

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**
Electronically Filed

UNITED STATES OF AMERICA,

Plaintiff

v.

Case No. 3:24-cv-722-BJB

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT,**

Defendant

**DEFENDANT’S RESPONSE TO COURT’S ORDER RE: PROPOSED CONSENT
DECREE’S TRANSPARENCY & SUPPORT**

Defendant Louisville/Jefferson County Metro Government (“Louisville Metro”), by counsel, for its Response to the Court’s Order re: Proposed Consent Decree’s Transparency and Support, issued January 18, 2025, (hereinafter “the Order”) hereby states as follows:

INTRODUCTION

On January 18, 2025, the Court issued an Order requesting the Parties respond to the following questions:

1. Ongoing Pattern and Practice
 - a. Given that the parties agree the reforms contemplated in the decree are already underway, why is an injunction necessary to compel them?
 - b. What authority authorizes the Justice Department to withhold, based on “litigation leverage,” information relevant to the judicial decision the parties sought?
2. Fourth Amendment
 - a. How many instances of excessive lethal force did the 2023 Findings reveal?
 - b. How many instances of excessive non-lethal force did the 2023 Findings reveal? And what is the ratio of excessive force to lawful force during the same time period?
3. First Amendment

- a. To what extent do the parties maintain the Police Department has violated citizens' First Amendment rights since the year 2021?
4. Americans with Disabilities Act
 - a. How will dispatchers and officers determine whether a 911 call requires a police response, a mental-health response, or both?
 - b. What legal standard determines whether “deflection” of 911 calls to a behavioral-health response team are “reasonable accommodations” required by the ADA?
5. Safe Streets Act
 - a. Why has the Justice Department refused to share its disparate-impact assessment with the Court or the City?
 - b. On what legal basis could the Court impose injunctive relief to remedy a sex-discrimination allegation that the Complaint and Report have not even alleged? *See* 2023 Findings at 69; Complaint ¶ 17.¹

Several of the questions posed by the Court request information that is only in the possession of Plaintiff, United States of America (“United States”), as they relate to the data that the United States has used to support its allegations against Louisville Metro. Because Louisville Metro does not have access to that specific data or the methodology for analyzing such data, Louisville Metro is unable to answer the Court’s questions on those topics. However, Louisville Metro has available historical data that it has kept in the ordinary course of business, and which may shed some light on the questions posed by the Court. In an effort to be responsive to the Court, Louisville Metro will present this data in addition to responding to the remaining questions from the Court.

I. Ongoing Pattern and Practice²

Louisville Metro is committed to implementing the reforms identified within the proposed Consent Decree. Since 2021, LMPD has created approximately 30 new positions within the department, both sworn and professional. In addition to those 30 positions, LMPD now has five legal advisors and two legal instructors where it previously only had one legal advisor.

¹ *See* DN 054.

² Consistent with its Answer, Louisville Metro continues to deny the United States’ allegation that any unlawful conduct occurred frequently or routinely.

Additionally, Louisville Metro began implementing some of the proposed reforms in consultation with the United States prior to negotiations concluding. Based on the voluntary actions of Louisville Metro in implementing reforms, the Court has questioned the necessity of an injunction to compel the continued reform work of Louisville Metro.

Consistent with its prior practice in similar situations, the United States presented a consent decree as the only option available to Louisville Metro to avoid litigation over the allegations in its Findings Report. As Louisville Metro wanted to avoid costly and distracting litigation and focus resources on becoming the best police department possible, it was necessary for the city to sign an Agreement in Principle to negotiate a consent decree with the United States. After extensive negotiations, Louisville Metro was able to finalize a consent decree that fully satisfied Mayor Greenberg's criteria which included a well-defined exit path upon reaching substantial compliance with the decree's requirements. Louisville Metro continues to support entry of the proposed Consent Decree as it implements reforms to which Louisville Metro is committed and avoids costly and wasteful litigation. From Louisville Metro's perspective, the proposed Consent Decree is an effective mechanism to keep the reform process on track and to provide third-party validation of Louisville Metro's progress by means of an independent monitor that will report to the public.

Louisville Metro does not have any information to offer concerning the United States' authority to withhold information the Court seeks based on "litigation leverage." Louisville Metro has no objection to the United States' disclosure of such information.

