



Office of Police Ombudsman Commission

Agenda
October 15, 2019
5:30PM – 7:00PM
Council Chambers
Lower Level, City Hall

TIMES GIVEN ARE AN ESTIMATE AND ARE SUBJECT TO CHANGE

Commission Briefing Session:

5:30 – 5:35pm	1) Welcome to Public	Commissioner Rose
	2) Agenda Approval	Commissioner Rose
	3) Approve August 20, 2019 Meeting Minutes	Commissioner Rose

Items:

5:36 – 7:15pm	1) Public Forum	Citizens Signed Up to Speak Bart Logue Luvimae Omana Christina Coty
	2) OPO Monthly Report	
	3) Analyst Brief	
	4) Admin Specialist Brief	

Commission Business:

7:16 – 7:30pm	1) New Commissioner Introduction	Commissioner Rose
	2) NACOLE Annual Conference Recap	Commissioners Wilburn & Holman
	3) Chair and Vice Chair Nominations	Commissioner Rose
	4) OPO Recommendations	Commissioners
	5) Letter to City Council	Commissioners
	6) Administrative Analyst Position	Commissioner Rose
	7) Executive Session – PAR and Request for Proposals	Commissioners

Adjournment:

The next Ombudsman Commission meeting will be held on November 19, 2019.

The password for City of Spokane Guest Wireless access has been changed:

Username: **COS Guest**

Password: **5FbXw8PZ**

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Office of Police Ombudsman Commission Minutes

August 20, 2019

Meeting Minutes: 1:41

Meeting called to order at 5:30pm

Attendance

- OPOC Commissioners present: Ladd Smith, Jenny Rose, James Wilburn and Elizabeth Kelley
- Legal Counsel: Dennis Hession
- OPO staff members present: Bart Logue, Luvimae Omana and Christina Coty

Items Session

- The Agenda approved
- The July 16th minutes were approved, Commissioner Kelley abstained from vote.
- Texting questions – going forward you will be able to text questions to the OPOC real time, and they will be answered time permitting.

Public Forum

- Robert Esseltine - Citizen
 - Came out to speak in favor of renewing Ombudsman Logue's contract
 - Filed a complaint in 2017; Mr. Logue gave him dignity and respect like he had never received from anyone in a government agency.
- Ron Wright - Citizen
 - Came out to speak in favor of renewing Ombudsman Logue's contract.
- Danien Penta – Center for Justice
 - Praised the work of Mr. Logue and the OPO
 - Stated that the recent events regarding police conduct would not have come to light had it not been for Mr. Logue's efforts.

Guest Speaker:

- Unable to make this month work with a guest speaker

Analyst Update:

- Use of Force dashboards are near completion. The OPO has been working with the City Web group and Mr. Scales to ensure the dashboards are ready to launch.
- The dashboards are currently being run in a test environment, where the Web group found they do not load on mobile devices properly.
- City Media, the OPO and SPD are working on a joint Media Release to launch the Dashboards for the public, which will be put on FB & Twitter.

OPO Report

- OPO Highlights for July
 - 107 contacts, 3 complaints, 19 referrals, 9 OPO interviews
 - 9 cases certified, 11 special cases reviewed
 - 6 community events
- Discussed changes to staffing inside the Internal Affairs unit.
- He was asked to be a presenter during the NACOLE Annual Conference, where he will speak on a panel regarding Driving Change Forward.
- Critical Incident

- Officer shot at Thursday morning

Commissioners' Business

- 2018 Annual Reports
 - Annual reports are completed and will be presented to the City Council on September 9th.
- Community Events
 - Unity in the Community
 - NAACP Monthly Meeting
 - NAACP Conference in September
- Commissioner Speak Out
 - Commissioner Rose – Ride along with Sgt. Eckersley, was a great experience. He was able to provide many experiences during their shift
 - Commissioner Kelley – In June, the American Bar Association came to town. Commissioner Kelley asked Ms. Omana to speak at a luncheon for women in Criminal Justice. Ms. Omana did an excellent job and represented the office very well.
 - Commissioner Smith – Had an hour long meeting with Chief Meidl. It was a very productive meeting.
- Other Business
 - Police Guild PRR
 - Requested all texts, emails, handwritten notes regarding Use of Force case F19-016 between City Council Members, Mayor's Office, City Legal and the Ombudsman Office.
 - Use of Force Cases
 - Recommendation will be made regarding the timeliness of UOF cases being submitted to the OPO, due to gaps in the current ordinance.
- Executive Session – 6:30-6:47pm
 - Ombudsman Logue contract renewal discussion
- Contract Renewal Vote
 - Commissioner Kelley – Motions to add a 3 year term to Mr. Logue's contract
 - Commissioner Wilburn – Seconds the motion
 - Community Comment
 - Elaine Tyree – The level of respect rising above the disrespect is amazing and is what Spokane will need for change to happen.
 - Approved Unanimously
 - Ombudsman Bart Logue Accepted Contract renewal for 3 years
- Commissioner Photos taken at Huntington Park

Motion Passes or Fails:

Meeting Adjourned at: 7:11pm

**Note: Minutes are summarized by staff. A video recording of the meeting is on file -
Spokane Office of Police Ombudsman Commission**

<https://my.spokanecity.org/bcc/commissions/ombudsman-commission/>

Use of Force

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

300.1.1 DEFINITIONS

Definitions related to this policy include:

- A. **Compliant** – Cooperative response to lawful commands.
- B. **Passive Resistance** – Noncompliance to lawful authority without physical resistance or mechanical enhancement.
- C. **Active Resistance** – Use of physical effort or mechanical resistance in achieving and/or maintaining noncompliance.
- D. **Assaultive** – Noncompliance perceived as, or resulting in, an actual assault on an individual or officer. The scope and severity of the attack would likely not result in serious bodily injury or death.
- E. **Aggravated Assaultive/Life Threatening** – Noncompliance perceived as, or resulting in, an actual assault on an individual or officer. The scope and severity of the attack would likely result in serious bodily injury or death.
- F. **Control Devices** – Includes TASER, baton, Oleoresin Capsicum (OC), 2-Chlorobenzalmalonitrile (CS), and Mechanical Restraints.
- G. **Control Techniques** – Includes Lateral Neck Restraint (LNR), Personal Impact Weapons, Counter joint, and Take Downs.
- H. **Deadly Force** – Force that creates a substantial likelihood of causing serious bodily injury or death.
- I. **De-escalation** – The use of verbal communication, body language, and/or tactics to defuse a situation.
- J. **Draw and Direct** - The purposeful display of a force option (OC, Baton, TASER, Firearm, other) and directing a person to comply with commands through the presence of the force option.
- K. **Force** – Any effort towards detention or control.
- L. **Imminent** – Impending or about to occur.
- M. **Intentional Pointing of a Firearm** - When the officer is intentionally “pointed in” (the muzzle is covering the subject) with their firearm, with the intent to use the firearm in defense of themselves or another.

