force.
    - c. Trends or patterns related to race, age and gender of subjects involved.
    - d. Trends or patterns resulting in injury to any person including employees.
    - e. Impact of findings on policy, practices, equipment, and training.
  - ii. The report shall be completed by the end of the first quarter of the following year and submitted to the Chief for review.

**9.0 REVIEW PROCEDURES****A. Less Lethal Use of Force Incident**

1. Supervisors shall ensure the Use of Force packet is complete and includes:
  - i. the Offense/Incident Report,
  - ii. charging documents,
  - iii. photos of injuries or lack of injuries,
  - iv. medical release forms,
  - v. digital audio recordings if available.
  - vi. videos shall be saved in their respective databases.
2. First Line Supervisor
  - i. The supervisor reviews the report for completeness and any audio/video of the incident
  - ii. The supervisor decides whether follow-up action is necessary and shall indicate his/her decision in the routing section of the Use of Force packet.
  - iii. The reviewing supervisor shall forward the packet to the lieutenant/next level supervisor in the chain of command.
3. Lieutenant / Next Level Supervisor
  - i. The lieutenant/next level supervisor shall review the Use of Force packet for completeness and forward it to the district commander along with any recommendations for follow-up actions.

4. District Commander
  - i. The district commander shall determine whether there was any type of policy violations, and comment on the severity of the violation(s).
  - ii. The commander shall then indicate what type of action was taken to address any policy violation(s) in the routing comment section.
  - iii. The district commander will route the Use of Force packet to his/her zone commander.
5. Zone Commander
  - i. The zone commander shall review the Use of Force packet for completeness and confirm that any policy violations were addressed.
  - ii. The zone commander shall document his/her findings in the routing section of the Use of Force packet. The report will then be routed to Standards Bureau (IA) Commander for entry into the IA database which houses the Early Intervention Personnel System (EIPS) within thirty (30) days of the incident.
  - iii. If the zone commander believes that the use of force violated the law, the zone commander shall send the packet to the Office of the Chief for referral to the Use of Force Advisory Group.
  - iv. The zone commander may consult with members of the Use of Force Advisory group on questionable force incidents to determine how they should be properly routed.
6. Standards Bureau.
  - i. The Standards Bureau (IA) Commander or designee is responsible for entry of use of force incidents into the Early Intervention Personnel System (EIPS).
  - ii. The Standards Bureau Commander will determine the appropriate disposition regarding the incident to determine policy compliance.
  - iii. If the Standards Bureau Commander or Standards Bureau Use of Force Subject Matter Expert believes that the use of force violated the law, the Standards Bureau commander shall send the packet to the Office of the Chief for referral to the Use Force Advisory Group.
  - iv. The Standards Bureau may consult with members of the Use of Force Advisory group on questionable force incidents to determine how they should be properly routed.

## 10.0 USE OF FORCE ADVISORY GROUP

### A. Mission:

1. **The use of force advisory group does not determine whether a use of force was reasonable or unreasonable.**
2. The advisory board is not an investigative body. All investigations will be handled by the appropriate NMSP Bureau.
3. All members will be required to sign non-disclosure agreements to maintain the confidentiality of these cases.

**B. Duties:** The Advisory Group shall be tasked with reviewing cases and providing guidance in the following circumstances:

1. **Investigations Bureau - questionable force by NMSP officer:** the advisory group shall review questionable force incidents prior to the cases being moved to the Investigations Bureau for criminal investigation and possible prosecution, in case there is a nexus with the Standards Bureau. The advisory group is a resource that can advise the investigators on use of force issues related to the investigation. The advisory board shall be provided with case files, all requested documents, and all video, audio, or other forms of media that documented the incident, including interviews not protected by Garrity.
2. **Investigations Bureau - questionable force by officers outside the NMSP:** The Investigations Bureau shall consult with the Use of Force Advisory group on criminal investigations related questionable force incidents brought to the NMSP by other agencies. The Advisory Group can advise the investigators on use of force issues related to the investigation. The Advisory Group shall be provided with case files, all requested documents, and all video, audio, or other forms of media that documented the incident, including interviews not protected by Garrity. This type of investigation may require the case agent to provide the advisory group with additional documents from the other agency, including but not limited to training records and policies.
3. **Resource to the Standards Bureau:** The Advisory Group is a resource to the Standards Bureau, including the Standards Bureau Use of Force Subject Matter Expert, to answer questions regarding whether a questionable force incident violated DPS policy, procedures, or training. The Advisory Group shall be provided with case files, all requested documents, and all video, audio, or other forms of media that documented the incident, including interviews. Discussions and decisions regarding questions from Standards Bureau will follow rules established under all relevant Internal Investigations policies, procedures, and laws.
4. **Use of Force Policy:** The Advisory Group shall be responsible for the review and update of the DPS Use of Force policy, based on changes in statute or case law.
5. **Reporting:** Any opinion regarding the questionable use of force will be made by a majority decision. The number of members assigned to review a case will be determined according to procedures established by the advisory committee.
  - i. Opinions provided to the Standards Bureau will follow rules established under all relevant Internal Investigations policies, procedures, and laws.
  - ii. All opinions, other than those provided to the Standards Bureau, will be documented in a written report provided to the requester.
  - iii. All opinions shall include:
    - a. The basic facts of the case



- b. The names of the members who reviewed the case
- c. The majority opinion that answers the use of force question
- d. The names of the concurring members of the majority
- e. Any dissenting members and opinions of those dissenting members.

**C. Qualifications:** To serve on the UOF Advisor Committee, members must meet at least one of the minimum qualifications

- 1. UOF master instructor trained in NMSP Use of Force curriculum during or after 2018
- 2. UOF instructors with 4 years of teaching experience, but who have not yet met all the requirements for Master Instructor – and who have been trained in NMSP Use of Force curriculum during or after 2018
- 3. UOF instructors trained in NMSP Use of Force Instructor curriculum during or after 2018, and who also have other use of force related instructor certifications - Defensive Tactics, Taser Instructor, Firearms Instructor
- 4. UOF instructors trained in NMSP Use of Force Instructor curriculum during or after 2018, who have training and experience in specialized units that focus on violent offenders - Tactical Team, ERT, Specialized Teams within the Investigations Bureau
- 5. UOF instructors trained in NMSP Use of Force Instructor curriculum during or after 2018, who have training and experience in specialized investigations, such as officer involved shootings or internal affairs.

**D. Selection:** The chief shall select the chairman of the use of force advisory group, based on the qualifications listed above. Members are selected by the chief or through an interview process run by the members of the group. The interview process may contain a test of knowledge in use of force decision making, case law, and defensive tactics or other use of force matters related the candidate's specialty.

**E. Dismissal from the advisory group:** Members may be dismissed from the working group for the following reasons:

- 1. inactivity (not participating in cases when assigned)
- 2. failure to follow procedures established by the working group
- 3. failure to follow the non-disclosure agreement
- 4. failure to stay current on use of force curriculum, changes in statutes, changes in case law, or changes related to their additional specialties – like defensive tactics.