II. Louisville Metro Data and Response to Court's Inquiry on alleged Fourth Amendment Violations

The United States' pattern and practice investigation reviewed incidents that occurred between 2016 and 2021. Louisville Metro obtained the calls-for-service data, for the same time period, from MetroSafe, which is responsible for dispatching officers and managing the radio

traffic of LMPD officers. The calls-for-service data is comprised of LMPD officers’ responses to 911 calls for assistance and officers’ self-initiated activities. This data shows that from 2016 to 2021, LMPD officers had 3,054,922 interactions with citizens. Louisville Metro also reviewed this data for 2022-2024; during this time period, LMPD officers had 1,224,467 interactions with citizens. The following chart shows the breakdown of the calls for service by year and how many sworn officers were employed by LMPD as of July 1st of each year:

	DOJ Investigation						Post DOJ Investigation		
	2016	2017	2018	2019	2020	2021	2022	2023	2024
Calls For Service	537174	540234	541962	511846	450968	472738	423905	353332	447230
Number of Officers as of July 1 every year	1248	1303	1285	1250	1194	1048	1042	1062	1058

Louisville Metro also pulled the annual number of arrests, traffic stops, and reports completed for violent crimes,³ homicides, and traffic fatalities for the years 2014 through 2024. Included alongside the Arrests, Traffic Stops, and Violent Crime Offenses data, the year-to-year percentage increase or decrease is noted.

	Arrests		Traffic Stops(1099 only)		Violent Crime Offenses		Homicides	Traffic Fatalities
2014	123494		79531		10181			
2015	100539	-19%	56299	-29%	10949	8%	78	82
2016	88036	-12%	43336	-23%	11560	6%	117	88
2017	91052	3%	56759	31%	10914	-6%	99	91
2018	92843	2%	67998	20%	10120	-7%	77	68
2019	76098	-18%	48144	-29%	10882	8%	89	93
2020	41700	-45%	25043	-48%	12386	14%	164	114
2021	47548	14%	33343	33%	13213	7%	178	111
2022	53580	13%	40991	23%	12342	-7%	157	117
2023	42805	-20%	31131	-24%	11125	-10%	145	117
2024	45597	7%	35458	14%	10799	-3%	142	105

³ This captures the following types of crimes pursuant to National Incident-Based Reporting System (NIBRS): Aggravated Assault, Arson, Kidnapping/Abduction, Murder & Nonnegligent Manslaughter, Negligent Manslaughter, Rape, Robbery, Simple Assault, Sodomy, and Statutory Rape. It should be noted that these numbers reflect the reports taken for these incidents and do not reflect actual arrests made for these incidents. It should also be noted that on March 14, 2023, LMPD began using a new Computer-Aided Dispatch/Record Management System which codified these incidents according to NIBRS definitions whereas the previous system codified them according to the Kentucky Uniform Crime Report definitions. For this reason, the data may not be completely comparable.

The Court has requested the Parties to answer specific questions relating to the number of instances of lethal and non-lethal uses of force underlying the United States’s 2023 Findings, and specifically what the ratio of excessive force to lawful force was during that same time period. As previously stated, the United States has not disclosed to Louisville Metro the data or methodologies it used as the basis for its allegations. However, in an effort to be as responsive as possible to the Court’s Order, LMPD has provided certain use of force data collected in the ordinary course of business. Before delving into Louisville Metro’s data, it is important to understand the different processes in which use of force investigations occur and are initiated.

There are three mechanisms in which use of force incidents are documented and investigated by LMPD: 1) Administrative Incident Report (“AIR”) via BlueTeam; 2) Professional Standards Unit (“PSU”); and 3) Public Integrity Unit (“PIU”).

The PSU is responsible for conducting internal administrative investigations of LMPD members for policy violations. A PSU investigation may be initiated at the request of the LMPD Chief of Police or by a citizen complaint. A citizen’s complaint may be received through several modalities; however, a citizen’s complaint may only be investigated by the LMPD if the requirements of KRS 67C.326⁴ are met.

The PIU is responsible for conducting all criminal investigations of departmental members and other Metro employees or public officials. Additionally, the PIU conducts investigations of Level 4 uses of Reportable Force involving LMPD officers. A PIU investigation may be initiated

⁴ KRS 67C.326 prohibits an administrative investigation from being conducted pursuant to a citizen’s complaint unless the citizen’s complaint is made in the form of a sworn affidavit. Absent a sworn affidavit from a citizen, LMPD is required to conduct an investigation into the citizen’s complaint but may only charge an officer with a policy violation if LMPD can independently substantiate the allegations without the sworn affidavit from the citizen.

at the request of the LMPD Chief of Police or their designee, or through a complaint by members of the LMPD, Louisville Metro Government, other governmental entity, or a citizen.⁵