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300.2 POLICY

The Spokane Police Department is committed to protecting people, their property and their rights. The use of objectively reasonable force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties. Officers must also remain mindful that they derive their authority from legal and constitutional principles designed to uphold the safety and dignity of the public, and that the unreasonable use of force undermines the community's trust.

Officers must have an understanding of, and true appreciation for, their authority and its limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use objectively reasonable force and to protect themselves and the public requires monitoring, evaluation and a careful balancing of all interests.

300.2.1 DUTY TO INTERCEDE/ETHICAL INTERVENTION

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

300.3 USE OF FORCE

Any force used by an officer must be objectively reasonable based on the totality of the facts and circumstances known to the officer at the time the force is used.

The "reasonableness" of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force used that reasonably appears necessary in a particular situation, with limited information and in circumstances that are often tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or exceptional technique must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

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Officers are not required to retreat or to be exposed to possible physical injury before applying reasonable force.

Officers may only use those control techniques and devices for which they have successfully completed department-approved training. Officers utilizing any control technique or device should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the person can comply with the direction or orders of the officer.
- (c) Whether the person has been given sufficient opportunity to comply.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

An officer may use force which reasonably appears necessary to effect an arrest if, after notice of the intention to arrest the person, the subject either flees or forcibly resists (RCW 10.31.050).

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

(a) Perception of the known and potential threat considerations to the public, the officer(s) and subject involved.

- The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, and the number of officers available vs. subjects).
- The effects of drugs or alcohol on the subject.
- Subject's mental state or capacity.
- Potential for injury to officers, suspects and others.
- Training and experience of the officer.
- Proximity of potential weapons or dangerous improvised devices.
- Prior contacts with the subject or awareness of any propensity for violence.
- Any other exigent circumstances.

(b) The level of resistance and/or attempts to flee demonstrated by the subject.

- The risk and reasonably foreseeable consequences of escape.
- The degree to which the subject has been effectively restrained and the subject's ability to resist despite being restrained.
- The apparent need for immediate control of the subject or a prompt resolution of the situation.

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- The availability of other options and their possible effectiveness.
 - Time available and split-second decision-making required under the circumstances.
 - Environmental factors.
 - Suspect's response to de-escalation efforts.
- (c) The severity of the crime and/or community caretaking function.

300.4 DEADLY FORCE APPLICATIONS

Use of deadly force, like any force used by an officer, must be objectively reasonable based on the totality of the facts and circumstances known to the officer at the time the force is used. Use of deadly force is justified in the following circumstances:

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

300.5 DOCUMENTING USE OF FORCE

Unless otherwise provided in policy or directed by a supervisor, all force used by an officer shall be promptly, completely and accurately documented. The officer shall articulate the factors which made the use of force objectively reasonable, based on the Use of Force Policy.

The officer should also document attempts to gain compliance through de-escalation, verbal commands, force options and other tactics. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or law.

300.5.1 NOTIFICATION TO SUPERVISORS

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

- A. The application of force resulted in apparent injury to the subject or unconsciousness (with the exception of minor marks on the wrist consistent with being handcuffed and/or minor marks or abrasions to portions of the body consistent with prone handcuffing);
- B. The subject claims an injury resulted from a use of force, even if no injury is visible (with the exception of minor marks on the wrist consistent with being handcuffed and/or minor marks or abrasions to portions of the body consistent with prone handcuffing);
- C. All applications of a Lateral Neck Restraint (Level I and Level II) (see Policy 308);
- D. All applications of a Conducted Energy Weapon (e.g. TASER™) (See Policy 308);

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- E. The intentional discharge of firearms (with the exception of training or recreation) (See Policy 312);
- F. Intentional Pointing of a Firearm - When the officer is intentionally "pointed in" (the muzzle is covering the subject) with their firearm, with the intent to use the firearm in defense of themselves or another;
- G. Any deployment of OC by means of spray or by means of physically or mechanically delivered techniques where a person is exposed to the substance (See Policy 308);
- H. Any deployment of CS by means of a spray or by means of physically or mechanically delivered techniques where a person is exposed to the substance (see Policy 308);
- I. Any application of an impact weapon whether personal, issued or improvised to a subject (See Policy 308);
- J. Any canine deployment where a reportable contact has occurred (See Policy 318); and
- K. When an individual alleges any of the above has occurred.

300.6 MEDICAL CONSIDERATION

Medical assistance shall be provided to any person who requests it, who is rendered unconscious, exhibits signs of physical distress, or who claims an injury (with the exception of minor marks on the wrist consistent with being handcuffed and/or minor marks or abrasions to portions of the body consistent with prone handcuffing or a takedown technique.) Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until the subject can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. Any refusal of medical attention shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible. Any subject who has been rendered unconscious by a Lateral Neck Restraint will be examined and/or treated by qualified medical personnel prior to law enforcement transport.

The on-scene supervisor, or if not available, the primary handling officer will make all reasonable attempts to provide information, as time allows, to assist medical care providers. This notification should include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and who appear impervious to pain (sometimes called Excited-Agitated Delirium), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden in-custody death (postmortem diagnosis of death: Excited Delirium). Calls involving these persons should be considered medical emergencies. Law enforcement personnel who reasonably suspect

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a medical emergency exists should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

300.7 CHAIN OF COMMAND REVIEW OF USE OF FORCE

300.7.1 SUPERVISOR REPORTING

When a supervisor becomes aware of an incident in which there has been a reported application of force the supervisor shall complete a Use of Force Report. Even in the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still required to complete a Use of Force Report. Use of Force reports are required under the circumstances described in Section 300.5.1 Notification to Supervisors.

