



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY

2011-2012

June 15, 2012

Final Report on

SHOOTING IN ALTA HEIGHTS



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY
P.O. BOX 5397
NAPA, CALIFORNIA 94581

June 15, 2012

The Honorable Mark S. Boesseneker
Presiding Judge
Superior Court of the State of California
County of Napa
825 Brown Street
Napa, California 94559

Re: 2011-2012 Grand Jury Final Report on Shooting in Alta Heights

Dear Judge Boesseneker,

Pursuant of Section 933 (a) of the California Penal Code, the 2011-2012 Napa County Grand Jury submits to you its final report on Shooting in Alta Heights. Our investigation of this subject was conducted in a manner consistent with the California Penal Code, this Court's Charge, and the historic role of the Grand Jury, to protect the interests of the residents of Napa County.

This is fourth in a series of final reports we will be issuing before the term ends. I would like to acknowledge the hard work and dedication of the Grand Jurors, which our report reflects. It is a privilege and a pleasure to work with them.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David B. Gilbreth".

David B. Gilbreth
Foreman
2011-2012 Napa County Grand Jury



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To the Residents of Napa County:

In order to fulfill the Grand Jury's mandate to investigate local governmental agencies to assure they are being administered efficiently, honestly, and in the best interests of Napa County residents, the 2011-2012 Grand Jury investigated the incident of November 28, 2010 in the Alta Heights neighborhood in which Richard Poccia was shot and killed by Napa Police officers.

The Grand Jury reviewed official documents and conducted interviews with agencies and citizens in the course of its investigation. Upon concluding the investigation, the Grand Jury has developed a set of findings recommendations with the objective of representing the public interest.

The Grand Jury found that in the Richard Poccia incident Napa County Mental Health's effort was inadequate and the Napa Police Department's response was unsuitable. As a result, the Grand Jury also found that numerous residents of the Alta Heights neighborhood now hold a negative opinion of the Napa Police.

The Grand Jury recommends that Napa County Mental Health develop more resources for crisis support and that it coordinate training and practice with Napa Police Department regarding crisis situations; that Napa Police Department coordinate training and practice with Napa Mental Health as well as providing public liaison officers for crisis situations; that Napa Police Department publish its Administrative Investigation Reports in a more timely manner; and that the Napa County Board of Supervisors with local governments establish a civilian review board as well as provide the necessary funding resources for the recommendations herein.

The Napa County Office of County Counsel has reviewed this final report. The Napa County Superior Court Presiding Judge, pursuant to California Penal Code Section 933(a), has found that this report complies with California Penal code Part 2 Title 4. This report has been accepted and filed as a public document by the County Clerk.

Copies of this report are available for review in the Napa City-County Library and online at www.napa.courts.ca.gov (follow the link to the Grand Jury).

We hope you find this report informative. It is an honor and privilege to serve you during the 2011-2012 Grand Jury tenure.

Respectfully submitted,

The 2011-2012 Napa County Grand Jury.

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SHOOTING IN ALTA HEIGHTS

SUMMARY

Richard Poccia was fatally shot by uniformed police officers on November 28, 2010, in the Alta Heights neighborhood of Napa. This episode has distressed many residents in the Alta Heights community and in the Napa community at large. To date, Alta Heights community members who experienced that afternoon in confusion, lock-down, and mourning have received little or no information from the Napa agencies involved.

The Napa Police Department needs the support and trust of the Napa community. However, some of the actions taken in the Alta Heights incident eroded that support and trust. The 2011-2012 Napa County Grand Jury is concerned, and has looked into the circumstances surrounding the death of Mr. Poccia. Police records and other official documents were reviewed, such as recorded interviews in the Sheriff's report of all the officers and witnesses involved. The Grand Jury also independently interviewed additional witnesses.

At this time the Grand Jury is not rendering an opinion as to whether or not the shooting was justified. Indeed, ongoing civil litigation, time constraints, and the delay of Napa Police Department's Administrative Report (internal affairs report) after more than sixteen months, have precluded a full investigation by the Grand Jury into the shooting.

This report addresses the need for better communication and common understanding between the Napa Police Department and the community, the need for closer cooperation between law enforcement and mental health agencies, and the need for vastly improved procedures following officer involved fatalities.

The 2011-2012 Napa County Grand Jury recommends instituting a program to assist communities dealing with the results of such events, establishing a Civilian Police Review Board and implementing measures to promote trust and communication among the Napa Police Department, the Napa County Mental Health Crisis Center and the Napa community.

BACKGROUND

The Napa Police Department was established in 1875, several years after the town of Napa was incorporated. The Police Department consists of 125 full time employees serving as Peace Officers, Public Safety Dispatchers, Community Services Officers and various specialists and assistants. Its mission "...in partnership with the community, is to promote and maintain a peaceful, safe and secure environment." (Mission Statement, City of Napa, Police Department website.)

Alta Heights, a quiet neighborhood of predominately single-family homes, is located at the foot of the east hills in Napa, California. It started in the early twentieth-century primarily by Italian-Americans from San Francisco and became part of what was referred to as the City of Napa's "Little Italy." Over the years this pleasant, middle class community has maintained its character and neighbor-friendly environment.

DISCUSSION

Richard Poccia was a sixty-year-old resident of Alta Heights living with his wife on Meek Avenue. He had been employed as a registered nurse in bay area hospitals and had interests in martial arts and music. Neighbors who had contact with Richard Poccia prior to the incident described him as considerate and congenial. The shooting death of Richard Poccia on November 28, 2010 was shocking and traumatic to his neighbors in Alta Heights as well as to the Napa community. This event has left many people feeling alienated from the agency committed to their safety.

The following facts, unless otherwise noted, are derived from the Sheriff's Report.

Sunday Morning, November 28, 2010 (Summarized from Sheriff's Report)

Richard Poccia was on leave from his job as registered nurse, with post-traumatic stress disorder (PTSD). Police interviews with Richard Poccia's wife indicate he was drinking heavily the weekend of November 26-28, 2010. His wife took other lodging on Friday night, November 26th.

Records show that Richard Poccia's wife, with the help of close friends, contacted the Napa Police that Sunday morning. Police were informed that Richard Poccia was alone and posed no threat to his wife or others in the area, possessed guns and had martial arts training. However, a friend reported to the police that Richard Poccia told him:

If the Police and Paramedics come here, it will end badly. Either they will get killed, I will get killed, or we both will get killed.

A Police sergeant, the Incident Commander (IC) who had experience in “hostage negotiations,” determined it would be counterproductive for police to physically approach Richard Poccia. The IC requested the Mental Health Crisis Center to contact Richard Poccia. The IC also told police to maintain a safe distance from Richard Poccia’s residence during their shifts. Interviews with Napa County Mental Health indicate that the Crisis Center called Richard Poccia twice that Sunday morning, but there was no response. The Crisis Center left a message and did not contact Richard Poccia again that day.

Sunday Afternoon, November 28, 2010 (Summarized from Sheriff’s Report)

Richard Poccia was in phone contact with his wife Sunday afternoon. According to Police reports he told her he had no more alcohol and if she would not get him some he was going out for more. She relayed this information to the IC, and added that it was a possible that he would take his .22 caliber pistol if he left the house. The police then assigned a team who would place Richard Poccia under an involuntary Section 5150¹ if and when he left his house.