Pursuant to LMPD policy, any use of force greater than minimal force is classified as Reportable Force.⁶ There are four levels of Reportable Force. The level of force used will determine the method and type of investigation that is conducted. However, each use of Reportable Force requires the completion of an AIR through the LMPD BlueTeam system. A Level 1 Use of Reportable Force requires the completion of an AIR by the involved officer and review for accuracy and policy compliance by an uninvolved, permanent-rank supervisor. Level 2 and Level 3 uses of Reportable Force require an uninvolved, permanent-rank supervisor to conduct the investigation and review of the use of force. This review is then sent through a division lieutenant for review before submission to the Force Investigations Review Unit (FIRU)⁷, with a copy to the division major. The FIRU reviews all Level 2 and 3 uses of Reportable Force for accuracy and policy compliance. At each level of review, the reviewer will document their findings, including whether any violations of LMPD policy are observed. Importantly, at any point throughout the review process, a reviewer may request the Chief of Police initiate a PSU investigation if potential policy violations are identified. All Level 4 uses of Reportable Force are investigated by the Public Integrity Unit for any criminal allegations and by the Professional Standards Unit for any policy violations.

⁵ To be clear, a sworn affidavit from a citizen is not required in order to initiate a PIU investigation.

⁶ Attached as Exhibit 1 is the current LMPD Use of Force policy and Exhibit 2 is the previous iteration of the policy. It is relevant to note that the Reportable Force definition and structure was implemented in October of 2024 when the new LMPD Force Investigation Review Unit began its role. However, all types of Reportable Force were previously required to be reported pursuant to an AIR so for the purposes of this Response, there is no distinction between Reportable Force prior to October 2024 and reporting force prior to that time.

⁷ The FIRU is comprised of a Lieutenant, Sergeant, and Legal Advisor.

For the pattern-and-practice investigation time period, there were a total of 2,288 documented uses of force by LMPD. Of those incidents, 213 PSU investigations were conducted for alleged use of force policy violations. Of those 213 PSU investigations, 41 were incidents involving the use of deadly force and 172 incidents involving use of non-lethal force. Of those investigations, three included incidents in which violations of the use of deadly force policy were sustained⁸ and 54 included incidents in which violations of the non-lethal use of force policies were sustained. It is important to note that a violation of policy does not necessarily mean that a violation of law occurred.

In short, to provide information pertinent to the Court's questions, LMPD's data identifies three incidents in which the use of deadly force policy was violated and 54 incidents in which non-lethal use of force policies were violated. While Louisville Metro believes these data points are relevant to the Court's questions, it should be noted that the data assume that all uses of force were appropriately documented, investigated, and adjudicated – assumptions that the United States may contest.

For some perspective to see how LMPD has progressed since 2021, LMPD has also compiled its data from 2022 – 2024.⁹ That data identifies a total of 907 AIRs completed for use of force incidents. It also identifies a total of 40 PSU investigations conducted for alleged use of force policy violations. Of these 40 investigations, 22 of the incidents involved the use of deadly force and 23 incidents involved the use of non-lethal force. Of these investigations, two incidents had a sustained violation of the use of deadly force policy and eight incidents had a sustained violation of the non-lethal use of force policies.

⁸ An alleged policy violation is found to be "sustained" when there is sufficient evidence to prove by a preponderance of the evidence the allegation.

⁹ It should be noted that in 2024, LMPD policy was expanded to begin capturing takedowns without injury, pointing of a firearm, and canine deployments with no bites as a reportable force incident.

The following chart provides a more detailed breakdown of this data. The chart also includes a breakdown of the PSU cases by number of allegations and number of officers investigated. A PSU case often looks at incidents as a whole; therefore, there may be more than one officer being investigated in one case and there may be more than just one allegation of a policy violation. For example, a PSU case may investigate an incident where an officer discharged their taser towards a subject three times and another officer pointed his firearm at the subject. That PSU case would include three allegations of policy violations against the first officer, one allegation for each taser discharge, and one allegation of a policy violation against the other officer for pointing a firearm.