300.7.2 INVESTIGATION, DOCUMENTATION AND NOTIFICATION

When completing a Use of Force Report the supervisor shall take the necessary steps to conduct a thorough investigation. The supervisor shall:

- A. Respond to the scene, when possible;
- B. Review all documentation of the incident and make every reasonable effort to contact all involved officers;
- C. Ensure identification of witnesses and other involved parties. When possible conduct civilian interviews of those subjects, including the subject to whom the force was applied ;
- D. Ensure the collection of any appropriate evidence when applicable;
- E. Ensure photographs are taken of all injuries and relevant items such as dirt stains on uniforms, tears in clothing, damage to equipment, etc.;
- F. In the event that the supervisor believes that the incident may give rise to potential civil litigation, the supervisor shall notify the DSO or appropriate command staff member during normal business hours;
- G. Attach all incident reports, the CAD incident history, Conducted Energy Weapon downloads, and a link to all officer-worn videos in Evidence.com;
- H. Enter force options used by any officer who used reportable force. List other officers present as witness officers;
- I. Provide a brief summary of the incident in Blue Team and attach a Use of Force Additional form with all other information;
- J. Provide a brief comment stating whether the use of force was within policy and any possible training issues, unless the involved officer is of an equal or superior rank. If more detailed analysis is needed, include it in the Use of Force Additional report;
- K. and forward the Use of Force Report to Internal Affairs Group in Blue Team.

Internal Affairs will attach all photographs and recordings of radio traffic to the report. A member of Internal Affairs will verify that all relevant materials were attached to the case and forward it to the next person in the supervisor's chain of command for review.

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300.7.3 REFERRAL TO INTERNAL AFFAIRS

When there is an allegation, complaint, or a supervisor is concerned that a violation may have occurred, the supervisor shall initiate an Internal Affairs Complaint in Blue Team. The supervisor shall forward the Complaint and the Use of Force Report through Blue Team to the Internal Affairs Group and copy each member of the chain of command to include the Chief of Police in the routing.

300.7.4 INTERNAL AFFAIRS RESPONSIBILITY – DEADLY FORCE

Internal Affairs shall complete the Blue Team Use of Force Report for any incident involving deadly force. (See also Policy 310).

De-Escalation

300.1 PURPOSE AND SCOPE

This policy provides the Spokane Police Department's core principles relating to the use of de-escalation tactics. Police officers have been delegated the responsibility to protect life and property and apprehend criminal offenders. The Department is committed to accomplishing this mission with respect and a minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force, when circumstances permit. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and avoid the application of unnecessary force.

When safe and reasonable under the totality of the circumstances, and time and circumstances permit, officers shall use de-escalation tactics in an effort to reduce the need for force or to minimize the level of force needed.

300.2 DEFINITION

De-escalation - De-escalation tactics and techniques are actions used by officers, when safe to do so, that seek to minimize the likelihood of the need to use force or reduce the level of necessary force during an incident and increase the likelihood of voluntary compliance. Mitigating the immediacy of a threat gives officers time to utilize extra resources and increases time available to call more officers or specialty units.

300.3 DE-ESCALATION

When encountering a non-compliant subject, officers shall, when safe and feasible, use de-escalation tactics in an effort to reduce the need for, or degree of, force necessary to safely resolve a situation. It is recognized that every situation is unique and fact-specific; not all tactics are appropriate in every circumstance. It is not required that officers use every technique below during every incident. The over-arching objective of de-escalation is to make a situation less dangerous for the public, the officers, and the subject involved. The subject's actions, type of weapon(s), presence of hostages, and overall risk to the general public and the involved officers will be important considerations in determining which tactics are appropriate in a particular scenario.

- A. Whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply such as:
 - 1. Mental impairment
 - 2. Developmental disability
 - 3. Physical limitation
 - 4. Language barrier
- B. The following are considered de-escalation tactics:
 - 1. Allow subjects the opportunity to submit to arrest before force is used.

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De-Escalation

2. Attempt to isolate and contain the subject. When it is safe and reasonable to do so, officers should make advantageous use of:
 - (a) Positioning, distance, concealment and cover by isolating and containing a subject.
 - (b) Continuously evaluating the officer's positioning, subject's actions, and available force options.
 - (c) Placing barriers between an uncooperative subject and an officer.
3. Create time and distance from the subject by creating a buffer zone (reactionary gap) and utilize cover to avoid creating an immediate threat that may require the use of force:
 - (a) When it is safe and reasonable to do so, officers should use time as a tactic.
 - (b) In order to use time as a tactic, a zone of safety should be established for the security of responding members and the public.
 - (c) Using time as a tactic may:
 1. Permit the de-escalation of the subject's behavior and create a window of opportunity to use a lower level of force to resolve the situation.
 2. Allow for continued communication with the subject and the adjustment of the verbal control techniques employed by the members.
4. Request the arrival of specialty units / additional resources, such as the Crisis Intervention Team (CIT) trained officers, Crisis/Hostage Negotiation Team, or extended range impact weapons.
5. The number of officers on scene may increase the available force options and may increase the ability to reduce the overall force used.
6. Communication from a safe position intended to gain the subject's compliance using:
 - (a) Verbal persuasion
 - (b) Advisements
 - (c) Warnings
7. Avoidance of physical confrontation, unless necessary.
8. Designate an officer to establish rapport and engage in communication and apply verbal techniques with the subject.
9. Tactically reposition, if safe to do so, as often as reasonably necessary to maintain a reactionary gap.
10. Continue de-escalation techniques as reasonably necessary to resolve the incident.

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- (a) An officer's awareness of these possibilities, when time and circumstances reasonably permit, shall be balanced against the facts of the incident.
11. Any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

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301.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of force. Police officers have been delegated the responsibility to protect life and property and to apprehend criminal offenders. The Department is committed to accomplishing this mission with respect and a minimal reliance on the use of force, and by using, whenever possible, rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force.

It is recognized, however, that in certain situations, the use of force may be unavoidable. While there is no way to specify the exact amount or type of force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

301.2 DEFINITIONS

Definitions related to this policy include:

- A. **Active Resistance** – Use of physical force or mechanical resistance in achieving and/or maintaining noncompliance.
- B. **Assaultive** - Noncompliance perceived as, or resulting in, an actual assault on a subject or officer. The scope and severity of the attack would likely not result in serious bodily injury or death.
- C. **Aggravated Assaultive/Life Threatening** - Noncompliance perceived as, or resulting in, an actual assault on a subject or officer. The scope and severity of the attack would likely result in serious bodily injury or death.
- D. **Compliant** - Cooperative response to lawful commands.
- E. **Control Devices** - Includes TASER, baton, oleoresin capicum (OC), 2-Chlorobenzalmalononitrile (CS), and mechanical restraints.
- F. **Control Techniques** - Includes lateral neck restraint (LNR), personal impact weapons, counter joint, and take downs.
- G. **De-escalation** - De-escalation tactics and techniques, including time, distance and cover, are actions used by officers, when safe to do so, that seek to minimize the likelihood of the need to use force or reduce the level of necessary force during an incident and increase the likelihood of voluntary compliance. Mitigating the immediacy of a threat gives officers opportunities to utilize extra resources and increases time available to call more officers or specialty units.
- H. **Environmental Factors** - Includes lighting, weather conditions, physical obstructions, and other physical conditions that impact the officer's and/or the suspect's ability to see, hear, etc. This also includes the proximity to bystanders who may be injured and the presence of persons likely to interfere.
- I. **Feasible** - Capable of being done or carried out to successfully achieve the arrest or lawful objective without increasing risk to the safety of the officer or another person.

