

**TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL
4.3 USE OF FORCE REPORTING AND REVIEW TEAM**

SUBJECT: Use of Force Reporting and Review Team		
4.3	EFFECTIVE: 10/14/2019	<i>William Cochran</i> William Cochran, Chief of Police
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4.3.1 PURPOSE

The purpose of this Order is to set forth the requirements for reporting and investigating an incident in which an officer used a reportable level of force and to ensure that such incidents are thoroughly investigated and reviewed in a fair and impartial manner.

4.3.2 POLICY

It is the policy of this Department that every reportable use of force by an officer be reported accurately, completely and promptly. Every reportable use of force shall be investigated thoroughly and with professionalism and impartiality to determine if the officer actions conforms to the law, complies with Departmental policies and is consistent with Departmental training standards.

4.3.3 PROCEDURE

A. A Supervisor will complete a Use of Force Report in Blue Team when it is determined that officer(s) have:

1. Used active pointing of a firearm or Electronic Control Device (ECD) to gain compliance;
2. Used any intermediate weapon. This includes such weapons as:
 - a. PR-24;
 - b. Baton;
 - c. Pepper spray;
 - d. Electronic Control Device (ECD);
 - e. Impact Munitions; or
 - f. Empty hand strikes.
3. Used of the following techniques:
 - a. Single cross face;
 - b. Double cross face;

TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL

4.3 USE OF FORCE REPORTING AND REVIEW TEAM

- c. Dynamic take downs;
 - d. Ground control tactics;
 - e. Palm mastoid;
 - f. Shin pin; or
 - g. Thigh lock.
 4. Taken any other intentional use of force that results in:
 - a. Any bodily injury
 - b. Complaint of injury by the subject
 - c. Likelihood of injury (based on circumstances) to the subject
 5. Shot at an aggressive or vicious animal in defense of officer or others that will require a supervisor to complete a firearms discharge report in Blue Team.
- B. Minor pain, redness or abrasions without any complaint of internal injury are not considered injuries for the purpose of reporting. Open wounds with bleeding or any condition requiring medical clearance before admission into a correctional facility would be considered an injury.
- C. Other Use of Force Reporting considerations
 1. Unintentional or accidental discharge of a weapon may or may not be a Use of Force action depending on the circumstances. It will be documented on an Incident Report and a detailed Supplemental Report with full supervisory inquiry and documentation when the incident does not require a use of force report.
 2. Humanely destroying animals does not require a Use of Force Report. Officers will notify supervisor to have a firearms discharge report in Blue Team for this.
 3. Response Team: The Chief of Police or designee may authorize members of the Topeka Police Response Team to use special weapons, equipment, and tactics deemed necessary for the performance of their duties. Active pointing of firearms in Response Team situations shall be documented in the Response Team's After Action Report. All other use of force actions will be handled in accordance with above policies.
- D. Immediate Supervisor Investigation
 1. In each incident in which a Use of Force Report is required an on-duty supervisor shall be immediately notified and called to the scene. Regardless of the number of officers involved, the supervisor will complete the Blue Team Report. The supervisor shall be responsible for investigating the

TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL

4.3 USE OF FORCE REPORTING AND REVIEW TEAM

circumstances surrounding the use of force, as well as initiating the guidelines below, as applicable;

- a. Officers will complete reports and narratives, and the supervisor will complete **ONE Blue Team report** for the incident attaching narratives, supervisor inquiry, photos, videos and a list of all officers involved.
- b. The supervisor shall ensure there is a case number assigned to the incident and all reports reference this same case number.
- c. The supervisor or designee shall examine the subject of the use of force for injury and ensure the subject receives medical attention as needed.
- d. The supervisor will attempt to interview the subject for complaints of pain. The subject will be advised the interview pertains only to the administrative use of force and not to any underlying alleged criminal inquiry. The following statement will be read to the subject prior to the administrative interview:
 - 1). **“This is an administrative interview to determine whether the officer(s) use of force complied with Department policy. The questions will be limited to the use of force by the officer(s) and any injuries you may have received. No questions will be asked at this time about any crime you are suspected of committing. Do you understand?”**
- e. The supervisor will interview any available witnesses regarding the circumstances of the incident, as well as the application of force. All statements shall be recorded unless circumstances make it impractical.
- f. The supervisor will ensure all officers involved in a use of force are interviewed separately. Supervisors will not ask officers or witnesses leading questions that suggest a legal justification for the officer’s conduct where such questions are contrary to appropriate law enforcement techniques
- g. All body worn camera (BWC) videos and any other recordings shall be reviewed by the supervisor for investigation purposes; and
- h. Digitally recorded items will be linked or attached to the report before forwarding to the next level for review.
- i. The supervisor shall identify and have collected all evidence relevant to the use of force and evaluate that evidence to determine whether the use of force
 1. was consistent with Department policy and/or
 2. suggests any policy, training, tactical or equipment concerns.

TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL

4.3 USE OF FORCE REPORTING AND REVIEW TEAM

2. Off-duty officers acting in the capacity as an officer and involved in use of force situations are subject to the same reporting procedures as on-duty officers. When an off-duty officer is involved in a use of force situation, they will notify an on-duty police supervisor immediately.
3. No supervisor who participated in a use of force, in any manner, will conduct the investigation of that incident.
4. Supervisors shall ensure documentation when the harm, or complaint of harm, is not caused by the officer or the officer's actions, e.g., when the suspect sustains injury through his or her own actions, such as banging his or her head against a wall, kicking doors of a patrol car, etc.
5. Non-sworn employees may be involved in force incidents accidentally, unintentionally, or as justified by law. Any reportable use of force incident by a non-sworn employee will be immediately reported to their bureau commander. That bureau commander will then notify the Chief of Police.
6. The investigating supervisor will ensure all Use of Force reports include the information required by this policy; consider all relevant evidence, including circumstantial, direct and physical evidence as appropriate and make credibility determinations if feasible. Supervisors will make all reasonable efforts through the investigation to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force claimed by the officer and the subject's injuries and inconsistencies between multiple officers.
7. When a supervisor determines the use of force may be in violation of Department policy, the supervisor will immediately notify their chain of command. If the watch commander agrees that Department policy may have been violated, the watch commander shall immediately notify the Professional Standards Unit. Upon such notification, the Professional Standards Unit will determine if they should respond to the scene and/or conduct or take over the investigation.
8. All reports will be completed by the end of shift or at a time designated by the on-duty Field Commander.
 - a. When the supervisor review is completed, the investigating supervisor will provide a brief written synopsis and a preliminary determination of the appropriateness of the use of force within the BlueTeam report that is to be electronically forwarded to their immediate supervisor and subsequently through the chain of command to the Bureau Commander.
 - b. The Use of Force Report packet will be sent through the chain of command, with each level of command reviewing the use of force incident within 72 hours of receiving it. Reviewing supervisors will order

TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL

4.3 USE OF FORCE REPORTING AND REVIEW TEAM

additional investigation when it appears there is additional relevant evidence that may assist in resolving the inconsistencies or improve the reliability or credibility of the findings.

9. Investigating supervisors may be subject to disciplinary action for failing to adequately investigate and document a use of force incident as required by this policy.
 10. When a supervisor conducts a deficient investigation the supervisor will receive the appropriate corrective action including counseling, training or demotion in accordance with performance evaluation procedure and/or the disciplinary process.
 11. When the investigating supervisor, reviewing supervisor or Bureau Commander finds evidence of a use of force involving potential criminal conduct by an officer he or she will suspend the use of force investigation immediately and notify the Chief and the Professional Standards Unit.
 12. When criminal conduct by the officer(s) is suspected, the Professional Standards will immediately take over the administrative investigation and an outside agency should be considered to conduct the criminal investigation.
 13. When the Bureau Commander finds the investigation is complete and the findings are supported by a preponderance of the evidence, the investigation file will be promptly forwarded to the Professional Standards Unit. The Professional Standards Unit will review the investigation to ensure it is complete and the findings are supported by the evidence.
 14. When the Professional Standards review is complete, the completed file will be forwarded to the Chief of Police for disposition.
 15. The TPD Use of Force review board, including the City of Topeka independent reviewer will make their findings known to the Chief of Police.
 16. Where, after investigation of a use of force is found to be out of policy, the Chief will direct and ensure the appropriate disciplinary process.
 17. Where the use of force indicated policy, training, tactical or equipment concerns, the Chief will ensure also that necessary training is delivered and that policy, tactical or equipment concerns are resolved.
- E. The Department will train all investigating supervisors on how to effectively complete these tasks.