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		DOJ Investigation					Post DOJ Investigation			
		2016	2017	2018	2019	2020	2021	2022	2023	2024
Calls For Service		537174	540234	541962	511846	450968	472738	423905	353332	447230
Number of Officers as of July 1 every year		1248	1303	1285	1250	1194	1048	1042	1062	1058
Use of Force Incidents	Blue Team Entries	442	481	438	376	314	237	226	233	448
	Percentage of Calls for Service	0.08228%	0.08904%	0.08082%	0.07346%	0.06963%	0.05013%	0.05331%	0.06594%	0.10017%
	% of Uoff (BlueTeam) Investigated	7.01%	8.11%	13.24%	8.78%	11.15%	7.17%	3.98%	7.30%	3.13%
	% of Uoff Sustained by Incident	1.13%	2.91%	3.42%	1.60%	4.14%	1.27%	1.33%	2.58%	0.22%
PSU Use of Force Investigations										
PSU Use of Force Investigations		31	39	58	33	35	17	9	17	14
Initiation Case Type	Chief Initiated	30	33	47	23	25	15	7	15	13
	Percent of Complaints	97%	85%	81%	70%	71%	88%	78%	88%	93%
	Citizen Affidavit	1	6	11	10	10	2	2	2	1
	Percent of Complaints	3%	15%	19%	30%	29%	12%	22%	12%	7%
	Number of Officers Accused	36	68	94	44	52	26	14	26	22
	# Ofcs Accused / # Ofcs Percentage	2.88%	5.22%	7.32%	3.52%	4.36%	2.48%	1.34%	2.45%	2.08%
Number of Allegations		37	77	100	47	68	30	18	30	26
Type of Force Allegation by Charge Investigated	Use of Deadly Force Cases	4	4	11	6	7	9	5	10	7
	Use of Deadly Force Allegations	4	7	18	9	23	12	9	18	14
	Use of Deadly Force Officers Accused	4	7	18	9	13	11	9	15	11
	Percentage of Deadly Force Cases	13%	10%	19%	18%	20%	53%	56%	59%	50%
	Percentage of Deadly Force Allegations	11%	9%	18%	19%	34%	40%	50%	60%	54%
	Use of Force Cases	27	36	47	27	30	10	5	7	11
	Use of Force Allegations	33	70	82	38	45	18	9	12	12
	Use of Force Officers Accused	32	61	76	35	39	15	5	11	11
	Percentage Use of Force Allegations	87%	92%	81%	82%	86%	59%	56%	41%	79%
Use of Deadly Force Sustainments	Sustained Cases	0	0	0	0	2	1	0	2	0
	Number of Sustained Officers	0	0	0	0	3	1	0	2	0
	Sustained Allegations	0	0	0	0	13	1	0	2	0
	Pending Disposition by Case	0	0	0	0	0	0	0	0	5
	Percentage of Sustained Cases	0%	0%	0%	0%	29%	11%	0%	20%	0%
	Percentage of Sustained Allegations	0%	0%	0%	0%	57%	8%	0%	11%	0%
Use of Force Sustainments	Sustained Cases	5	15	15	6	11	2	3	4	1
	Number of Sustained Officers	6	15	18	7	11	2	3	4	1
	Sustained Allegations	6	15	18	7	13	2	5	4	1
	Pending Disposition by Case	0	0	0	0	0	0	0	0	8
	Percentage of Sustained Cases	19%	42%	32%	22%	37%	20%	60%	57%	9%
	Percentage of Sustained Allegations	18%	21%	22%	18%	29%	11%	56%	33%	8%
All Use of Force Sustained Disposition	Sustainment Incidents by Cases	5	14	15	6	13	3	3	6	1
	Sustainment by Allegations	7	14	18	7	26	3	5	6	1
	Pending Disposition	0	0	0	0	0	0	0	0	16
	Percentage of Sustained Allegations	19%	18%	18%	15%	38%	10%	28%	20%	4%
Sustained Disposition of Corrective Action	# Sustained - Terminated	0	2	0	0	4	0	1	0	1
	# Sustained - Suspended	0	4	8	5	5	1	1	0	0
	# Sustained - Letter of Reprimand	3	5	4	0	1	1	1	2	0
	# Sustained - Counseling	2	2	1	0	0	0	0	0	0
	# Sustained - Remedial Training	1	0	0	0	0	0	0	1	0
	# Sustained - No Action	0	1	2	0	0	0	0	0	0
	# CBE - Resignation	1	0	2	2	5	1	0	2	0
	# CBE - Termination	0	0	0	0	0	0	0	0	0
# CBE - Retirement	0	0	0	0	0	0	0	1	0	

III. First Amendment

The Court requests information relating to the extent LMPD has violated citizens' First Amendment rights since 2021. It should be noted that there have been no widespread protests since

the events of 2020, resulting in a paucity of data on this issue. However, as previously mentioned, LMPD officers have had at least 1,224,467 interactions with citizens since the beginning of 2021. According to Louisville Metro's data, LMPD initiated two PSU investigations into alleged First Amendment-related policy violations in 2024; however, one of these investigations stems from an incident that occurred in 2020. Each of these investigations is ongoing.