The Napa Police Department successfully made contact with Richard Poccia when the IC called his cell phone. Richard Poccia informed the officer he had knowledge of Section 5150 and although he had five guns in his possession, he was not a danger to himself. Specifically, he denied being suicidal. The IC assured Richard Poccia that it was legal to possess firearms, that his wife was concerned for him, and that they wanted assurance he was not going to harm himself. Richard Poccia agreed to have police officers come to his residence to check on his welfare. He agreed to wait until officers arrived and then come out of his house without his guns.

The contact team, referred to at that time as the Emergency Response Team (ERT), consisted of four officers who brought weapons of various lethality. Standard police procedure requires increasing levels of force to insure compliance with commands. According to standard procedure, the first officer went “hands on” (not using his

¹ Section 5150 of the California Welfare and Institutions Code allows police (and certain other designated mental health professionals) to take someone into custody if they believe that, due to a mental disorder or inebriation, said person is:

1. A danger to his or herself, and/or;
2. A danger to others, and/or;
3. Gravely disabled. (As a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing or shelter.)

This is not a criminal arrest. Under this law, the subject is taken to a psychiatric hospital. There, the professional staff may detain that person for up to 72 hours if it’s determined that that person meets the above criteria.

weapon), the second officer had a Taser, the third officer possessed a beanbag gun, and the fourth carried a rifle. (Appendix I.)

Other officers came into the neighborhood to secure the general area as the ERT was preparing. The decision was made to not notify the neighbors. There was virtually no contact with the neighbors throughout the incident.

The official records show that the IC placed one more call to Richard Poccia. He reiterated that he was not going to hurt himself or others. He was asked to remove his jacket, tuck his shirt into his pants and not carry any weapons when he exited his house. He agreed to come out with his hands up and listen for the instructions from the officer in charge, who was positioned down the street.

The ERT was positioned behind a small retaining wall about 150 feet down the street from Richard Poccia's residence. The "hands on" officer was giving directions to Richard Poccia, telling him, "I'm your friend; It's important that you listen to me." As he walked down the small elevation of his street to the officers, he was instructed to turn around a second time more slowly, and was reminded several times to keep his hands up by multiple officers.

The Coroner's record stated that Richard Poccia had a blood alcohol level of 0.32. A blood alcohol level of 0.08 is the threshold for legal intoxication.

One witness reported that Richard Poccia responded, "...Where, Where?" at one of the officers and seemed confused because, according to this witness, "...all these people were screaming at him." A second witness the Grand Jury interviewed also stated three or four officers were issuing commands to Richard Poccia.

Official records reflect that when Richard Poccia came closer to the officers and saw their weapons his demeanor drastically changed. The record indicates that he became particularly agitated by the presence of the Taser and rifle. The officers began to form a semi-circle around Richard Poccia, within ten feet from him. According to the information provided, the officer with the beanbag shotgun lowered his weapon, drew his revolver and then returned it to his holster. It was reported Richard Poccia became increasingly belligerent and displayed hostile aggression in his body movements.

The record reflects that at this time the command to Taser him was given. Simultaneously, Richard Poccia turned forty-five degrees away from the officers and purportedly reached to his waistband. The Sheriff's Report states that one officer reported he saw a knife handle, a second reported he saw a knife and a third reported he saw a gun handle. Police and neighbors report that a "pop" was heard followed by a scream and a "bang" immediately after. The autopsy report states that the fatal AR-15 bullet wound at the back of Richard Poccia's head was "tangentially front-to-back, right to left, and essentially horizontal". Both Taser darts penetrated his back. Near Richard Poccia's body was found not a gun, but a closed pocketknife.

Sunday Evening, November 28, 2010

The Coroner reports that the shooting occurred at 3:16 p.m., but the body was not removed until 5:00 a.m. the following morning. It took over thirteen hours for the proper officials to complete their examination of the area. Richard Poccia's body was left in the street throughout this thirteen-hour period.

The Grand Jury finds this incomprehensible and unacceptable, and acknowledges the dismay it caused the residents of the quiet neighborhood. The Grand Jury recommends that in the future, more expedient procedures be followed, even if it requires bringing in professionals from neighboring counties. The Grand Jury further recommends that screening be provided to give a scene of violence a modicum of civility and respect.

It is standard policy for the Napa County Sheriff to conduct an investigation when the discharge of weapons by Napa Police Officers causes a fatality. The investigation by the Sheriff's Office included interviews of persons in the area. The most extensive information came from the officers who were directly involved in the incident. The Grand Jury did not find any civilian who actually saw the shooting.

The Grand Jury does not attempt to draw any conclusions regarding the justifiability of the shooting. Based on the facts in the Sheriff's report, the Napa County District Attorney found the shooting to be reasonable self-defense and ruled the death a justifiable homicide.

Conclusion

The events and aftermath of November 28, 2010, are highly disturbing. The Grand Jury is concerned with minimizing the damage to the community resulting from any such tense, traumatic situations in the future.

The report states that Richard Poccia had been experiencing a mental crisis for several days. On November 28, 2010, the Napa Police Department was the first agency to be notified and was concerned for his safety. It concluded the Crisis Center of Napa County Mental Health would be the appropriate agency to assist him. A worker at the Crisis Center made two unsuccessful attempts to contact Richard Poccia by phone. Recent budget issues at Napa County Mental Health had resulted in fewer staff positions. It was single staffed on Sunday morning. There was no other staff member available to check on Richard Poccia should it have been considered necessary.

The Grand Jury believes that the outcome might have been altered if a Mental Health Crisis worker had been assisting. It certainly warranted an effort. There is a need for Napa Mental Health and the Napa Police Department to work more effectively together. Previously, as a matter of policy, in situations where weapons are concerned crisis workers are not called out. Police exclusively are expected to handle the event. The Grand Jury challenges that policy: A crisis worker placed safely away from harm and in a

position to monitor the situation could provide valuable input to the officers carrying out their duty.

Napa County Mental Health and the Napa Police share the common goal of promoting a high quality of life in the community of Napa, one by alleviating suffering associated with mental illness and the other by assuring a safe and secure environment. The Grand Jury encourages these two public service agencies to operate “hostage negotiations” in conjunction whenever the possibility arises.

During the course of its interviews, the Grand Jury was advised of a recent example of cooperation between these two departments. In October 2011, shortly before noon, a young transient perched himself at the top of a water tower at the Sawyer Tannery on Coombs Street. While atop the tower he attempted to destroy cell phone equipment and threw objects at the officers below as they tried to persuade him to come down. During the 6-hour standoff a mental health professional assisted police on-site by providing suicide-counseling information. Eventually, the subject was successfully brought into custody and charged with trespassing and intent to cause bodily injury.

These agencies perform two different roles, and they operate under two separate points-of-view. The Grand Jury acknowledges it is not easy to discern the balance each situation requires between patient listening in one case and swift decision-making in the other. The more these disciplines continue to share their professional skills, the more Napa will profit by the synergy of their combined practices. Mutual training exercises would provide a way to improve cooperation. The Grand Jury encourages frequent in-service exercises between the two departments, particularly at middle management and field levels, so that the expertise of each profession is shared with the other.

The Grand Jury found that before and after the shooting, virtually no attention was given to the needs of the Alta Heights neighborhood. The residents were told nothing. Some were restricted to or from their homes. The Grand Jury questions the Napa Police’s decision to not inform neighbors in the immediate area during the situation. Some information, however little, would have helped to provide reassurance. A number of Alta Heights residents have told the Grand Jury that their previous high regard for Napa Police has plummeted, mainly due to:

1. The callousness with which the police treated their neighborhood, and
2. The insensitive treatment of Richard Poccia’s body.