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- J. **Force** - Physical actions used to effect, influence, or persuade a subject to comply with an officer.
 - 1. **Inappropriate Force** - Force that is not reasonable and/or necessary under the totality of the circumstances.
 - 2. **Deadly Force** - Means the intentional application of force through the use of firearms or any other means reasonably likely to cause serious physical injury or death.
 - 3. **Reportable Force** – All use of force by an officer outside of handcuffing or wrist locks/joint control techniques shall be thoroughly documented in a report. If the incident does not require a report, the interaction may be documented in CAD.
 - 4. **Reviewable Force** – A use of force incident that requires a Use of Force Report in BlueTeam. (See 301.13.1)
- K. **Fourth Amendment Interest** - A person's Fourth Amendment right to be free from objectively unreasonable force. The use of force to effect an arrest is subject to the Fourth Amendment's prohibition on unreasonable seizures.
- L. **Governmental Interests** - The need to use force because of facts and circumstances that present the "Graham factors."
- M. **Graham Factors** – The non-exhaustive list of factors for determining when an officer's use of force is objectively unreasonable, including (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight.
- N. **Imminent** - The reasonable perception that something is impending or about to occur.
- O. **Intentional Pointing of a Firearm** - When the officer is intentionally "pointed in" at a subject with their firearm.
- P. **Less Lethal Device** - A device designed and intended to apply force that is not likely to cause the death of a subject, including chemical agents, CEWs, impact/pain compliance devices, less lethal shotguns, forty (40) mm launchers and projectiles, and pepper ball systems.
- Q. **Nature and Quality of the Intrusion** - The type and degree of force used.
- R. **Passive Resistance** – Noncompliance to lawful authority without physical resistance or mechanical enhancement.
- S. **Totality of the Circumstances** – Additional factors that may make the use of force appropriate in a particular case, whether or not they are among the core three Graham factors.

301.3 ALL FORCE MUST BE OBJECTIVELY REASONABLE

All force used by officers must be objectively reasonable in light of facts and circumstances confronting them. Determining whether force is reasonable under Fourth Amendment requires carefully balancing the nature and quality of the intrusion on an individual's Fourth Amendment

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interest against the countervailing governmental interests at stake. Reasonable force requires careful attention to the facts and circumstances of each particular case, including the following Graham Factors:

- The severity of the crime at issue;
- Whether the suspect poses an immediate threat to the safety of the officers or others; and
- Whether he is actively resisting arrest or attempting to evade arrest by flight.

Reasonable force is also determined by “the totality of the circumstances,” including specific factors that may be appropriate in a particular case, whether or not they are among the three Graham Factors.

The Graham Factors govern the use of force, even in situations that do not involve a crime. Prior to using force, officers must consider whether the subject poses an immediate threat to the safety of the officers or others.

The Department recognizes that officers are often forced to make split-second decisions in circumstances that are tense, uncertain, and rapidly evolving concerning the amount of force that is necessary in a particular situation. These decisions must therefore be judged based on the totality of the circumstances, and not with the benefit of 20/20 hindsight.

301.4 WHEN USE OF FORCE IS AUTHORIZED

Officers shall only use force based on the totality of the circumstances, urgency of the situation, actions, and level of resistance offered by a subject when no reasonably effective alternative appears to exist when trying to achieve a law-enforcement objective. The force used must comply with federal, state law, and Spokane Police Department policies, training, and rules for specific instruments and devices. Officers utilizing force should consider, if feasible, the following:

- If the person has been given a verbal warning.
- The likelihood the tactic, technique, or device being employed will be effective under the circumstances.
- The potential level of injury that may occur upon deployed force.
- If the person can comply with directions or orders.
- If the person has been given sufficient opportunity to comply.

Officers should use physical force only to perform their duties under the law or restore order, when the exercise of persuasion, advice, and warning is found to be insufficient, or not feasible, to achieve police objectives and to use only the amount of force that is objectively reasonable. When force is necessary, it should be delivered timely and adequately, ceasing the danger and protecting the community and officers.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the

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Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or exceptional technique must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

301.5 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force, and in evaluating the Graham Factors regarding the reasonableness of force, officers should consider the following:

- A. Perception of the known and potential threat considerations to the public, the officer(s) and subject involved.
 - 1. The nature of the encounter
 - 2. The conduct of the subject being confronted, as reasonably perceived by the officer at the time.
 - 3. Age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, and the number of officers available vs. suspects.
 - 4. Whether a person is unresponsive and the reasons, if known, for that unresponsiveness.
 - 5. Potential for injury to officers, suspects and others.
 - 6. Training and experience of the officer.
 - 7. Proximity of potential weapons or dangerous improvised devices.
 - 8. Availability of cover officers.
 - 9. Prior contacts with the subject or awareness of any propensity for violence.
 - 10. Any other exigent circumstances.
- B. The level of resistance and/or attempts to flee demonstrated by the subject.
 - 1. The risk and reasonably foreseeable consequences of escape.
 - 2. The degree to which the subject has been effectively restrained and the subject's ability to resist despite being restrained.
 - 3. The apparent need for immediate control of the subject or a prompt resolution of the situation.
 - 4. The availability of other options and their possible effectiveness.
 - 5. Time available and split-second decision-making required under the circumstances.
 - 6. Environmental factors.
 - 7. Suspect's response to de-escalation efforts.
- C. The severity of the crime and/or community caretaking function.

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301.6 ADDITIONAL FACTORS TO BE CONSIDERED WHEN USING FORCE

Officers should be mindful of individuals with apparent physical or mental disabilities and those with apparent limited English proficiency before using force. Officers should also exercise caution before using force against young children, elderly persons and pregnant women. Officers should not expose themselves to unreasonable danger, however, and must evaluate the facts and circumstances with which they are presented.