IV. Americans with Disabilities Act

a. Louisville Metro's Deflection Program

Louisville Metro's MetroSafe 911 Center is the primary Public Safety Answering Point for 911 emergency calls in Jefferson County, Kentucky. The 911 Center call-takers receive and assess incoming emergency calls, triage response, and dispatch what, if any, emergency services a caller is eligible for, including emergency medical services ("EMS"), fire department personnel, law enforcement, and now Deflection for certain behavioral health crisis calls. Attached as Exhibit 3 is a General Memorandum from Louisville Metro's 911 Center Assistant Director detailing the availability of Deflection crisis triage services and the criteria for an appropriate Deflection response. A behavioral health crisis call would be excluded from Deflection if either (1) a public safety threat or (2) an emergency physical health condition is present requiring other appropriate emergency services. Currently, MetroSafe policy defines a public safety threat requiring a law enforcement response to include those situations in which a person experiencing the behavioral health crisis has physical possession of weapons, or he or she or another person on scene is currently exhibiting violent or threatening behavior or has a known history of violence. An EMS response is required if the person experiencing the behavioral health crisis is under the influence of drugs or alcohol such that he or she requires medical intervention or if the person in crisis has injured or is in process of injuring themselves or another person.

Additionally, to triage these calls and send the appropriate response, the 911 Center only dispatches Deflection to first-party calls, where the caller is the person experiencing the behavioral health crisis, or second-party calls, where the caller is present with the person experiencing the behavioral health crisis. Third-party calls, where a caller is not present with the person in crisis, are deemed ineligible at this time because of the inability to assess the safety risks, medical needs, or the desire for the person in crisis to work with Deflection. These calls would typically result in a law enforcement response, if needed. Notably, if LMPD is the responding law enforcement agency, its officers can request Deflection after securing the scene and determining it would be an appropriate response for a person experiencing a behavioral health crisis.

b. Legal Standard for Evaluating Deflection as a “Reasonable Accommodation”

The Attorney General has promulgated regulations in accordance with Title II of the Americans with Disabilities Act (“ADA”) governing public services that require public entities to “make reasonable modifications to policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.”¹⁰

A proposed modification complies with Title II’s obligations if the modification permits the otherwise qualified disabled individual “meaningful access to the benefits of the services” provided by the public entity.¹¹ What meaningful access looks like and the “determination of what constitutes reasonable modification is highly fact-specific, requiring case-by-case inquiry.”¹² This

¹⁰ 28 C.F.R. § 35.130(b)(7)(i)

¹¹ *Ability Center of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 909 (6th Cir. 2004); see also *Alexander v. Choate*, 469 U.S. 287, 297 (1985).

¹² *Anderson v. City of Blue Ash*, 798 F.3d 338, 356 (6th Cir. 2015), (quoting *Lentini v. Cal. Ctr. for the Arts, Escondido*, 370 F.3d 837, 844 (9th Cir. 2004)).

mixed question of law and fact requires an individualized inquiry into whether a proposed modification would be “reasonable *under the circumstances* as well as necessary *for that person*.”¹³ The qualified disabled individual need not prove that the specific modification is the only means to afford access to the service or benefit, only that it is sufficient to remove the barrier to meaningfully access the program, services and benefits.¹⁴ Still, Title II does not give qualified disabled individuals unilateral authority to determine how a public entity may reasonably accommodate their disability. While individual preferences should be considered, a public entity’s offered accommodation “need not be perfect or the one most strongly preferred by the plaintiff” to satisfy its obligations under the ADA, only that it preserves meaningful access.¹⁵

Public entities are further protected from overly burdensome modification requests if they can demonstrate the modification would fundamentally alter the nature of the service provided. Fundamental alteration is an affirmative defense that public entities may raise regarding otherwise-necessary modifications and is also a “fact-intensive inquiry.”¹⁶ The Supreme Court has presented two frameworks to analyze the fundamental alteration defense depending on whether the objection is based on the resources needed to implement the modification or whether the modification would change an essential part of the program, service or activity.

If the public entity objects to the resources necessary to implement a proposed modification, Justice Ginsberg’s plurality opinion in *Olmstead v. LC ex rel. Zimring* suggests a balancing test for what modifications present a fundamental alteration. When considering the allocation of available resources, if the proposed modification for the individual would be

¹³ *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 688 (2001)(emphasis added).

