

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 9

October 8, 2019

APPROVED BY THE BOARD OF POLICE COMMISSIONERS ON September 17, 2019

**SUBJECT: REPORTING A NON-CATEGORICAL USE OF FORCE
INCIDENT – REVISED**

PURPOSE: This Order revises Department Manual Section 4/245.10, *Reporting a Non-Categorical Use of Force Incident*, to ensure that all facts pertaining to a Non-Categorical Use of Force (NCUOF) are thoroughly captured and documented in the NCUOF report.

PROCEDURE: This Order revises Department Manual Section 4/245.10, *Reporting a Non-Categorical Use of Force Incident*. Attached is the revised Department Manual Section 4/245.10 with revisions indicated in italics.

AMENDMENTS: This Order amends Section 4/245.10 of the Department Manual.

AUDIT RESPONSIBILITY: The Commanding Officer, Audit Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.



MICHEL R. MOORE
Chief of Police

Attachments

DISTRIBUTION "D"

DEPARTMENT MANUAL
VOLUME IV
Revised By Special Order No. 9 , 2019

245.10 REPORTING A NON-CATEGORICAL USE OF FORCE INCIDENT.

Employee's Responsibilities. An employee who becomes involved in a reportable Non-Categorical Use of Force (*NCUOF*) incident shall:

- Notify a supervisor without delay;
- *The author of the report shall report the full details of the use of force incident in the related Department arrest or crime report;*
- Use an Employee's Report, Form 15.07.00, to report the full details of the use of force incident when a crime or arrest report is **not** required;
- Document the name of the investigating supervisor in the related arrest, crime report, or *Employee's Report*, under the heading "Additional"; *and,*
- *Ensure that all descriptions of suspect's actions and officers' actions are in plain language (versus "aggressive/combative" etc.).*

Off-duty employees who become involved in a reportable use of force incident in which the employees' occupation as a Department employee is a factor shall notify his or her supervisor or watch commander without unnecessary delay. Notification shall be made to *the Department Operations Center* when the employee's location of assignment is closed.

Note: Off-duty employees completing use of force-related reports shall submit a copy to their supervisor no later than their next regularly scheduled tour of duty.

Investigating Supervisor's Responsibilities. When a *NCUOF* incident occurs, an **uninvolved** supervisor from the employee's command (or from the nearest Area when the employee's command is closed or the employee's supervisor is not available to respond), shall be assigned to conduct the *NCUOF* investigation.

Generally, a supervisor who witnessed a *NCUOF* incident should not conduct a use of force investigation. However, the watch commander may make exceptions on a case-by-case basis, based on exceptional operational needs. The watch commander shall document the exceptional operational need in a *Watch Commander's Daily Report, Form 15.80.00*. *Any supervisor who is involved in the use of force incident is not permitted to conduct the investigation.*

Note: An involved supervisor is defined as a supervisor who *used force, monitored the officer's actions and was in a position to intervene if necessary,* provided guidance or direction during the use of force, or participated in *the* on-scene planning or directing related to the incident.

The supervisor assigned to conduct the investigation shall:

- Respond and conduct an on-scene investigation;

Exception: When an on-scene investigation is impractical due to exigent circumstances, such as a hostile group or an off-duty employee's distance from the City, the supervisor

DEPARTMENT MANUAL
VOLUME IV
Revised By Special Order No.9 , 2019

shall consult with his or her watch commander or officer in charge and arrange for a reasonable alternative.

- Collect and preserve all appropriate evidence and canvas the scene to locate witnesses, when appropriate;
- *Document the vantage point of officers and witness(es), as well as any part of the force observed for Level I incidents;*
- Conduct *independent* interviews with all *involved and witnessing* Department employees, non-Department witnesses, and the person(s) against whom force was used (group interviews are prohibited). Supervisors shall activate their Body Worn Video (BWV) when interviewing all non-Department witnesses during all NCUOF Level I and Level II investigations, except as specified below:
 - * *A witness or victim refuses to provide a statement if recorded and the encounter is non-confrontational;*
 - * *In the supervisor's judgement, a recording would interfere with his or her ability to conduct an investigation, or may be inappropriate, because of the witness's physical condition, emotional state, age or other sensitive circumstances (e.g., a victim of rape, incest or other form of sexual assault);*
 - * *Situations where recording would risk the safety of a confidential informant or citizen informant; or,*
 - * *In patient-care areas of a hospital, rape treatment center, or other healthcare facility unless an enforcement action is taken in these areas.*

Note: If a supervisor's BWV was not activated, an explanation shall be provided in the NCUOF.