To prevent a repetition of this alienation, the Grand Jury recommends a public relations liaison in the Napa Police Department. Other agencies have reported success with an officer going door to door immediately after an incident to explain what happened to the extent that the situation allows. The Grand Jury suggests the Police Chief consider the position of a police liaison officer, whose duty in tense situations requiring extreme means, would be to disseminate relevant information to affected neighborhood residents.

The officer(s) should be present during and after the events for the primary purpose of facilitating understanding and assurance to the community.

Other communities have promoted trust and confidence between law enforcement and neighborhoods in various ways. One is to establish a Civilian Police Review Board. Involving civilians promotes trust. A community is more apt to perceive an investigation as fair if civilians are involved in the process.

Other cities have dealt with similar divisive events. The City of Oakland, in 2009, suffered the murder of four police officers in one incident. The acting Chief of Police commissioned an investigation by CNA, Institute of Public Research. The report presented an objective, unbiased look at what transpired; what was done right as well as what was done wrong. A report of this nature requested by the Napa Police Department could identify the factors contributing to the tragedy, develop findings on specific actions and decisions, review the use of force, and provide a set of recommendations (advisory and non-binding) to help identify potential improvements in procedures, tactics and training.

The Napa Police Department exists to protect and to serve. Commissioning independent reviews as described above would show courage. The erosion of trust this Grand Jury found in the Napa community and particularly in Alta Heights, would be mitigated by such a study and/or civilian review board.

Alta Heights has been a quiet, peaceful, close-knit neighborhood for generations. The shooting of Richard Poccia on November 28, 2010, severely traumatized many of the residents of Alta Heights. After the immediate tragedy of the shooting passed, those residents needed a forum to voice their feelings. The Grand Jury recognizes the need to support individuals who have experienced confusion, anger and grief following traumatic events. While Napa Police Department provides psychological counseling to officers (Appendix II.), there is no parallel service available to the affected civilians. The Grand Jury believes the Napa County Mental Health Department is the best public agency to offer this support. Community healing would be enhanced if Mental Health had a community program of services modeled after the services provided to schools following the death of a student.

FINDINGS

The 2011-2012 Napa County Grand Jury finds that:

- F1.** The Napa Police Department is delinquent in not publishing the results of its Administration Investigation in a timely manner.
- F2.** Richard Poccia's body was left on the street over thirteen hours, an inordinate and unacceptable amount of time.
- F3.** There is a need for more effective collaboration between Napa County Mental Health and the Napa Police Department in crisis situations.
- F4.** There is no civilian review board in Napa County for OIS incidents.
- F5.** Much of the Alta Heights community is estranged from the Napa Police Department as result of police actions during and after the Richard Poccia event.
- F6.** It is commendable that the Napa Police Department provides access to psychological counseling for its officers following traumatic situations such as an OIS.
- F7.** Adequate psychological counseling is not currently available to Napa communities following traumatic situations that occur in public.
- F8.** Mental Health's two unanswered phone calls without more follow-up to Richard Poccia were inadequate.

RECOMMENDATIONS

The 2011-2012 Napa County Grand Jury recommends that:

- R1.** The Napa Police Department explain the reason(s) the Administrative Investigation Report of the OIS of November 28, 2010, is delinquent, and release the report within 60 days.
- R2.** The Napa Police Department publish future Administrative Investigation Reports within 180 days of the incidents giving rise to them.
- R3.** Within 90 days the City of Napa establish procedures to utilize appropriate screening for sensitive crime scenes.
- R4.** Within 180 days the law enforcement departments in Napa County and Mental Health Department establish more effective coordination in situations of crisis intervention by (1) engaging in joint training exercises, and by (2) maintaining instantaneous communication and patching capability.

- R5.** Within one year the Napa County Board of Supervisors and all Napa County incorporated local governments establish a civilian review board to examine all investigation documents of this incident and all future Officer involved shooting (OIS) incidents to provide feedback from a civilian point-of-view.
- R6.** Within 90 days the Napa Police Department provide its staff effective public interface and/or appoint a liaison officer to inform and reassure the public during tense events.
- R7.** Within 180 days the Napa County Mental Health Department (1) establish support programs for communities involved in traumatic incidents, and (2) establish additional programs to promote community awareness of resources for crisis support.
- R8.** Within 180 days the Napa County Board of Supervisors provide the necessary funding resources to assist Napa County Mental Health with (1) appropriate staff levels for crisis situations, and (2) effective communication routing and patching links with Napa Police.

REQUEST FOR RESPONSES

Pursuant to Penal Code, Section 933.05, the 2011-2012 Grand Jury requests responses from the following individuals:

- The Police Chief of the City of Napa: **F1, F2, F3, F4, F5, F6, R1, R2, R4, R5, R6.**
- The Director of Napa County Mental Health Department: **F3, F7, F8, R4, R7.**
- The Napa County Sheriff: **R4.**
- The Police Chief of the City of St. Helena: **R4.**
- The Police Chief of the City of Calistoga: **R4.**

From the following governing bodies:

- Napa County Board of Supervisors: **F3, F4, R5, R8.**
- Napa City Council: **F2, R2, R3.**

- American Canyon City Council: **R5.**
- Calistoga City Council: **R5.**
- American Canyon City Council: **R5.**
- St. Helena City Council: **R5.**
- Yountville City Council: **R5.**

GLOSSARY

Administrative Report - A professional internal account of an incident, which examines the behavior of the participants in the incident with regard to department policy.

Civilian Review Board - An authorized body of citizens representing the public who investigate conduct by police officers, either as an independent agency or as part of a law enforcement agency.

Coroner Inquest - A procedure by a government official who investigates, determines and records the cause of deaths. In some jurisdictions, coroners conduct inquiries in the presence of jurors from that county.

ERT - Emergency Response Team

Hostage Negotiation - The action of peace officers to establish rapport with a person(s) involved in a crisis in order to produce a peaceful resolution to a volatile situation.

IC - Incident Commander

Napa County Incorporated Local Governments – The City/Town Councils of American Canyon, Calistoga, Napa, St. Helena, and Yountville.

OIS - Officer Involved Shooting

PTSD - (Post Traumatic Stress Disorder) A severe anxiety disorder with symptoms appearing after a psychological trauma and causing dysfunction in a person's life.

Section 5150 - A California code that permits police to place a person under involuntary custody for the welfare of that person.

Taser - A nonlethal electroshock weapon used to subdue a belligerent or dangerous individual by disrupting voluntary control of muscles.

METHODOLOGY

Interviews Conducted

- Calistoga Police Department
- St. Helena Police Department
- Napa Police Department Officers
- Napa County Sheriff's Department
- Napa County Mental Health Department
- Neighbors of Alta Heights Neighborhood
- Family and Friends of Richard Poccia
- Napa County District Attorney's Office

Documents Reviewed

- **Napa Police Manual**
- **NPD 10-007227 which includes:**
 - Statements of On Scene Police Officers
 - Statements of On Scene Supervisor
 - Statements of Napa County Police Department Investigative Unit
 - Statements of Napa County Sheriff's Department Investigative Unit
 - Coroner's Report of Richard Poccia
 - Toxicology Report of Richard Poccia
 - Crime Scene Log
 - Witness Written Statements
 - Search Warrant and Return
- **Napa County Interagency Crisis Response Protocol**
- **<http://www.suicide.org/suicide-by-cop.html>**

- **Improving Responses to People with Mental Illnesses; The Essential Elements of a Mental Health Court.** Report prepared by the Council of State Governments
- **Independent Board of Inquiry Into the Oakland Police Department; March 21, 2009, Incident** by CNA, Institute for Public Research
- **Justice Center Criminal Justice/Mental Health Consensus Project**
- **Police Accountability and Citizen Review** by International Association of Chiefs of Police
- Related Articles in **Napa Register**

APPENDIX

- I.** NPD Policy 300, “Use of Force”;
NPD Policy 308, “Control Devices and Techniques”
NPD Policy 309, “TASER Guidelines”
- II.** NPD Policy 310, “Officer Involved Shooting”



Napa Police Department

Policy Manual

Use of Force

300.1 PURPOSE AND SCOPE

This policy recognizes that the use of force by law enforcement requires constant evaluation. Even at its lowest level, the use of force is a serious responsibility. The purpose of this policy is to provide officers of this department with 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, each officer is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

300.1.1 PHILOSOPHY

The use of 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 human encounters and when warranted, may use force in carrying out their duties.