¹⁴ *Tennessee v. Lane*, 541 U.S. 509, 532 (2004)

¹⁵ *Wright v. NY Dept. of Corrections*, 831 F.3d 64, 72 (2d Cir. 2016) quoting *Noll v. Int’l Bus. Machs. Corp.*, 787 F.3d 89,95 (2d. Cir. 2015)(internal citations and alterations omitted.)

¹⁶ *Hindel v. Husted*, 875 F.3d 344, 347 (6th Cir. 2017) (quoting *Hindel v. Husted*, No. 2:15-cv-3061, 2016 WL 2735935 (S.D. Ohio May 11, 2016)).

inequitable given the broader responsibilities the public entity has to the needs of other individuals with disabilities served by the program, then it would be a fundamental alteration.¹⁷ Budgetary concerns alone cannot sustain a fundamental alteration defense; many reasonable modifications require some investment of resources. Instead, the *Olmstead* test requires the public entity to show how the investment of those resources for a proposed modification would specifically harm other individuals with disabilities from receiving the services for which they are eligible. The reviewing court does not look at the cost of the modification for that individual alone in isolation, but requires the entity to demonstrate, through budgetary fund-shifting to cover the proposed modification, that it would result in fewer or lower quality services available to other eligible disabled individuals. If, instead, the public entity objects to the proposed modification because it alters an essential function of the service, program, or activity, the Court's opinion in *PGA Tour, Inc. v. Martin*, is instructive. When evaluating whether a modification of a rule in a golf tournament might constitute a fundamental alteration, the Supreme Court identified two circumstances such an accommodation would be unworkable: (1) if an alteration affected an essential aspect of the services or programs, even if applied to all participants equally; or (2) if a minor modification gave a disabled competitor an advantage over nondisabled participants, thereby fundamentally changing the character of the competition.¹⁸

But the public entities cannot wait for each disabled individual to request accommodations for access. The ADA places "an affirmative obligation" on public entities to prevent discrimination on the basis of disability.¹⁹ The regulations also require public entities to evaluate current services, policies, and procedures that do not meet ADA requirements and make the necessary modifications

¹⁷ *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 604 (1999)

¹⁸ *PGA Tour*, 532 US at 682.

¹⁹ *Wilson v. Gregory*, 3 F.4th 844, 859 (6th Cir. 2021), (quoting *Ability Ctr. Of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 910 (6th Cir. 2004)).

proactively.²⁰ To that end, the Attorney General has promulgated specific regulations that guide this evaluation process for common accommodations, including among others, mobility devices, service animals, communications systems, and architectural requirements to make public services readily accessible to individuals with disabilities.²¹ But a public entity's obligation to self-evaluate its services and programs for accessibility issues and reasonable modifications is not limited to the enumerated regulations.²² It also must evaluate its programs more generally for barriers to access and in doing so, solicit feedback from interested parties including individuals with disabilities and organizations serving them.²³

Based on the legal framework set forth above, offering Deflection to individuals experiencing behavioral health crises would be a reasonable modification of Louisville Metro's policies and programs to ensure individuals with behavioral health disabilities have meaningful access to Louisville Metro's emergency services. A Deflection response, instead of a law enforcement, addresses the allegation of the United States that categorical exclusion of individuals with identified behavioral health disabilities from accessing emergency health responses violates Title II of the ADA.²⁴ The development of an alternative response pilot program now known as Deflection reflects Louisville Metro's engagement in the self-evaluation process. Even prior to the United States' release of the Findings Report, Louisville Metro identified policies that may impact meaningful access to its emergency services. The development and expansion of the program was informed by the feedback of both individuals with behavioral health disabilities and the local organizations serving them. Louisville Metro need not demonstrate Deflection is the only method

²⁰ 28 C.F.R. § 35.105(a)

²¹ See generally 28 CFR § 35

²² *Ability Center of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 907 (6th Cir. 2004).

²³ 28 C.F.R. § 35.105(b)

²⁴ See 72 USC § 12132

to improve accessibility. Louisville Metro could have modified other 911 center policies or trained other first responders to provide a health response. The ADA and its regulations do not require demonstrating that this modification to existing practice is the sole means to afford meaningful access to programs, only that it is sufficient to allow that access. Further, because Deflection is now an established program within Louisville Metro's 911 Center, predating the filing of this litigation, requiring its continuity through the Consent Decree is not a fundamental alteration to any essential aspect of Louisville's emergency services.

c. Louisville Metro's Deflection Program Data

From July through December of 2023, the Louisville Metro Deflection program operated across all eight LMPD patrol divisions for 12 hours a day, from 10 am to 10 pm. During this time, 1,732 calls to MetroSafe were transferred to a crisis triage worker and the Mobile Crisis Response Team was deployed 732 times.