4.3.4 SUSPECT'S ACTIONS

- A. The Compliant Subject may exhibit any of the following:

TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL
4.3 USE OF FORCE REPORTING AND REVIEW TEAM

1. Immediate appropriate response to directions;
2. Slow but appropriate response to directions; and/or
3. Verbally resistant but physically compliant with lawful orders.

B. The Passive Resistant Subject is:

1. Peacefully failing to comply with directions;
2. Resisting with limp body weight only; and/or
3. Ignoring directions.

C. The Active Resistant Subject exhibits any of the following:

1. Psychological intimidation such as:
 - a. The “Blank Stare”;
 - b. “Mean Mugging”; and/or
 - c. Verbal abuse without physical compliance.
2. Physical resistance such as:
 - a. Resistive tension such as locked joints, flexed muscles, or rigid body resistance;
 - b. Moving away from control attempts such as:
 - (1) Moving behind barricades, cover or concealment;
 - (2) Attempts to elude on foot;
 - (3) Tucking arms and hands under body to avoid being handcuffed when on the ground; and/or
 - (4) Holding onto fixed objects for support, such as, the steering wheel, furniture, or doors.

D. The Assaultive Subject exhibits such behavior as:

1. Verbal aggression, and/or fighting language;
2. Attempts empty hand strikes at the officer;
3. Throwing objects at officer;
4. Maintains a fighting stance with clenched fists;
5. Threatens the officer while moving into the officer’s reactionary gap;
6. Physically attacking or pushing the officer in non-life endangering ways; and/or
7. Any other behaviors indicative of actively fighting or resisting the officer.

E. The Life Endangering Subject exhibits such behavior as:

1. Reaching or attempting to reach for a weapon (as reasonably perceived by officer);

TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL

4.3 USE OF FORCE REPORTING AND REVIEW TEAM

2. Aggravated assault with a weapon;
3. Attempting to disarm the officer of any defensive weapon;
4. Mounting excessive physical resistance, or is recognized as a skilled fighter;
5. Multiple suspects assaulting or battering the officer; and/or
6. Tackling or forcing the officer to the ground, which involves stomping, kicking, and/or strangling.

4.3.5 USE OF FORCE REVIEW TEAM

A. The Use of Force Review Team will consist of members appointed by the Chief and two members appointed by the President of the FOP Lodge #3 as follows:

1. A Committee Chair of the rank of Major (OIC);
2. A Committee Co-chair of the rank of Captain or Lieutenant;
3. The Police Legal Advisor;
4. Six members consisting of:
 - a. The Range Master;
 - b. Defensive Tactics Instructor;
 - c. Two supervisors; and
 - d. Two members selected by the FOP president.

B. The Use of Force Review Team analysis shall include:

1. Regularly scheduled meetings to review all uses of force, except as outlined in 4.4 Deadly Force-Incident Procedure. The Use of Force Review Team may meet more frequently based on the number of reports to be reviewed if needed.
 - a. Use of Force actions should be analyzed from the perspective of an objectively reasonable officer at the scene with due allowance for the fact that law enforcement officers "are often forced to make split second judgments -- in circumstances that are tense, uncertain, and rapidly evolving." They should be judged without "20/20 hindsight." *Graham v. Conner*, 490 U.S. 386, 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989).
 - b. Factors included in the analysis are, but not limited to:
 - 1) The severity of the crime at issue;
 - 2) Whether the suspect poses an immediate threat to the safety of officers and others; and
 - 3) Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.
2. An analysis report shall be submitted to the Chief's Office annually that will:
 - a. Seek to identify patterns or trends; and

TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL
4.3 USE OF FORCE REPORTING AND REVIEW TEAM

- b. Suggest training needs and policy modifications, if any.