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

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use reasonable force and protect the public welfare requires a careful balancing of all human interests.

300.1.2 DUTY TO INTERCEDE

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 such excessive force. Such officers should also promptly report these observations to a supervisor.

300.2 POLICY

It is the policy of this department that officers shall use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control. "Reasonableness" of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any interpretation of reasonableness must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving about the amount of force that is necessary in a particular situation.

Given that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying reasonable force.

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300.2.1 USE OF FORCE TO EFFECT AN ARREST

Any peace officer that has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance of the person being arrested; nor shall such officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance (Penal Code § 835a).

300.2.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

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

- (a) The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
- (b) Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion and number of officers vs. subjects).
- (c) Influence of drugs/alcohol (mental capacity).
- (d) Proximity of weapons.
- (e) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (f) Time and circumstances permitting, the availability of other options (what resources are reasonably available to the officer under the circumstances).
- (g) Seriousness of the suspected offense or reason for contact with the individual.
- (h) Training and experience of the officer.
- (i) Potential for injury to citizens, officers and suspects.
- (j) Risk of escape.
- (k) Other exigent circumstances.

It is recognized that officers are expected to make split-second decisions and that the amount of an officer's time available to evaluate and respond to changing circumstances may impact his/her decision.

While various degrees of force exist, each officer is expected to use only that degree of force reasonable under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

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

300.2.3 NON-DEADLY FORCE APPLICATIONS

Any application of force that is not reasonably anticipated and intended to create a substantial likelihood of death or very serious injury shall be considered non-deadly force.

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Each officer is provided with equipment, training and skills to assist in the apprehension and control of suspects as well as protection of officers and the public. Non-deadly force applications may include but are not limited to leg restraints, control devices and TASER described in Policy Manual §§ 306, 308 and 309 respectively.

Given that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying reasonable force.

300.2.4 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be very effective in controlling a passive or actively resisting individual. Officers may only apply those pain compliance techniques for which the officer has received departmentally approved training and only when the officer reasonably believes that the use of such a technique appears necessary to further a legitimate law enforcement purpose. Officers utilizing any pain compliance technique should consider the totality of the circumstance including, but not limited to:

- (a) The potential for injury to the officer(s) or others if the technique is not used
- (b) The potential risk of serious injury to the individual being controlled
- (c) The degree to which the pain compliance technique may be controlled in application according to the level of resistance
- (d) The nature of the offense involved
- (e) The level of resistance of the individual(s) involved
- (f) The need for prompt resolution of the situation
- (g) If time permits (e.g., passive demonstrators), other reasonable alternatives

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.2.5 CAROTID RESTRAINT

The proper application of the carotid restraint hold by a trained officer may be effective in restraining a violent individual. Only officers who have successfully completed department-approved training on the use of the carotid restraint hold and the department Use of Force Policy are authorized to use the technique. After initial training, officers shall complete training annually on the use of the carotid restraint hold.

The carotid restraint hold may only be used when the officer reasonably believes that the application of the hold appears necessary to prevent serious injury or death to an officer or other person(s).

After any application of any carotid restraint hold, the officer shall ensure the following steps occur:

- (a) Any individual who has had the carotid restraint hold applied, regardless of whether he/she was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel.

Napa Police Department

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- (b) The officer shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid restraint hold and whether the subject lost consciousness as a result.
- (c) Any officer applying the carotid restraint shall promptly notify a supervisor of the use or attempted use of such hold.
- (d) The use or attempted use of the carotid restraint shall be thoroughly documented by the officer in the related incident report.

300.3 DEADLY FORCE APPLICATIONS

While the use of a firearm is expressly considered deadly force, other force might also be considered deadly force if the officer reasonably anticipates and intends that the force applied will create a substantial likelihood of causing death or very serious injury. Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect himself/herself or others from what he/she reasonably believe would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing suspect when the officer has probable cause to believe that the suspect 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 an imminent or future potential risk of serious bodily injury or death to any other person if the suspect is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

300.4 REPORTING THE USE OF FORCE

Any use of force by a member of this Department shall be documented promptly, completely, and accurately in an appropriate report depending on the nature of the incident. The content of a use of force report should include, but not be limited to the factors outlined in §300.22 and §300.5 when appropriate. The use of particular weapons such as chemical agents may require the completion of additional report forms as specific in departmental policy and/or law.

300.4.1 NOTIFICATION TO SUPERVISORS

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

- (a) The application of force appears to have caused physical injury
- (b) The individual has expressed a complaint of pain
- (c) Any application of a control device
- (d) The individual has been rendered unconscious

300.4.2 MEDICAL ATTENTION FOR INJURIES SUSTAINED USING FORCE

Medical assistance shall be obtained for any person(s) who has sustained visible injury, expressed a complaint of pain, or who has been rendered unconscious.

300.5 SUPERVISOR RESPONSIBILITY

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

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- (a) Obtain the basic information from the involved officer(s);
- (b) Insure that any injured parties are examined and treated;
- (c) Insure that photographs have been taken of any areas involving visible injury or complaint of pain as well as overall photographs of uninjured areas;
- (d) Review and approve related reports;
- (e) Should the supervisor determine that any application of force was not within policy, a separate internal administrative investigation shall be initiated.
- (f) In the event that the supervisor believes that the incident may give rise to potential civil litigation, notification to the next level of supervision shall be made as soon as practical.

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 expected to complete as many of the above items as circumstances permit.



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Control Devices and Techniques

308.1 PURPOSE AND SCOPE

To reduce and minimize altercation-related injuries to officers and suspects, the Department authorizes the use of selected control devices. Certain control devices are provided in order to control violent or potentially violent suspects. It is anticipated that the use of these devices will generally result in fewer altercation-related injuries to officers and suspects. The below procedures are for the use and maintenance of control devices (e.g., baton, oleoresin capsicum (OC) spray and tear gas). Only those control devices that have been approved by the Chief of Police or his/her designee are authorized to be carried by members of this department.

308.1.1 WHEN DEVICES MAY BE USED

When a decision has been made to control or arrest a violent or threatening suspect, an approved control device may only be used when its use appears reasonable under the circumstances.

308.1.2 TRAINING FOR CONTROL DEVICES

- (a) Only officers trained and having shown adequate proficiency in the use of any control device and this agency's Use of Force policy are authorized to carry the device. Proficiency training must be monitored and documented by a certified weapons or tactics instructor.
- (b) Training for all control devices should occur every two years at a minimum.
- (c) All training and proficiency for control devices will be documented in the officer's training file.
- (d) Officers failing to demonstrate proficiency with the weapon or knowledge of this agency's Use of Force policy will be provided remedial training. If, after two additional attempts, an officer still cannot demonstrate proficiency with a weapon or knowledge of this agency's Use of Force policy, the officer may be subject to discipline.