On February 4, 2024, the Diversion program expanded to operate for 16 hours a day, from 10 am to 2 am; then on June 6, 2024, the Diversion program began operating 24 hours a day. During the 2024 calendar year, there were 3,452 calls to MetroSafe transferred to the Crisis Triage Workers and the Mobile Crisis Response Team was deployed 1,099 times and transported individuals to receive the appropriate care 669 times.

V. Safe Streets Act

a. United States' Disparate-Impact Assessment

Louisville Metro has no information concerning why the United States has refused to share its disparate-impact assessment or what authority supports their position. Louisville Metro would find such information useful for its own purposes of continuous improvement.

b. Legal Authority to Impose Injunctive Relief to Remedy Sex-Discrimination Allegation

The Court has questioned what authority permits it to impose injunctive relief to remedy a sex-discrimination allegation not raised in the Complaint and Report. The parties' consent "serves as the source of the court's authority to enter any judgment at all,"²⁵ even in circumstances when said relief would not be available to the plaintiff following judgment after trial. *In Local No. 93 v. Cleveland*, the Supreme Court explicitly rejected an argument raised by the intervening union that a consent decree may not offer greater relief than could be awarded at trial.²⁶ There, the Supreme Court readily endorsed that consent decrees have features of both voluntary contracts and judgments entered after litigation. But notably, Justice Brennan's opinion recognized that "the voluntary nature of a consent decree is its most fundamental characteristic."²⁷ This authority is not without limitations, though. Even if the parties agree, "[a] consent decree must spring from and serve to resolve a dispute within the court's subject matter jurisdiction..., must 'com[e] within the general scope of the case made by the pleadings,'"²⁸ Still, so long as the nature of the agreement comes within the general scope of the case, this Court retains authority to enter such a decree.

It is readily apparent that many of the requirements for Section IX of the proposed Consent Decree, including policy updates, training, and supervisory requirements, fall generally within the claims raised by the United States' complaint. The United States expressed concerns that there are systemic deficiencies in policies, training, supervision, and accountability structures within Louisville Metro.²⁹ Louisville Metro does not have all the data upon which the United States relied in issuing its 2023 Findings; therefore, Louisville Metro cannot and does not concede the

²⁵ *Local 93*, 478 U.S. at 522.

²⁶ *Id.* at 524.

²⁷ *Local No. 93 v. City of Cleveland*, 478 U.S. 501, 521-22 (1986); see also *United States v. ITT Cont'l Baking Co.*, 420 U.S. 223, 235-37 (1975) and *United States v. Armour & Co.*, 402 U.S. 673 (1971).

²⁸ *Id.* at 525.

²⁹ DN 1, ¶ 19.

allegations in the Complaint regarding a pattern or practice. Louisville Metro, however, does support continuous evaluation and improvement and recognizes the importance of public trust and confidence in the progress of police reform. It is believed that the requirements contained within Section IX of the proposed Consent Decree address the allegations of the United States in a manner acceptable to Louisville Metro. Moreover, the parties have voluntarily consented to these terms to resolve the pending litigation. That consent affords the court the authority to enter the decree and impose injunctive relief.

CONCLUSION

Louisville Metro respectfully submits the foregoing in response to the Court's Order of January 18, 2025 and requests that the Court grant the Joint Motion for Entry of the Consent Decree.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

On February 18, 2025, the foregoing was served on the Court and all counsel via the Court's electronic filing system.

/s/ Annale R. Taylor
Annale R. Taylor

Louisville Metro Police Department

<h2>Standard Operating Procedures</h2>	SOP Number: 9.1
	Effective Date: 04/08/03
	Prv. Rev. Date: 09/19/22
	Revised Date: 10/01/24
Chapter: Use of Force	Accreditation Standards: KACP: 1.3, 1.8, 1.13, 1.14
Subject: Use of Force	

9.1 USE OF FORCE

9.1.1 POLICY

It is the policy of the Louisville Metro Police Department (LMPD) that all members recognize the sanctity of human life, respect basic human rights, and have an intolerant attitude towards the abusive treatment of all persons. The use of force by officers must be conducted in an impartial manner, free of bias, and in accordance with the Constitution, applicable laws, and the Standard Operating Procedures (SOPs) of this department.