301.7 FOURTH AMENDMENT INTERESTS

The value of human life is immeasurable, and people have a protected interest in their life and personal safety. It is therefore the policy of the Spokane Police Department to prioritize the sanctity of human life. The Fourth Amendment of the U.S. Constitution guarantees individuals the right to be free from excessive or objectively unreasonable force. Officers must therefore carefully balance the type and degree of force used against the need to use force.

- A. Officers shall make protecting and preserving human life their primary objective.
- B. Officers shall exhibit respect and professionalism even when force is necessary.
- C. Officers shall use de-escalation tactics whenever safe and reasonable.
- D. Offer aid to those affected by a use of force whenever reasonably safe to do so.

301.8 ASSESSING LEVEL OF FORCE

Officers shall continually assess situations to determine if de-escalation is feasible and if force is necessary. Officers will continually reassess their force in relation to the amount of continued resistance offered by the subject and adjust their level of force appropriately.

301.9 WHEN USE OF FORCE IS PROHIBITED

The use of excessive force or unwarranted physical force is prohibited.

301.10 DUTY TO INTERCEDE/ETHICAL INTERVENTION

Every officer is obligated to ensure compliance by themselves and other officers with Department regulations, policies and the law. Any officer present and observing another officer using force they know or have reason to know is clearly beyond what is objectively reasonable under the circumstances shall, when in a safe position to do so, intercede to prevent the use of unreasonable force. The officer shall promptly report these observations and the efforts made to intervene to a supervisor. If the observing officer is a supervisor, he or she will issue a direct order to stop the violation.

301.11 DEADLY FORCE

It is the policy of this Department to use deadly force only as a last resort when reasonable alternatives have been exhausted or are not feasible to protect the safety of the public and police officers against an imminent threat of death or prevent serious bodily injury to the officer or another person. The use of force is the most serious decision an officer may ever make.

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- A. When Deadly Force is Authorized
 - 1. An officer may use deadly force to protect themselves or others from what the officer reasonably believes would be an imminent threat of serious bodily injury or death.
 - 2. An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is imminent risk of serious bodily injury or death to themselves or any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force where feasible.
- B. Verbal Warning - If feasible, and if doing so would not increase the danger to the officer or others, an officer shall give a verbal warning to submit to the authority of the officer before discharging a firearm or using other deadly force. An officer shall:
 - 1. Identify himself/herself as an officer and advise the person they are under arrest if applicable;
 - 2. Give the command(s) to be followed;
 - 3. Afford the person a reasonable opportunity to comply with the officer's command(s); and
 - 4. State the intention to shoot or otherwise use lethal force if the person does not comply with the command(s).
- C. Reasonable Care for the Public. To the extent feasible, an officer shall take reasonable care when discharging his or her firearm so as not to jeopardize the safety of the public or other officers.
- D. When Use of Deadly Force is Prohibited:
 - 1. As a warning;
 - 2. At a person who poses a danger only to him or herself;
 - 3. Solely in defense or protection of property;
 - 4. Firing at or into a moving vehicle when the vehicle is the only threat to the officer or public and when deadly force is not reasonably necessary to prevent death or serious bodily harm to the officer or another person. Officers will make every effort to move and stay out of the path of a moving motor vehicle or a vehicle capable of becoming mobile.

301.12 MEDICAL CONSIDERATION

- A. Medical assistance shall be provided to any person who requests it, who is rendered unconscious, exhibits signs of physical distress, or who claims an injury (with the exception of minor marks on the wrist consistent with being handcuffed and/or minor marks or abrasions to portions of the body consistent with prone handcuffing or a takedown technique). Any subject exhibiting signs of physical distress after

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an encounter should be continuously monitored until the subject can be medically assessed.

- B. Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. Any refusal of medical attention shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a BWC recording is made of the contact or an interview with the subject, any refusal should be included in the recording if possible. Any subject who has been rendered unconscious by a Lateral Neck Restraint will be examined and/or treated at a medical facility prior to being booked into jail.
- C. The on-scene supervisor, or if not available the primary handling officer, will make all reasonable attempts to provide information, as time allows, to assist medical care providers. This notification should include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).
- D. Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and who appear impervious to pain (sometimes called Excited-Agitated Delirium), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden in-custody death (postmortem diagnosis of death: Excited Delirium). Calls involving these persons should be considered medical emergencies. Law enforcement personnel who reasonably suspect a medical emergency exists should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.
- E. When the scene is secure and it is safe to do so, officers should attempt to render medical first aid until medical response has arrived.

301.13 USE OF FORCE REPORTING

- A. Unless otherwise provided in policy, all force used by an officer shall be promptly, completely and accurately documented. The officer shall articulate the factors which made the use of force objectively reasonable, based on the Use of Force Policy.
- B. The officer shall also document attempts to gain compliance through de-escalation, verbal commands, force options and other tactics. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or law.
- C. Officers, including officers working extra duty assignments, shall promptly report circumstances of incidents involving a Use of Force, Attempted Force, Inappropriate Force or Inappropriate Attempted Force to a supervisor or command officer.

301.13.1 NOTIFICATION TO SUPERVISORS

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

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- A. The application of force resulted in apparent injury to the subject or unconsciousness (with the exception of minor marks on the wrist consistent with being handcuffed and/or minor marks or abrasions to portions of the body consistent with prone handcuffing);
- B. The subject claims an injury resulted from a use of force, even if no injury is visible (with the exception of minor marks on the wrist consistent with being handcuffed and/or minor marks or abrasions to portions of the body consistent with prone handcuffing);
- C. All applications of a Lateral Neck Restraint (Level I and Level II) (see Policy 308);
- D. All applications of a Conducted Energy Weapon (e.g. TASER™) (See Policy 308);
- E. The intentional discharge of firearms (with the exception of training or recreation) (See Policy 312);
- F. Intentional Pointing of a Firearm - When the officer is intentionally "pointed in" at a subject with their firearm. Maintaining tactical observation of a subject with magnified optics is a trained tactical advantage and should not be considered a use of force;
- G. Any deployment of OC by means of spray or by means of physically or mechanically delivered techniques where a person is exposed to the chemical (See Policy 308);
- H. Any deployment of CS by means of a spray or by means of physically or mechanically delivered techniques where a person is exposed to the substance (see Policy 308);
- I. Any application of an impact weapon whether personal, issued or improvised, to a subject (See Policy 308);
- J. Canine deployment per Policy 318; and
- K. When a subject alleges any of the above has occurred.

