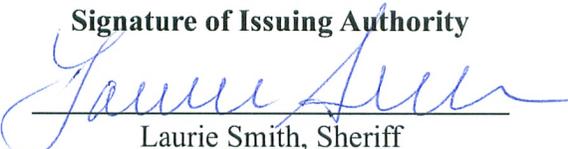


<p style="text-align: center;"><b>Office of the Sheriff Custody Bureau</b></p> <p style="text-align: center;"><b>Policy and Procedure Manual</b></p>	<p><b>Policy Number:</b> 9.02  <b>No. of Pages:</b> 11  <b>Date of Origin:</b> 2021-02-22  <b>Date Revised:</b> 2021-02-22</p>
<p><b>Chapter:</b> Security and Control</p>	<p><b>Subject:</b> Use of Force Investigation, Reporting, and Review</p>
<p><b>Supersedes:</b> Sections VIII, XX, XXI, XXII, and XXIII of <i>Policy 9.01 - Use of Force</i>, adopted 2017-08-29</p>	<p><b>Distribution:</b> Unrestricted</p>
<p><b>References:</b> Government Code § 7286; <i>Chavez v County of Santa Clara</i>, Case No. 1:15-cv-05277-RMI (Remedial Plan March 2019); <i>Policy 9.01 - Use of Force</i>; <i>Policy 0.04 – De-escalation</i>.</p>	
<p style="text-align: center;"><b>Signature of Issuing Authority</b></p>  <p style="text-align: center;">Laurie Smith, Sheriff</p>	<p style="text-align: center;"><b>Current Policy Review</b></p> <p><b>Date of Review:</b> 2021-02-22  <b>Revisions Made:</b> New</p>

**I. Purpose and Scope**

The purpose of this policy is to establish requirements for Custody Bureau investigation, documentation, and review of use of force events. This policy applies to all Office of the Sheriff staff.

**II. Definitions**

Appropriate Force: Force that is objectively reasonable, necessary, proportional and consistent with *Policy 9.01 – Use of Force*.

Deadly Force: Any use of force that creates a substantial risk of causing death or serious bodily injury. Deadly force includes, but is not limited to, the discharge of a firearm.

De-escalation: The process of using strategies and techniques intended to decrease the intensity of the situation. The goal of De-escalation is to gain the voluntary compliance of the person and thereby reduce or eliminate the need to use physical force.

De Minimis Force: De Minimus Force is a physical interaction meant to separate, guide, and/or control the person in a manner that does not cause any pain, and is not reasonably likely to cause any pain, including, control holds or joint manipulation techniques without pain, hands or equipment

used to stop, push back, separate, guide, or escort a person, or holding or displaying a firearm or less-lethal weapon without pointing it at a person.

Intermediate Force: Force that is more than De Minimis Force and less than Deadly Force. This includes force that causes temporary pain, a complaint of temporary pain, or force likely to cause injuries less than a Serious Bodily Injury. Intermediate Force includes the use of chemical agents, control holds with pain, personal body weapons, impact weapons, and less lethal weapons.

Inappropriate Force: Force that is not objectively reasonable, necessary, or proportionate consistent with **Policy 9.01 – Use of Force**.

Injury Categories: Injuries received because of a use of force will be categorized into one of the following:

- A. No Injury: Temporary discomfort or disorientation that does not require medical attention.
- B. Injury: Lasting physical pain or injury, or an impairment of physical condition greater than transitory pain but less than serious bodily injury.
- C. Serious Bodily Injury: Bodily injury that creates a substantial risk of death or causes permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

Reportable Force: The following categories of force or circumstances as a result of the use of force require mandatory reporting both verbally and in writing to a supervisor:

- A. The use of Intermediate Force or Deadly Force
- B. Force that results in complaints of sustained pain or injury
- C. Force that results in injury, Serious Bodily Injury, or death
- D. An event that is designated by a supervisor as reportable.

The use of De Minimus Force is not required to be reported.

Use of Force Package: A completed use of force investigative package that includes reports, videos, interviews, photographs, and other information relevant to the use of force.

Use of Force Review Committee ("UFRC"): A committee of at least three Sheriff's Office executive staff or designee that reviews use of force packages for policy compliance and, where indicated, makes recommendations regarding any training, operational changes, corrective action, and/or refers the matter to investigation units for further review.