308.2 BATON GUIDELINES

The Department authorizes the use of the following impact weapons:

- (a) **Straight Baton:** The straight baton should be made of a high quality wood with a close, straight grain. The baton length should be no less than 21 inches and no more than 29 inches. The baton diameter should be no less than 1 1/8 inches and no more than 1 1/4 inches.
- (b) **Expandable Straight Baton:** The Department only authorizes use of expandable straight batons manufactured by ASP Inc, Monadnock Lifetime Products Inc, Winchester Police Products/Professional Safety Inc., and Peacekeeper Products International. For officers working uniformed assignments the baton length should be no less than 21 inches and no more than 31 inches. For officers working plain clothes assignments the baton length should be no less than 16 inches and no more than 31 inches.
- (c) **Riot Baton:** The riot baton should be made of high quality wood with a close, straight grain. The baton length should be no less than 36 inches and no more than 42 inches.

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The baton diameter should be no less than 1 1/8 inches and no more than 1 1/4 inches.

- (d) Side-Handle Baton: Only departmentally issued side-handle batons are approved.
- (e) Orcutt Police Nunchaku (OPN): Only departmentally issued OPN's are approved.

308.2.1 IMPROVISED IMPACT WEAPONS

On certain rare occasions, an officer may be forced to resort to the use of an improvised impact weapon. An improvised impact weapon is any object used to strike a human being which is not primarily designed for use as an impact weapon. Examples include flashlights, radios and firearms. As such items are not designed for use as impact weapons they may cause more severe injury than intended or result in other dangerous consequences such as the discharge of a firearm.

Officers shall not use improvised impact weapons unless no reasonable alternative exists to prevent the escape of a violent suspect or to protect the officer or another person from injury. Every officer who uses an improvised impact weapon will be required to thoroughly explain and support the failure to use an authorized impact weapon in an appropriate report pursuant to Policy Manual 300.4 and 300.5.

308.3 TEAR GAS GUIDELINES

The use of tear gas for crowd control, crowd dispersal or against barricaded suspects shall be based on the circumstances. The Shift Sergeant, Incident Commander or Crisis Response Unit Commander may authorize the delivery and use of tear gas, evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary to result in the safe control of the suspect(s). When practical, fire personnel should be alerted or summoned to the scene to control any fires and to assist in providing medical aid or gas evacuation when the scene is safe. Only officers or supervisors trained in the use of tear gas weapons should discharge such devices at the scene.

308.4 CHEMICAL AGENTS SPRAY GUIDELINES

Only authorized personnel may possess and maintain department issued oleoresin capsicum spray. Chemical agents are weapons used to minimize the potential for injury to officers, offenders, or other persons. They should be used only in situations where such force reasonably appears justified and necessary.

308.4.1 REQUIRED INSTRUCTION FOR USE

All personnel authorized to carry oleoresin capsicum spray, shall complete the required course of instruction prior to possessing and using the oleoresin capsicum spray.

308.4.2 CARRYING OF OLEORESIN CAPSICUM (OC) SPRAY

Uniformed field personnel who exercise the option of carrying the oleoresin capsicum spray shall carry the device in its holster on the equipment belt. Plainclothes and non-field personnel may carry the oleoresin capsicum spray as authorized, consistent with the needs of their assignment or at the direction of their supervisor.

Canisters involved in any type of malfunction or damage shall be turned in to the Rangemaster for exchange. Damage to City Property forms shall also be forwarded to the appropriate supervisor and shall explain the cause of damage.

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308.4.3 PEPPERBALL SYSTEMS

PepperBall® projectiles are plastic spheres that are filled with a derivative of oleoresin capsicum (OC) powder. A compressed gas launcher delivers the projectiles with enough force to burst the projectiles on impact, releasing the OC powder. Although classified as a less-lethal device, the potential exists for the projectiles to inflict injury when they strike the head, neck, spine and groin. Therefore, personnel deploying the PepperBall system shall avoid intentionally striking those body areas unless a life-threatening situation exists. The use of the PepperBall system is subject to the following requirements:

- (a) Officers encountering a situation that requires the use of the PepperBall system shall notify a supervisor as soon as practical. The supervisor shall respond to all PepperBall System deployments where the suspect has been hit. The field sergeant shall make all notifications and reports as required by § 300 Use of Force Policy.
- (b) Only qualified, department-trained personnel shall be allowed to deploy and use the PepperBall system.
- (c) Each deployment of a PepperBall system shall be documented. This includes situations where the launcher was directed toward the suspect, whether or not the launcher was used. Only non-incident deployments are exempt from the evaluation form requirement (e.g., training, accidental discharges, or product demonstrations).

308.4.4 TREATMENT OF OC SPRAY/CHEMICAL AGENTS EXPOSURE

Persons who have been affected by the use of OC spray or chemical agents should be promptly provided with the proper solution to cleanse the affected areas. Those persons who complain of further severe effects shall be afforded a medical screening by appropriate medical personnel.

308.4.5 REPORT OF USE

All uses of chemical agents or OC spray shall be documented in the related arrest/crime report.

308.5 IMPACT MUNITIONS

This department is committed to reducing the potential for violent confrontations when suspects are encountered. Impact munitions, when used properly, are less likely to result in death or serious physical injury.

Impact munitions are approved by the department and are fired from a 37 mm launchers or shotgun. Certain munitions can be used in an attempt to de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

308.5.1 DEPLOYMENT

Approved munitions are justified and may be used to compel an individual to cease his or her actions when such munitions present a reasonable option for resolving the situation at hand.

Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officer(s) determine that deployment of these munitions cannot be done safely. The safety of hostages, innocent persons, and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

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308.5.2 EXAMPLES OF CIRCUMSTANCES APPROPRIATE FOR DEPLOYMENT

Examples include, but are not limited to, the following types of situations where the subject:

- (a) Is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions
- (b) Has made credible threats to harm himself or others
- (c) Is engaged in riotous behavior or is throwing rocks, bottles, or other dangerous projectiles at people and/or officers

308.5.3 DEPLOYMENT CONSIDERATIONS

Before impact munitions, the officer should consider the following factors:

- (a) Severity of the crime or incident.
- (b) Subject's capability to pose an imminent threat to the safety of officers or others.
- (c) If the subject is actively resisting arrest or attempting to evade arrest by flight.
- (d) The credibility of the subject's threat as evaluated by the officers present, and physical capacity/capability.
- (e) The proximity of weapons available to the subject.
- (f) The officer's versus the subject's physical factors (e.g., age, size relative strength, skill level, injury/exhaustion, the number of officer(s) versus subject(s)).
- (g) The availability of other force options and their possible effectiveness.
- (h) Distance and angle to target.
- (i) Type of munitions employed.
- (j) Type and thickness of subject's clothing.
- (k) The subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

308.5.4 DEPLOYMENT DISTANCES

Officers should keep in mind the manufacturer's recommendations regarding deployment when using control devices, but are not solely restricted to use according to these manufacturer recommendations. Each tactical situation must be evaluated on the totality of circumstances at the time of deployment.

Ten (10) feet is the manufacturer's minimum recommended distance for application of impact munitions to prevent death or serious physical injury. At distances greater than 15 yards, accuracy of the impact munitions decreases significantly, thereby increasing the chances of striking the head or throat area.

308.5.5 SHOT PLACEMENT

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death.

The most effective shot placement is generally in the upper torso. Shots fired to the extremities, lower abdomen, and buttocks carry a low risk of serious injury (with a low potential for immediate incapacitation).