301.14 CHAIN OF COMMAND REVIEW OF USE OF FORCE

301.14.1 SUPERVISOR REPORTING

When a supervisor becomes aware of an incident in which there has been a reviewable application of force, the supervisor shall complete a Use of Force Report. In the event a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still required to complete a Use of Force Report. Use of Force reports are required under the circumstances described in Section 301.13.1 Notification to Supervisors.

301.14.2 INVESTIGATION, DOCUMENTATION AND NOTIFICATION

When completing a Use of Force Report the supervisor shall take the necessary steps to conduct a thorough investigation. The supervisor shall:

- A. Respond to the scene, when possible.
- B. Review all documentation of the incident and make every reasonable effort to contact all involved officers.
- C. Ensure identification of witnesses and other involved parties. When possible conduct civilian interviews of those subjects, including the subject to whom the force was applied.

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- D. Ensure the collection of any appropriate evidence when applicable.
- E. Ensure photographs are taken of all injuries and relevant items such as dirt stains on uniforms, tears in clothing, damage to equipment, etc. Photos should also be taken when appropriate to document the lack of injury.
- F. In the event that the supervisor believes that the incident may give rise to potential civil litigation, the supervisor shall notify the DSO or appropriate command staff member during normal business hours.
- G. Attach all incident reports, the CAD incident history, Conducted Energy Weapon downloads, and a link to all officer-worn videos in Evidence.com.
- H. Enter force options used by any officer who used reviewable force. List other officers present as witness officers.
- I. Provide a brief summary of the incident in BlueTeam and attach a Use of Force Additional form with all other information.
- J. Provide a brief comment stating whether the use of force was within policy and any possible training issues, unless the involved officer is of an equal or superior rank. If more detailed analysis is needed, include it in the Use of Force Additional report.
- K. Forward the Use of Force Report to 'Internal Affairs Group' in BlueTeam.

Internal Affairs will attach all photographs and recordings of radio traffic to the report. A member of Internal Affairs will verify that all relevant materials were attached to the case and forward it to the next person in the supervisor's chain of command for review.

301.14.3 REFERRAL TO INTERNAL AFFAIRS

The supervisor shall complete a Use of Force Report through BlueTeam. The supervisor shall forward the Use of Force Report through BlueTeam to the Internal Affairs Group and copy each member of the chain of command to include the Patrol Major.

Any egregious behavior/conduct identified by a supervisor will be promptly brought to the attention of the DSO. If during a Chain of Command review, a supervisor identifies an egregious policy violation, prompt DSO notification will be made.

301.14.4 INTERNAL AFFAIRS RESPONSIBILITY – DEADLY FORCE

Internal Affairs shall complete the BlueTeam Use of Force Report for any incident involving deadly force. (See also Policy 310).

October 15, 2019

Chief Craig Meidl
Spokane Police Department
1100 W. Mallon Avenue
Spokane, Washington 99260

RE: R19-1 – Juvenile Miranda Advisements

Dear Chief Meidl,

We received a complaint, OPO 19-18/C19-017, from a concerned community member after her juvenile son was mistakenly identified by the Spokane Police Department as the person of interest in a call of a person with a gun as he resembled the description of the person the police were looking for. The community member complained the officers used excessive force on her son and were rude to her when she was on scene. While the concerns in her complaint have been mediated, review of the case captured her son being read his *Miranda* rights in the back of a police car while being detained. It was clear that the detained juvenile, who was eleven at the time, did not understand he was being subjected to a *Terry* stop and what that could entail. As the officers were cuffing him, he asks, “Am I arrested?...Am I seriously getting arrested?!” The detained juvenile is later read his *Miranda* rights after he was placed in the back seat of a police vehicle. He requests a second reading of his rights and asks the officer a clarifying question. The officer responds by asking him if he understands the rights read to him, to which he responds in the affirmative. Some discussion ensues and the officer asks if the detained juvenile wants an attorney. The juvenile then responds by asking the officer, “What is an attorney?” This clearly demonstrated that the detained juvenile did not fully understand his rights when he had previously responded that he did.

The Washington Courts and the United States Supreme Court recognize children are different from adults and must be treated differently in the criminal justice system.¹ The International Association of Chiefs of Police recognizes juveniles’ limited ability to understand their *Miranda* rights, which can require a tenth-grade level of comprehension.² In 2014, researchers examined 371 juvenile *Miranda* warnings from around the country and found that

¹ *State v. Houston-Sconiers*, 188 Wn.2d 1, 8 391 P. 3d 409 (2017) (quoting *Miller v. Alabama*, 567 U.S. 460, 480, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012)).

² Int’l Ass’n of Chiefs of Police, *Reducing Risks: An Executive’s Guide to Effective Juvenile Interview and Interrogation* (2009).

52% required at least an eighth-grade reading level.³ Reading comprehension and specific knowledge of vocabulary words used in these warnings is critical to a general understanding of the *Miranda* warnings.⁴

While the Supreme Court has favored the totality of the circumstances, similar to adult advisements, to per se rules on juvenile advisements, several states have adopted per se rules. A review of the Spokane Police Department Manual⁵ policies on *Miranda* advisements does not show a specific policy for juvenile advisements. Washington State also does not appear to have adopted per se juvenile *Miranda* advisements. However in the state of Washington, the Seattle Police Department requires a parent or guardian to waive the rights of a juvenile under the age of 12, and has a right to be present during the interview.⁶ King County Sheriff's Office simplified the warnings it provided juveniles as of September 2017.⁷ It expanded into two parts the portion of the advisement relevant to this case.⁸ Instead of just saying, "You have the right to an attorney. If you cannot afford an attorney, one will be provided to you." The first part uses the term 'lawyer' instead of 'attorney' and explains what services the lawyer will provide. The second part expounds on the juvenile's ability to stop answering questions and law enforcement will cease from asking further questions.

The OPO recommends Spokane Police Department create a policy that accounts for juvenile *Miranda* advisements or at a minimum, ensure officers take extra steps to ensure that minors are able to comprehend the advisement. This will help ensure any information a juvenile provides is preserved.

Sincerely,

Bart Logue
Police Ombudsman
Office of the Police Ombudsman, City of Spokane

cc: Director MacConnell

³ Lorelai Laird, *Police Routinely Read Juveniles their Miranda Rights, But Do Kids Really Understand Them?*, 2016 American Bar Association, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/august-2016/police-routinely-read-juveniles-their-miranda-rights-but-do-kid/ (last visited Aug. 5, 2019).