### **III. Policy**

The Office of the Sheriff recognizes the magnitude of the responsibility that comes with the constitutional authority to use force. This responsibility includes maintaining vigorous and transparent oversight systems to ensure accountability to the community and maintain their trust. In order to ensure transparency and accountability, staff must clearly and reliably report and thoroughly document each time they use force and supervisors must clearly and reliably document the steps they have taken to investigate and review the actions of staff and any additional steps taken or recommendations for further review and action.

#### **IV. Coordination with Other Investigating Units**

If the force event (1) involves a death; or (2) possibly involves serious staff misconduct or a criminal act committed by staff, the supervisor shall notify the watch commander (or higher-ranking supervisor, if no watch commander is available).

The watch commander will notify the facility captain, who is responsible for ensuring that the appropriate investigation bodies are notified, including the Sheriff's Office Investigations Division and/or the Internal Affairs Unit. If no watch commander is available, then the supervisor will make all of the notifications.

The Sheriff's Office Investigation Division and/or Internal Affairs Unit and Custody Bureau staff will work together to determine how the investigation will proceed to ensure that the Investigations Division is able to perform its investigatory functions while allowing Custody Bureau staff to conduct a concurrent review of the use of force event.

In the event of an in-custody death related to a force event, the Sheriff's Office shall follow the countywide "Officer Involved Incident" protocol.

#### **V. Use of Force Reporting**

##### **A. Staff Shall Notify a Supervisor**

1. Any staff member who receives a previously unreported allegation of Reportable Force from any source and through any means shall immediately notify a supervisor. The supervisor shall ensure that a report is completed.
2. Any staff member who uses or witnesses a Reportable Force shall immediately, or as quickly as reasonably possible under the circumstances, ensure that a supervisor is notified unless a supervisor is on scene. Notification must be made to a higher-ranking supervisor than the highest-ranking staff member who participated in the use of force.

##### **B. Staff Required to Submit a Report**

1. Staff that use Intermediate or Deadly Force shall prepare a report.

2. Staff witnesses that do not participate in the use of force event are not required to submit a written report unless:
  - a. The staff witness did not activate their BWC consistent with **General Order 10.06 - Body Worn Camera System**. The staff witness must describe the reason staff did not activate their BWC and prepare a report consistent with Part F.
  - b. The staff witness was directed by a supervisor to submit a written report.
  - c. The staff witness believes that staff involved in the force event used Inappropriate Force.

#### C. Report Timing

The reporting staff member shall submit their written report prior to going off-duty unless:

1. That staff member is rendered medically incapable of submitting a written report. In such cases, a supervisor will designate staff to take a statement from the injured staff member if possible. If the injured staff member is incapable of providing a statement, that fact and the reasons for it will be documented instead.
2. The supervisor determines that the report can be completed later if the delay does not exceed 24 hours.

#### D. Review of Video Footage and Second Report

Staff are not authorized to review video recordings of the force event until staff submits an initial written report that complies with section V.F. Staff who review video recordings of the force event after submitting their original report, and subsequently discover discrepancies between the original report and the video recording, shall submit a second report for the same incident. Whether an adverse inference should be drawn from an amendment or supplement will depend upon the facts and circumstances in each case. The Office of the Sheriff will not assume an adverse inference when staff amend or supplement their reports if a video review prompts further recollection of incident details.

#### E. Collaboration Prohibited

Staff are prohibited from collaborating with each other in writing use of force reports.

#### F. Report Contents

Staff are only required to report their own conduct or observations in their reports, which shall cover the following topics:

1. The location, date, and times of relevant events before, during, and after the force event.

2. The names of staff, inmates, or others who the reporting staff member reasonably believes were involved in the force event.
3. Description of events that occurred immediately prior to the use of force, including any specific verbal direction and steps that were taken to resolve the situation without using force, and how the person responded to the attempts to resolve the situation without using force.
4. Known or apparent mental illness, cognitive impairment, physical limitations (e.g., mobility, vision, hearing, or speech impairment), language barrier, or drug or alcohol intoxication of the person that was subject to force by staff.
5. De-escalation efforts before and during the force event and, if de-escalation was not used, a description of why de-escalation was not used.
6. Type(s) of resistance exhibited by the person(s).
7. Description of force used by any staff member.
8. Type of force used by the reporting staff member, including and the manner in which it was used, the reason for using force, and how the person responded to the use(s) of force.
9. Known injuries sustained by any person and whether the injured person was provided medical care.
10. If the person that was subject to the force by staff was escorted away from the scene or secured in restraints, the name(s) of the staff escorting or securing the person.
11. If chemical agents were used, decontamination efforts.
12. Interactions with mental health staff before, during, or after the force event, including any de-escalation efforts by mental health staff.
13. Interactions with medical staff before, during, or after the force event, including consultation with medical staff prior to a planned force event, medical evaluations after force, and medical care and/or medical clearance provided to the person.
14. Any other information concerning the force event that the reporting staff member believes may be important for the person reviewing the use of force report to know.