In cases where the use of deadly force is justified or immediate incapacitation must be accomplished to prevent death or serious injury, officers are authorized to consider close

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range or extended range shots with impact munitions involving distances closer than 10 feet or greater than 15 yards.

308.5.6 APPROVED IMPACT PROJECTILE FOR 12-GAUGE MUNITIONS

The approved 12-gauge munitions projectile for patrol use is the Def-Tec #23DS. It is a 2-3/4" standard clear plastic 12 gauge shotshell, with a 40 gram (approximately) #9 shot payload, sewn into a tear shaped bag of cotton and ballistic material.

308.5.7 IMPACT DELIVERY SHOTGUNS

A specially marked shotgun, designated for the use of 12-gauge impact projectiles, may be carried by trained officers.

Officers will inspect this shotgun at the beginning of each shift to ensure that it is in proper working order and only loaded with departmentally approved impact projectiles (Refer to 308.5.6).

308.5.8 USE OF IMPACT MUNITIONS BY SWAT

Officers assigned to the SWAT team, who have completed a departmental training course may carry and employ 12 gauge or 37/40 mm impact munitions while on duty or while performing Special Weapons and Tactics (SWAT) missions.

308.5.9 TRAINING REQUIRED FOR USE

Personnel who have successfully completed an approved departmental training course shall be authorized to use impact projectiles. Officers deploying impact projectiles will complete an annual recertification course.

308.6 RESPONSIBILITIES

308.6.1 SHIFT SERGEANT RESPONSIBILITIES

The Shift Sergeant shall monitor the use of control devices in the same manner as all other use of force incidents.

- (a) The Shift Sergeant may authorize the use of a control device by selected personnel or members of specialized units provided the person(s) authorized has/have the required training. The request for a control device should be made through the Shift Sergeant.
- (b) The Shift Sergeant shall review each use of control devices by any personnel within his or her command.
- (c) The Shift Sergeant shall ensure training on the use of control devices is provided as needed.

308.6.2 RANGEMASTER RESPONSIBILITIES

The Rangemaster shall control the inventory and shall issue all control devices. All damaged, inoperative and/or expended control devices shall be returned to the Rangemaster for disposition, repair or replacement.

308.6.3 MAINTENANCE RESPONSIBILITY

All normal maintenance, charging or cleaning shall remain the responsibility of personnel using the various devices.

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308.7 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES

Any application of a control device and/or technique listed within this section shall be documented pursuant to Policy Manual § 300.4 and 300.5.



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TASER™ Guidelines

309.1 PURPOSE AND SCOPE

When properly applied in accordance with this policy, the TASER™ device is considered a non-deadly control device that is intended to control a violent or potentially violent individual, while minimizing the risk of serious injury. It is anticipated that the appropriate use of such a device will result in fewer serious injuries to officers and suspects.

309.2 POLICY

Personnel who have completed department-approved training may be issued a TASER for use during the current assignment. Personnel leaving a particular assignment may be expected to return it to the department's inventory.

Officers shall only use the TASER and cartridges that have been issued by the Department. The device shall be carried either as part of a uniformed officer's equipment in an approved holster or secured in the driver's compartment of the officer's vehicle so that it is readily accessible at all times.

- (a) When the TASER is carried as part of a uniformed officer's equipment, the TASER shall be carried on the side opposite the duty weapon.
- (b) All TASERs shall be clearly and distinctly marked to differentiate them from the duty weapon and any other device.
- (c) Whenever practical, officers should carry a total of two or more TASER cartridges on their person at all times when carrying a TASER.
- (d) Officers shall be responsible for ensuring that their issued TASER is properly maintained and in good working order at all times.
- (e) Officers should never hold both a firearm and the TASER at the same time unless lethal force is justified.

309.3 VERBAL AND VISUAL WARNINGS

A verbal warning of the intended use of the TASER should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is for the following:

- (a) Provide the individual with a reasonable opportunity to voluntarily comply.
- (b) Provide other officers and individuals with a warning that a TASER may be deployed.

If, after a verbal warning, an individual is unwilling to voluntarily comply with an officer's lawful orders and it appears both reasonable and practical under the circumstances, the officer may, but is not required to, display the electrical arc (provided there is not a cartridge loaded into the TASER) or the laser in a further attempt to gain compliance prior to the application of the TASER. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair his/her vision.

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

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309.4 USE OF THE TASER

As with any law enforcement equipment, the TASER has limitations and restrictions requiring consideration before its use. The TASER should only be used when its operator can safely approach the subject within the operational range of the TASER. Although the TASER is generally effective in controlling most individuals, officers should be alert to the potential for failure and be prepared with other options.

309.4.1 FACTORS TO DETERMINE REASONABLENESS OF FORCE

The application of the TASER is likely to cause intense, but momentary, pain. As such, officers should carefully consider and balance the totality of circumstances available prior to using the TASER including, but not limited to, the following factors:

- (a) The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
- (b) Officer/subject factors (i.e., age, size, relative strength, skill level, injury/exhaustion, number of officers vs. subjects).
- (c) Influence of drugs/alcohol (mental capacity).
- (d) Proximity of weapons.
- (e) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (f) Time and circumstances permitting, the availability of other options (what resources are reasonably available to the officer under the circumstances).
- (g) Seriousness of the suspected offense or the reason for contact with the individual.
- (h) Training and experience of the officer.
- (i) Potential for injury to citizens, officers and suspects.
- (j) Risk of escape.
- (k) Other exigent circumstances.

309.4.2 APPLICATION OF THE TASER

Authorized personnel may use the TASER when circumstances known to the officer at the time indicate that such application is reasonable to control a person in any of the following circumstances:

- (a) The subject is violent or physically resisting.
- (b) A subject who by words or action has demonstrated an intention to be violent or to physically resist and who reasonably appears to present the potential to harm officers, him/herself or others.
 - 1. When practicable, the officer should give a verbal warning of the intended use of the TASER followed by a reasonable opportunity to voluntarily comply.
 - 2. The officer must be able to articulate a reasonable belief that other available options appeared ineffective, impractical or would have presented a greater danger to the officer, the subject or others.
- (c) Absent meeting the conditions set forth in (a) or (b) above, or a reasonable belief that an individual has committed or threatened to commit a serious offense, mere flight from a pursuing officer shall not serve as good cause for the use of the TASER to apprehend an individual.

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309.4.3 SPECIAL DEPLOYMENT CONSIDERATIONS

The use of the TASER should generally be avoided in the following situations unless the totality of the circumstances indicate that other available options reasonably appear ineffective, impractical, or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the TASER:

- (a) Pregnant females.
- (b) Elderly individuals or obvious juveniles.
- (c) Individuals who are handcuffed or otherwise restrained.
- (d) Individuals who have been recently sprayed with a flammable chemical agent or who are otherwise in close proximity to any flammable material.
- (e) Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).

Because the application of the TASER in the drive-stun mode (i.e., direct contact without darts) relies primarily on pain compliance and requires close proximity to the subject, additional caution should be exercised. The application in drive-stun mode should be limited to brief applications in which pain compliance would reasonably appear necessary to achieve control.

The TASER shall not be used to torture, psychologically torment, elicit statements or to punish any individual.

309.4.4 TARGETING CONSIDERATIONS

While manufacturers generally recommend that reasonable efforts should be made to target lower center mass and to avoid intentionally targeting the head, neck, chest and groin, it is recognized that the dynamics of each situation and officer safety may not permit the officer to limit the application of the TASER darts to a precise target area. As such, officers should take prompt and ongoing care to monitor the condition of the subject if one or more darts strikes the head, neck, chest or groin until he/she is released to the care of paramedics or other medical personnel.