⁴ Richard Rogers et al., *The Language of Miranda Warnings in American Jurisdictions: A Replication and Vocabulary Analysis*, 32 *Law & Hum. Behav.* (2007).

⁵ <https://static.spokanecity.org/documents/police/accountability/police-policy-manual-2017-05-04.pdf> (last visited Aug. 5, 2019).

⁶ <https://www.seattle.gov/police-manual/title-6---arrests-search-and-seizure/6150---advising-persons-of-right-to-counsel-and-miranda> (last accessed Aug. 5, 2019).

⁷ <https://www.kingcounty.gov/depts/sheriff/news-media/news/2017/September/Miranda-warnings-simplified-for-juveniles.aspx?print=1> (last visited Aug. 5, 2019).

⁸ <https://www.kingcounty.gov/~media/depts/executive/performance-strategy-budget/documents/pdf/RLSJC/2018/July26/Miranda-Warning-for-Youth.ashx?la=en> (last visited August 5, 2019).

October 15, 2019

Chief Craig Meidl
Spokane Police Department
1100 W. Mallon Avenue
Spokane, Washington 99260

RE: R19-2 – Use of Force Reporting on Force Used Against Persons of Mistaken Identity

Dear Chief Meidl,

The OPO received and reviewed two cases¹ where officers were looking for a suspect and ended up using force on a person who matched the description, but who was not the intended person. While we understand that officers must take control of a subject before they are able to confirm or dispel their identity, it is prudent that the Spokane Police Department (SPD) thoroughly document the circumstances leading up to the use of force, and the reasons why the force was utilized.

In both cases, the actions of the officers could be seen as objectively reasonable as the officers were conducting an investigative stop or detention that is well settled under *Terry v. Ohio*. However, when officers intrude on the privacy of an innocent community member, the government intrusion should be thoroughly documented. Furthermore, the right to privacy is jealously guarded in the state of Washington by Article 1, Section 7 of the constitution. It provides, “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” While we are not contesting the authority of the officers’ actions, thorough documentation of these types of matters are important.

In both of the complaints we received, the force utilized was what SPD refers to as a “Non-Reportable Use of Force.” SPD’s policy regarding the reporting of physical uses of force was reported to be “more limited than other agencies” in the Use of Force Summary report completed by Police Strategies, the consultant who analyzed SPD’s last 5 years of use of force.² The report says most agencies require officer[s] to report on any physical force that was used to overcome any level of resistance. This would include pulling a resistant subject’s arms back for handcuffing, the use of joint manipulation and pain compliance techniques, physical strikes, pushes, and takedowns using body weight to hold a subject to the ground and wrestling with a

¹ C18-088/OPO 18-56; C19-017/OPO 19-18

² See <https://static.spokanecity.org/documents/opo/analysis/spd-use-of-force-summary-report-from-2013-to-2018.pdf> (Accessed on October 14, 2019).

subject. SPD officers are only required to report physical uses of force when the subject is injured or complains of an injury.

In one of the cases reviewed, it could be perceived that a Level 1 Lateral Neck Restraint (LNR) was applied, which is far more serious than the threshold of what should be considered a reportable use of force. SPD neither categorized the force used in this case as an LNR nor did it consider it reportable force. Regardless, we believe that ANY force utilized, whether it be restraints, body manipulation, take downs, body weight, etc., in addition to “reportable uses of force” employed against an innocent community member who only resembles the person of interest, should be thoroughly documented in a manner consistent with the documentation requirements for what SPD refers to as “reportable use of force” cases. These incidents should be promptly referred to a non-involved supervisor for next steps.

In the two cases reviewed, follow up was not made until complaints were filed. The OPO recommends a non-involved supervisor review the case and contact the person involved to determine whether further action or documentation is necessary. This would have been especially prudent in the case involving a juvenile. Thank you for your prompt consideration of this matter.

Sincerely,

Bart Logue
Police Ombudsman
Office of the Police Ombudsman, City of Spokane

cc: Director Jacqui MacConnell

October 15, 2019

Chief Craig Meidl
Spokane Police Department
1100 W. Mallon Avenue
Spokane, Washington 99260

RE: R19-3 – Reportable Uses of Force

Dear Chief Meidl,

We appreciate Spokane Police Department's (SPD) collaboration with the Office of Police Ombudsman's (OPO) initiative on use of force dashboards. One of the services included with the consultant, Police Strategies LLC, is that they are able to analyze SPD's use of force compared to the other law enforcement agencies in their network.

Police Strategies LLC provided its assessment and recommendations in its Use of Force Summary Report from 2013 to 2018.¹ In reviewing how data is tracked from use of force incidents, it became clear that pursuant to the Use of Force Policy, §300.5 Documenting Force, officers have been tracking uses of force in police reports, including lower levels of force. However these were not considered a "reportable use of force," and therefore not being counted as a use of force. It is only under §300.5.1 Notification to Supervisors that a use of force review is triggered and counted as a use of force for reporting purposes.

One of the report's recommendations that we wish to endorse to SPD is to count reportable use of physical force the same as the other agencies in the Police Strategies LLC network. The report says SPD's policy on physical uses of force is more limited than other agencies. SPD's current policy only requires officers report physical uses of force when the subject is injured or complains of an injury. Most other agencies require officer[s] to report on any physical force that was used to overcome any level of resistance. This would include pulling a resistant subject's arms back for handcuffing, the use of joint manipulation and pain compliance techniques, physical strikes, pushes, and takedowns using body weight to hold a subject to the ground and wrestling with a subject.

Updating the tracking of these uses of force would make for a more accurate comparison of force across agencies. More importantly, SPD would be more accurately report back to the community the actual uses of force occurring. Thus, I recommend SPD update its

¹ See <https://static.spokanecity.org/documents/opo/analysis/spd-use-of-force-summary-report-from-2013-to-2018.pdf> (Accessed on October 14, 2019).

reportable uses of force threshold to reporting on any physical force that was used to overcome any level of resistance.