## **VI. Investigation Responsibilities**

### **A. Supervisor Responsibilities**

Unless any of the below responsibilities are assumed by the Sheriff's Investigations Unit or Internal Affairs Unit, a supervisor is responsible for ensuring appropriate documentation of the force event, which involves the following:

## 1. Video Footage

Supervisors shall gather and review all relevant video footage of the force event. If a witness staff member is not required to prepare a report, the supervisor shall ensure that the staff member's relevant BWC footage is tagged with the appropriate incident number.

## 2. Photographs

The supervisor shall ensure that staff obtain photograph documentation of relevant events of the force event, including:

- a. The scene
- b. The person(s) that is/are the subject of the force event
- c. If applicable, injuries or assault to staff.

Photographs shall have the time and date of when the photograph was taken, person's name, PFN (if applicable), and the name of the photographer.

## 3. Interviews

4. The supervisor shall ensure that the subject of the use of force event and any witnesses (except badge staff) who were involved in the incident and/or may have important information about the event are interviewed. The supervisor shall ensure the interviews are conducted as follows:

- a. The interview captures the person's account of the incident, the conduct of staff and others during the event, and any injuries observed.
- b. Interviews are recorded consistent with BWC policy.
- c. Interviews take place out of view and hearing range from others involved in the force incident.
- d. Inmates are not interviewed inside the housing units.
- e. Interviews shall not be leading, nor will staff be dismissive of an inmate's version of the events.

## 5. Report Submission and Completeness

Supervisors have discretion to require a written report from a staff witness who would not otherwise be required to submit one under this policy. Supervisors should request a report if the witness staff member has information about the event that is not captured in any other reports, video footage, or other documentation. The use of force package should be prepared within 30 days.

The supervisor shall verify that all required reports are submitted and review the reports for completeness and content. If the supervisor reasonably believes that staff collaborated with each other while preparing written reports, he/she shall notify the watch commander.

#### 6. Prepare the Use of Force Package

The supervisors shall collect all relevant information for the force incident and prepare a Use of Force Package. The supervisor shall submit the Use of Force Package to the watch commander along with any concerns, comments, or recommendations the supervisor has about the incident. Supervisors are authorized to direct training for staff involved in the incident before completing the Use of Force Package.

### B. Watch Commander Responsibilities

In a significant use of force event, the watch commander may determine if the investigation should be conducted by a sergeant not involved in any aspect of the force event.

Upon receiving a completed Use of Force Package, the watch commander shall:

1. Review the Use of Force Package and identify inconsistencies that appear between reports, video documentation, or other evidence and refer the matter for further investigation. The watch commander shall refer the concerns to Captain who shall review and refer the matter to the appropriate investigation unit, if necessary.
2. Submit the Use of Force Package to the Use of Force Review Committee and the facility commanders.
3. Categorize the use of force and injuries pursuant to Section VII - Force Event Categorization. Categorize the injuries received because of the force based on the facts known at the time. Record these categorizations along with any other pertinent information in the Administrative Incident report.
4. The watch commander should complete the review within 30 days.

## VII. Force Event Categorization

Each force event shall be categorized by the watch commander according to two independent variables: (1) Force categories, and (2) Injury categories.