309.4.5 MULTIPLE APPLICATIONS OF THE TASER

If the first application of the TASER appears to be ineffective in gaining control of an individual and if circumstances allow, the officer should consider the following before additional applications of the TASER:

- (a) Whether the probes or darts are making proper contact.
- (b) Whether the application of the TASER is interfering with the ability of the individual to comply.
- (c) Whether verbal commands, other options or tactics may be more effective.

This, however, shall not preclude any officer from deploying multiple, reasonable applications of the TASER on an individual.

309.4.6 REPORT OF USE

All TASER discharges, intentional or accidental, shall be documented in a report and notification made to a supervisor in compliance with Policy § 300.4.1. Any report documenting the discharge of a TASER cartridge will include the cartridge serial number and an explanation of the circumstances surrounding the discharge.

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The onboard TASER memory will be downloaded through the data port by a Taser Instructor and saved with the related report as soon as practical. Photographs of probe sites, the Anti-Felon Identification (AFID) tags and other injuries sustained shall be collected. Expended cartridge along with both probes and wire shall be collected and booked into evidence for future reference. The cartridge serial number shall be noted and documented on the evidence paperwork. The evidence packaging shall be marked "Biohazard" if the probes penetrated the subject's skin.

309.4.7 TASER CAM®

Some TASERs are equipped with the TASER CAM, which is an audio-video recording device integrated into the power supply. The TASER CAM is activated any time the safety is in the on position. The safety should not be in the on position unless the officer intends to use the device and the guidelines established in §§ 309.3 and 309.4 are met. Any time the TASER CAM is activated, the video and audio data should be downloaded in accordance with department evidence procedures and referenced in the related case report. All video and audio not booked as evidence will be kept for a minimum of one year, at which time they will be erased or destroyed.

309.5 MEDICAL TREATMENT

Absent extenuating circumstances or unavailability, only qualified personnel, including certified paramedics, should carefully remove TASER darts from a person's body. Used TASER darts shall be considered a sharp biohazard, similar to a used hypodermic needle. Universal precautions should be taken accordingly.

All persons who have been struck by TASER darts or who have been subjected to the electric discharge of the device shall be medically assessed, as soon as practicable and prior to booking, by paramedics or other qualified medical personnel.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called "excited delirium") or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

If any individual refuses medical attention, such a refusal should be witnessed by another officer and/or medical personnel and shall be fully documented in related reports.

If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

The transporting officer shall inform any person receiving custody or any person placed in a position of providing care that the individual has been subjected to the application of the TASER.

309.6 TRAINING

In addition to the initial department approved training required to carry and use a TASER, all approved personnel shall be recertified by a department approved TASER instructor on an annual basis. The annual training will be a reassessment of an officer's knowledge and/or practical skill on use of the Taser.

Annual training will consist minimally of the following:

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- (a) A review of the Use of Force Policy § 300.
- (b) Target area considerations, to include techniques or options to reduce the intentional application of probes near the head, neck, chest and groin.
- (c) De-escalation techniques.



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Officer-Involved Shooting

310.1 PURPOSE AND SCOPE

To establish policy and procedures for the investigation of an incident in which a person is injured as the result of a police shooting. The intent of this policy is to ensure that such incidents be investigated in a fair and impartial manner.

310.2 INVESTIGATION RESPONSIBILITY

This department conforms to the Napa County Officer-Involved Fatal Incident Protocol for investigating officer-involved shootings.

310.3 TYPES OF INVESTIGATIONS

Officer-involved shootings involve several separate investigations. The investigations may include:

- (a) A criminal investigation of the incident by the agency having jurisdiction where the incident occurred. This department may relinquish its criminal investigation to an outside agency with the approval of the Chief of Police or a Bureau Captain.
- (b) A criminal investigation of the involved officer(s) conducted by an outside agency
- (c) A civil investigation to determine potential liability conducted by the involved officer's agency
- (d) An administrative investigation conducted by the involved officer's agency, to determine if there were any violations of department policy

310.4 JURISDICTION

Jurisdiction is determined by the location of the shooting and the agency employing the involved officer(s). The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings:

310.4.1 NAPA POLICE DEPARTMENT OFFICER WITHIN THIS JURISDICTION

The Napa Police Department is responsible for the criminal investigation of the suspect's actions, the civil investigation, and the administrative investigation.

310.4.2 ALLIED AGENCY'S OFFICER WITHIN THIS JURISDICTION

The Napa Police Department is responsible for the criminal investigation of the suspect's actions. The criminal investigation of the officer-involved shooting will be conducted by the District Attorney's Office. The officer's employing agency will be responsible for any civil and/or administrative investigation(s).

310.4.3 NAPA POLICE DEPARTMENT OFFICER IN ANOTHER JURISDICTION

The agency where the incident occurred has criminal jurisdiction and is responsible for the criminal investigation of the incident. That agency may relinquish its criminal investigation of the suspect(s) to another agency. The Napa Police Department will conduct timely civil and/or administrative investigations.

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310.4.4 INVESTIGATION RESPONSIBILITY MATRIX

The following table identifies the possible scenarios and responsibilities for the investigation of -involved shootings:

	Criminal Investigation of Suspect(s)	Criminal Investigation of (s)	Civil Investigation	Administrative Investigation
NPD in This Jurisdiction	NPD Investigators	District Attorney's Office	NPD Staff	NPD Staff
Allied Agency's in This Jurisdiction	NPD Investigators	District Attorney's Office	Involved 's Department	Involved 's Department
NPD in Another Jurisdiction	Agency where incident occurred	Decision made by agency where incident occurred	NPD Staff	NPD Staff

310.5 THE INVESTIGATION PROCESS

The following procedures are guidelines used in the investigation of an officer-involved shooting.

310.5.1 DUTIES OF INITIAL ON SCENE SUPERVISOR

Upon arrival at the scene of an officer-involved shooting, the first uninvolved supervisor should:

- (a) Take all reasonable steps to obtain emergency medical attention for all apparently injured individuals.
- (b) Attempt to obtain a brief overview of the situation from any non-shooter officer(s).
 1. In the event that there are no non-shooter officers, the supervisor should attempt to obtain a brief voluntary overview from one shooter officer.
- (c) If necessary, the supervisor may administratively order any officer from this department to immediately provide public safety information necessary to secure the scene and pursue suspects.
 1. Public safety information shall be limited to such things as outstanding suspect information, number and direction of shots fired, parameters of the incident scene, identity of known witnesses and similar information.
- (d) Absent a voluntary statement from any officer(s), the initial on scene supervisor should not attempt to order any officer to provide other than public safety information.
- (e) Provide all available information to the Shift Sergeant and the Communications Center. If feasible, sensitive information should be communicated over secure networks.
- (f) Take command of and secure the incident scene with additional personnel until relieved by a detective supervisor or other assigned personnel.
- (g) As soon as practical, shooter officers should respond or be transported (separately, if feasible) to the station for further direction.
 1. Each involved officer should be given an administrative order not to discuss the incident with other involved officers pending further direction from a supervisor.

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2. When an officer's weapon is taken or left at the scene (e.g., evidence), the officer will be provided with a comparable replacement weapon or transported to the station by other officers.

310.5.2 SHIFT SERGEANT DUTIES

Upon learning of an officer-involved shooting, the Shift Sergeant shall be responsible for coordinating all aspects of the incident until relieved by the Chief of Police or his/her designee.