- Determine an initial classification of the NCUOF as either a Level I or Level II incident;
- *Review all audio and video recordings of the use of force and state in the report that recordings were reviewed;*
- *Identify the time frames relevant to the use of force and electronically "bookmark" the relevant portions for subsequent reviewers;*
- *For Level I investigations, electronically record the statement of the subject of the use of force and non-Department witnesses;*

Note: If during the course of the investigation by Area personnel, a NCUOF incident is reclassified from a Level II to a Level I incident, the investigating supervisor shall attempt to re-interview and electronically record the statement of the subject of the use of force and of non-Department witnesses, if not done during the initial investigation. If unable to re-interview and/or record the interview at that time, an explanation of what attempts were made to re-interview the parties is required.

- *Verify whether all statements are consistent with the arrest report or related reports;*
- *Identify and document any inconsistencies or conflicts between the accounts of the officers, the suspect(s), and/or the witness(es), and attempt to resolve those differences;*

DEPARTMENT MANUAL
VOLUME IV
Revised By Special Order No. 9 , 2019

- Review any related crime and/or arrest report or Employee's Report, *to ensure that the related reports contain a complete account of the incident.* A Follow-Up Investigation, Form 03.14.00, may be used to make any necessary corrections to the related report(s) or to provide additional information;

Note: The supervisor who conducts the NCUOF investigation shall not approve any of the related report(s).

- Utilize the Use of Force System (UOFS) to complete the NCUOF Report; and,
- Forward the completed NCUOF Report along with all related reports, to the watch commander/officer in charge (OIC).

Note: Generally, a NCUOF Report should be initiated in the UOFS before the investigating supervisor's end of watch. This requirement will be satisfied when the investigating supervisor generates a UOF case number. However, complex incidents or exigent circumstances may require additional time.

Multiple NCUOF incidents can be captured in one NCUOF Report case number (e.g., NCUOF during the arrest and a separate NCUOF during booking of the same subject). Additionally, multiple NCUOF incidents involving multiple subjects during one incident can also be reported in a single NCUOF Report, especially if the incident is documented in one arrest report narrative.

Watch Commander's Responsibilities. A watch commander/OIC reviewing a NCUOF investigation shall document his or her insight in the "Findings" section of the NCUOF Report. As part of this evaluation, watch commanders/OICs shall:

- Evaluate whether or not the force used was *objectively* reasonable and *ensure* that all relevant tactical, use of force, and policy issues are addressed;
- Evaluate each force option used by each officer and determine if it was reasonable based on the actions of the subject of force (i.e., suspect);
- Evaluate the officer's efforts at tactical de-escalation and provide a rationale if tactical de-escalation was not feasible;
- Ensure that all supervisors are interviewed regarding their actions at the scene during the incident;
- Evaluate the actions of each of these supervisors and the existence and effectiveness of supervisory command and control;
- Level I issues need to be identified and addressed in the "Insight" section, such as how the inconsistencies or conflicts were resolved (e.g., independent witnesses corroborated the officer's or subject's account, a lack of injuries one would expect to see with the force reported by the subject, or video/audio corroborated or refuted the subject's allegation); and,
- Review the relevant recordings of the incident "bookmarked" by the investigating supervisor and certify that this has been completed.

DEPARTMENT MANUAL
VOLUME IV
Revised By Special Order No.9 , 2019

Note: Reviewers at each level are required to review and certify that they have reviewed all bookmarked recordings of the incident.

Authority to Approve Reports. Non-Categorical Use of Force investigations and any related report(s) (i.e., the crime and/or arrest report or *Employee's Report*), shall be approved by an on-duty watch commander/OIC or designee of supervisory rank.

Note: The watch commander/OIC approving the use of force investigation is not required to be the same watch commander/OIC who reviewed and approved the related report(s). Generally, the involved Department employee's chain of command will conduct and approve the use of force investigation.

Example: Officers from Metropolitan (*Metro*) Division submit an arrest report to the watch commander, Area of occurrence, while the Metro supervisor assigned to investigate the related use of force submits the completed investigation to his *or* her Metro OIC.