### A. Force Categories

Each staff member using force will have his or her use of force categorized by the highest level of force he or she used during the event. The watch commander will categorize the

entire force event separately at the highest level of force used by any staff member during the event as follows:

Force Category 1	Pain Compliance Control Holds Chemical Agents Pressure Point Controls Take Downs
Force Category 2	Person Body Weapons Strikes Pepperball Launcher Impact Weapons
Force Category 3	Less Lethals and Munitions (e.g., FN303, 40 mm) Force Category 2 involving force to a person's head, neck, sternum, spine, groin, or kidneys Discharge of a firearm Deadly Force Where non-authorized use of force techniques and/or force options are used

#### B. Injury Categories

Based on information available at the time, the watch commander shall prepare the Administrative Incident Report Form. The watch commander shall also categorize the injuries for the person who was subject to force as follows:

Injury Category 1	Transitory Pain
Injury Category 2	Injury
Injury Category 3	Serious Bodily Injury or Death

### VIII. Use of Force Review Committee

#### A. Committee Composition and Attendance

The UFRC will be attended by the Undersheriff or Assistant Sheriff and may be attended by Sheriff's Office command staff or other designees. The UFRC committee is comprised of the following members:

1. Support Services Captain or designee;
2. Jail Reforms Captain or designee; and
3. Facility Captain or designee that does not oversee the facility where the use of force event occurred

The UFRC may identify supervisors and watch commanders who will attend UFRC meetings for the purpose of providing analysis regarding event in which they were involved.

#### B. Meeting Frequency

The UFRC meets every other month, or more if necessary, to review completed Use of Force Packages.

#### C. Case Selection Process

1. The Operational Standards and Inspections Unit (OSIU) shall compile Use of Force Packages for all Category 2 and 3 force events and forward them to the UFRC for review as soon as they are complete.
2. The OSIU shall compile Use of Force Packages for all uses of force resulting in an Injury Category 2 and 3 and forward them to the UFRC for review as soon as they are complete.
3. A facility captain may refer any force event to the UFRC for review. The OSIU shall assemble these Use of Force Packages for the referred event and forward them to the UFRC as soon as they are complete.
4. Every six months, OSIU shall randomly select five cases or five percent of the total cases (whichever is greater) Type 1 use of force events from each of the Main Jail and Elmwood Complexes and refer to UFRC for review and to determine whether the use of force was categorized correctly and compliant with policy.
5. The Internal Affairs Unit tracks all use of force incidents and provides periodic summary reports to the UFRC for those identified by the Early Warning System (EWS). The UFRC shall review these reports and recommend modifications to policy and procedure based on identified trends.

#### D. Determinations

1. The UFRC shall determine if the force event was consistent with applicable policy.
2. The UFRC shall determine if the force event was appropriate classified.
3. The UFRC may make recommendations about training needs for staff involved in the force event or the staff in general.
4. The UFRC may make recommendations about operational changes.

5. The UFRC may recommend that the force event be referred to ACHS staff for quality review of ACHS role in the force event.
6. The UFRC may refer any case to the Sheriff's Office Investigations Unit to investigate potential criminal conduct or the need for disciplinary action as it deems appropriate.

#### E. Review Standard

In determining whether a particular use of force was appropriate, the UFRC shall apply the Objectively Reasonable, Necessary, and Proportional standard described in Section VI. – Force Must Be Objectively Reasonable, Necessary, and Proportional of ***Policy 9.01 - Use of Force***, to include:

1. The facts and circumstances staff knew or reasonably should have known at the time of the event.
2. De-escalation, tactical options, and control options, if any, which were available to staff.
3. Whether the use of force was objectively reasonable when viewed in the light of what an objectively reasonable peace officer would have done under the same or similar circumstances.
4. Whether the use of force was necessary to safely accomplish a legitimate correctional objective.

While evaluating a force event, the UFRC shall pay particular attention to:

1. Whether force was necessary.
2. Whether a different degree of force should have been used.
3. Whether a weapon or security restraint device should have been used at all or should have been used in the manner it was.
4. Whether injuries or lack of injuries are consistent with staff reports.
5. Incomplete or conflicting reports.
6. Evidence of collaboration in staff reports.
7. Whether the force event should be referred to the Mental Health for review of mental healthcare staff's involvement in the force event.
8. Whether there were any other policies violations, training issues, or operational needs.

#### F. Incomplete Use of Force Packages

If at any point in the UFRC review, the UFRC determines that the use of force packet is

incomplete or there are unexplained discrepancies in the evidence, the packet will be referred to the involved facility captain or assistant division commander for additional investigation and returned to the UFRC once complete.

## **IX. Policy Review**

This policy shall be reviewed every year and, when necessary, the Sheriff's Office will undertake efforts to revise the policy.

~~~ *End* ~~~