310.5.3 NOTIFICATIONS

The following person(s) shall be notified as soon as practical:

- Chief of Police
- Bureau Captain of the involved officer
- Special Operations/Communications Bureau Captain
- District Attorney OIS rollout team
- Psychological/Peer support personnel
- Coroner (if necessary)
- Officer representative (if requested)

All outside inquiries about the incident shall be directed to the Special Operations/Communications Captain.

310.5.4 MEDIA RELATIONS

A single press release shall be prepared with input and concurrence from the supervisor and agency representative responsible for each phase of the investigation. This release will be available to the Shift Sergeant, Special Operations/Communications Bureau Captain and Public Information Officer in the event of inquiries from the media.

It will be the policy of this department to not release the identities of involved officers absent their consent or as required by law. Moreover, no involved officer shall be subjected to contact from the media (Government Code § 3303(e)) and no involved officer shall make any comments to the press unless authorized by the Chief of Police or a Bureau Captain.

Law enforcement officials receiving inquiries regarding incidents occurring in other agency jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

310.5.5 INVOLVED OFFICERS

Once the involved officer(s) have arrived at the station, the Shift Sergeant should admonish each officer that the incident shall not be discussed except with authorized personnel or representatives. The following shall be considered for the involved officer:

- (a) Any request for department or legal representation will be accommodated, however, no involved officer shall be permitted to meet collectively or in a group with an attorney or any representative prior to providing a formal interview or report (Government Code § 3303(i)).
- (b) Discussions with licensed attorneys will be considered privileged as attorney-client communications.

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- (c) Discussions with department representatives (e.g., employee association) will be privileged only as to the discussion of non-criminal information however.
- (d) A psychotherapist shall be provided by the Department to each involved officer, or any other officer, upon request.
 - 1. Interviews with a licensed psychotherapist will be considered privileged and will not be disclosed except to the extent that the officer is or is not fit for return to duty.
 - 2. An interview or session with a licensed psychotherapist may take place prior to the involved officer providing a formal interview or report, but the involved officers shall not be permitted to consult or meet collectively or in a group with a licensed psychotherapist prior to providing a formal interview or report.
- (e) Although the Department will honor the sensitivity of communications with peer counselors, there is no legal privilege to such. Peer counselors are cautioned against discussing the facts of any incident with an involved or witness officer.

Care should be taken to preserve the integrity of any physical evidence present on the officer's equipment or clothing, such as blood or fingerprints, until investigators or lab personnel can properly retrieve it.

Detectives shall make reasonable accommodations to the officer's physical and emotional needs (Government Code § 3303(d)).

Each involved officer shall be given reasonable paid administrative leave following an officer-involved shooting. It shall be the responsibility of the Shift Sergeant to make schedule adjustments to accommodate such leave.

310.6 THE SHOOTING INCIDENT CRIMINAL INVESTIGATION

310.6.1 DETECTIVE PERSONNEL

Once notified of an officer-involved shooting, it shall be the responsibility of the Investigation Unit supervisor to assign appropriate detective personnel to handle the investigation of related crimes. Detectives will be assigned to work with investigators from the District Attorney's Office and may be assigned to separately handle the investigation of any related crimes not being investigated by the District Attorney's Office.

All related departmental reports except administrative and/or privileged reports will be forwarded to the designated detective supervisor for approval. Privileged reports shall be maintained exclusively by those personnel authorized such access. Administrative reports will be forwarded to the appropriate Bureau Captain.

310.6.2 CRIMINAL INVESTIGATION

It shall be the policy of this department to utilize the District Attorney's Office to conduct an independent criminal investigation into the circumstances of any officer-involved shooting involving injury or death.

If available, detective personnel from this department may be assigned to partner with investigators from the District Attorney's Office so as to not duplicate efforts in related criminal investigations.

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Once public safety issues have been addressed, criminal investigators will be given the next opportunity to interview involved officers in order to provide them with an opportunity to give a voluntary statement. The following shall be considered for the involved officer:

- (a) Supervisors and Administrative Investigation Staff should not participate directly in any voluntary interview of officers. This will not prohibit such personnel from monitoring such interviews or indirectly providing areas for inquiry.
- (b) If requested, any involved officer will be afforded the opportunity to consult individually with a representative of his/her choosing or an attorney, prior to speaking with criminal investigators. However, in order to maintain the integrity of each individual officer's statement, involved officers shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (c) Any voluntary statement provided by the officer(s) will be made available for inclusion in the administrative or other related investigations.
- (d) Absent consent from the involved officer or as required by law, no administratively coerced statement(s) will be provided to any criminal investigators.

310.6.3 REPORTS BY INVOLVED OFFICERS

In the event that suspects remain outstanding or subject to prosecution for related offenses, this department shall retain the authority to require involved officers to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals (Government Code § 3304(a)).

While the involved officer may write the report, it is generally recommended that such reports be completed by assigned investigators who should interview involved officers as victims/witnesses. Since the purpose of these reports will be to facilitate criminal prosecution, statements of involved officers should focus on evidence to establish the elements of criminal activities by involved suspects. Care should be taken not to duplicate information provided by involved officers in other reports.

Nothing in this section shall be construed to deprive an involved officer of the right to consult with legal counsel prior to completing any such criminal report.

Reports related to the prosecution of criminal suspects will be processed according to normal procedures, but should also be included for reference in the investigation of the officer-involved shooting.

310.6.4 WITNESS IDENTIFICATION AND INTERVIEWS

Because potential witnesses to an officer-involved shooting or other major incident may become unavailable or the integrity of their statements compromised with the passage of time, a supervisor should take reasonable steps to promptly coordinate with criminal investigators to utilize available personnel for the following:

- (a) Identify all persons present at the scene and in the immediate area.
 - 1. When feasible, a recorded statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.
 - 2. Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose

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- of identification, officers should attempt to identify the witness prior to his/her departure.
- (b) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by department personnel.
1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness in a department vehicle. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transportation.
- (c) Assign available personnel to promptly contact the suspect's known family and associates to obtain any available and untainted background information about the suspect's activities and state of mind prior to contact with officers.

310.7 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an officer-involved shooting, this department will conduct an internal administrative investigation to determine conformance with department policy. This investigation will be conducted under the supervision of a Bureau Captain and will be considered a confidential peace officer personnel file.

- (a) Any officer involved in a shooting may be administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.
- (b) If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.
1. If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of his or her prior statement before proceeding with any subsequent interview(s) (Government Code § 3303(g)).
- (c) In the event that an involved officer has elected to not provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.
 2. If requested, the officer shall have the opportunity to select an uninvolved representative to be present during the interview (Government Code § 3303(i)). However, in order to maintain the integrity of each individual [officer's/deputy's] statement, involved officers shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
 3. Administrative interview(s) should be recorded by the investigator (the officer may also record the interview) (Government Code § 3303(g)).
 4. The officer shall be informed of all constitutional *Miranda* rights (Government Code § 3303(h)) and, assuming no voluntary waiver, will then be given an administrative order to provide full and truthful answers to all questions (Government Code § 3303(e)). The officer shall be informed, however, that the

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interview will be for administrative purposes only and that the statement cannot be used criminally (The *Lybarger* or *Garrity* admonishment).

5. The administrative interview shall be considered part of the officer's confidential personnel file.
6. The Bureau Captain shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
7. The completed administrative investigation shall be submitted to the Quality Assurance Committee, which will restrict its findings as to whether there was compliance with the Department use of deadly force policy.
8. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.