Sincerely,

Bart Logue
Police Ombudsman
Office of the Police Ombudsman, City of Spokane

cc: Director Jacqui MacConnell

DRAFT

October 15, 2019

Chief Craig Meidl
Spokane Police Department
1100 W. Mallon Avenue
Spokane, Washington 99260

RE: R19-4 – Use of Force Policy Concern

Dear Chief Meidl,

We want to congratulate you for your recently published update to the Use of Force Policy, §301, and creating a De-Escalation Policy, §300. We recognize that a lot of time and effort went into this policy and there are parts of it which we consider to be very progressive. We do, though, have a concern to a change to Referral[s] to Internal Affairs. Formerly §300.7.3, has been updated as §301.14.3.

The previous policy (dated 2019/01/04) stated, “When there is an allegation, complaint, or a supervisor is concerned that a violation may have occurred, the supervisor shall initiate an Internal Affairs Complaint in Blue Team.” The new policy (dated 2019/10/04) states, “The supervisor shall complete a Use of Force Report through BlueTeam. The supervisor shall forward the Use of Force Report through BlueTeam to the Internal Affairs Group and copy each member of the chain of command to include the Patrol Major. Any egregious behavior/conduct identified by a supervisor will be promptly brought to the attention of the DSO (Duty Staff Officer). If during a Chain of Command review, a supervisor identifies an egregious policy violation, prompt DSO notification will be made.”

Use of force is one of the highest privileges a community gives to its police department. Removing the requirement that a supervisor initiate an Internal Affairs Complaint when they think a violation may have occurred is ill advised. Allegations of violations should always be thoroughly documented and investigated without undue Command influence. This is one of the many reasons that Internal Affairs is a direct report to the Chief’s Office or his/her designee.

In May 2019, I became concerned that §300.7.3 had not been appropriately followed. I raised this issue for several reasons: oversight of the matter was undermined; perceptions of impropriety or special treatment; improper preservation of interviews; and a lack of a full and proper investigation. It appears, with this recent policy update, that you are specifically removing the requirement to a complete an impartial Internal Affairs investigation, exacerbating my concerns on interviews taking place off the record, improper investigations, and special treatment; as well as an absolute removal of an oversight mechanism.

I urge you to reconsider this alarming change to policy. Any perceived violations of SPD's Use of Force Policy deserves impartial scrutiny during the investigative process, PRIOR to a Chain of Command review. Impartiality is especially important in use of force cases, in which bias and command influence can quickly try to sway outcomes. Internal Affairs investigators are generally removed from outside influence in administrative investigations. This is not the case in supervisory reviews of direct report officers, who have the additional scrutiny of their direct report supervisor.

I am not proposing that every use of force case have a full-fledged investigation; rather when a supervisor feels there may have been a policy violation, that case should be thoroughly and objectively investigated. Any violation of use of force principles have the potential for increased community concern as well as increased liability. The updated §301.14.3 policy emphasis on only egregious violations is also troubling. Egregious violations of the Use of Force policy are of significant concern and impartial investigations of those actions are critical as there are due process concerns should the case be pursued criminally.

I have no issue with the internal notification process that SPD has chosen to implement at this time. However, I strongly urge you to re-implement the duty to report to Internal Affairs for investigation provisions from 300.7.3 which were removed. Objectivity and transparency demands it. This deviation from previous practice is alarming, and is an affront to community accountability.

Sincerely,

Bart Logue
Police Ombudsman
Office of the Police Ombudsman, City of Spokane

cc: Director Jacqui MacConnell

October 15, 2019

City of Spokane City Council
Spokane City Hall
808 W. Spokane Falls Blvd.
Spokane, Washington 99201

RE: Full-time Administrative Specialist position

Dear City Council Members,

As decisions on the 2020 budget are being finalized in the coming days, we, the Office of the Police Ombudsman Commission (OPOC), request your continued support of the Police Ombudsman's highest budget priority – establish the Administrative Specialist position as a full-time position. The position currently exists as a part-time employee (.6). The Police Ombudsman has requested \$28,535.55 from the Administration in the 2020 Budget Allocation Request to make the position a full-time position.

Our governing ordinance provides, “the City Council shall maintain necessary funding to appropriately staff the Office of the Police Ombudsman and the Commission, including adequate staff to enable the Police Ombudsman to perform the required duties and responsibilities of the office as well as providing staff assistance to the Police Ombudsman Commission.” See Spokane Municipal Code §04.32.160. A year ago, you amended the budget ordinance to secure the funding necessary to create the Administrative Specialist position. See Ordinance Number C35512 (passed on June 26, 2017). Through this action, we believe you are in agreement that this position functions to ensure the OPOC receives timely logistical and administrative support, while providing staff support to the Office of the Police Ombudsman (OPO). This position also helps reduce the burden placed upon the OPO. This past year, Internal Affairs (IA) has generally complied with the Police Ombudsman's request to include him in every citizen and officer interview of complaints filed by citizens. Increased IA interviews, coupled with watching body worn camera videos, and more thorough investigations have greatly impacted the Police Ombudsman's ability to fulfill the requirements of SMC 04.32 outside of the complaint process. The Police Ombudsman and members of the OPO staff regularly work deep into the evening hours to fulfill their responsibilities in a diligent manner.

Currently, the Administrative Specialist provides support to our Commission and is the primary point of contact for complaint intake and processing in the OPO. Citizen contacts increased by 61%. Complaint interviews went from 29 to 187. Complaints have more than doubled in 2018. In 2019, the complaints are on pace to surpass those in 2018. Providing citizens with an empathetic listening ear combined with the increased volume of complaints has made complaint intake a much larger portion of the job. However, the Administrative Specialist also performs administrative reporting functions for the OPOC, case management, managing social media, participate in

community outreach, and other administrative functions. The workload would be difficult even for a full-time employee, but the OPO is only allotted a twenty-four (24) hours a week to complete it.

The Police Ombudsman continues to experience a shortfall in administrative support for the office. Due to the continuously evolving and increasing work load in providing police oversight, we believe that the City Council should strongly consider converting the Administrative Specialist from a part-time employee (.6) to a full-time position. This would begin to solve the Police Ombudsman's current concerns with a lack of administrative support for the office.

The OPO's successes in meeting its staffing goals are largely a result of the budgetary commitment provided by the City Council. While we have not yet achieved all of our desires, you have provided a path forward for the difficult work in front of us; ensuring the OPO is properly established and funded for oversight in Spokane. It is of the utmost importance to retain the current staffing levels in the OPO. Thank you for your consideration on this very important matter.

Sincerely,

Jenny Rose, Chair

Elizabeth Kelley, Commissioner

Blaine Holman, Commissioner

Ladd Smith, Commissioner

James Wilburn, Jr., Commissioner

cc: Bart Logue, Police Ombudsman