All uses of force must be objectively reasonable as viewed from the perspective of a reasonable officer on-scene (*Graham v. Connor* 490 U.S. 386 (1989)). De-escalation techniques will be used in all interactions when it is safe, under the totality of circumstances, and both time and opportunity allow. Prior to using force, officers will, where reasonable and practical, utilize a critical thinking decision-making framework to analyze and respond to incidents (Priorities, Intelligence, Environment, Tools/Tactics/Technology, and Officer instincts (PIETO) model). Officers will take reasonable care that their actions do not precipitate an unreasonable use of force that places themselves, or others, in jeopardy. Officers will continually assess the situation and changing circumstances to modulate their use of force appropriately. Officers will not use force to punish subjects.

Officers will only carry, and use, departmentally-approved force tools in which the officers are trained and qualified to use, except in exigent situations when an officer may use any resource at their disposal (KACP 1.3f, 1.8) (refer to SOP 9.2).

All reportable uses of force must be reported immediately (when safe to do so), and reviewed, pursuant to SOP 9.3. Officers must articulate the justification for each use of force.

9.1.2 DEFINITIONS

Activate: The act of depressing the trigger of a Conducted Electrical Weapon (CEW) causing a CEW to fire probes or re-energizing the CEW by pushing upward on the selector switch after successful connection.

Active Aggression: An overt act reasonably indicating that an assault through physical means is imminent, coupled with the apparent ability to carry out the assault or cause injury.

Active Resistance: When an individual exerts physical force to avoid detention or arrest but does not attempt to harm the officer, or another. Attempts to leave the scene, fleeing, hiding from detection, physical resistance to being handcuffed, or pulling away from the officer's grasp are all examples of active resistance. This includes verbal hostility/threats coupled with a failure to comply with officer's commands. Non-compliance alone does not constitute active resistance.

Carotid/Vascular Restraint: Any physical maneuver that applies pressure to the blood vessels of the neck and restricts, or creates a substantial risk of restricting, blood flow to an individual's brain. Brief, incidental contact with the neck does not constitute a carotid/vascular restraint for the purposes of LMPD policy.

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9.1.2 DEFINITIONS (CONTINUED)

Chemical Agent: A departmentally-approved less-lethal weapon, which consists of a chemical compound that irritates the eyes to cause tears, discomfort, and temporary loss of visual capacity (e.g., pepper spray, Mace, Oleoresin Capsicum (OC)).

Chokehold and/or Choking Techniques: Any physical maneuver that applies pressure to the throat or windpipe and restricts, or creates a substantial risk of restricting, an individual's ability to breathe. Brief, incidental contact with the neck does not constitute a chokehold/choking technique for the purposes of LMPD policy. Chokehold and/or choking techniques are a use of deadly force and only an approved force option in a situation where the use of deadly force would be allowed and reasonable (LMCO 36.04) (KACP 1.14).

Conducted Electrical Weapon (CEW): Departmentally-approved less-lethal weapons designed to disrupt a subject's central nervous system by means of deploying battery-powered electrical energy, sufficient to cause intense muscle contractions, affecting the individual's motor nervous system and/or disruption of the individual's sensory nervous system and central nervous system.

Deadly Force: Force likely to create a substantial risk of causing death or serious physical injury. Head, neck, throat, clavicle, spinal, or renal injuries caused by impact weapons, of any sort, can lead to death or serious physical injury.

De-Escalation: A desired outcome achieved by utilizing decision-making, communication, and tactics to resolve conflict or potential conflict, which is ethically based on the preservation of life and the avoidance of the use of force (LMCO 36.04).

De-Escalation Techniques: Actions used by officers, when safe and feasible without compromising law-enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of gaining voluntary compliance from a subject.

Direct Apprehension: The act in which a canine handler deploys a canine to locate and engage a suspect.

Hard Empty Hand Control: The use of punches, strikes, or kicks to gain compliance.

Imminent Danger: Also known as "impending danger." An action or event that is likely to occur at any moment and which is likely to cause injury to an officer, or another person.

Injury: Visible scuffs, scrapes, abrasions, bruises, wounds, or complaint of pain that is more than brief pain.

Intervene: To act verbally or physically to prevent or alter a result or course of events.

Involved Officer: Any officer who participates in a use of force, assists in overcoming an individual's resistance during a use of force, or orders or authorizes a use of force. The Special Weapons and Tactics (SWAT) Team command and the Special Response Team (SRT) command are not to be considered involved unless the respective commanding officer uses force.

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9.1.2 DEFINITIONS (CONTINUED)

Minimal Force: Physical interaction meant to escort, separate, guide, and/or control subjects that are not intended, or are not reasonably likely, to cause pain or injury. Minimal force does not constitute a reportable use of force. However, if a minimal force technique is used but results in an injury, or complaint of injury, it is a reportable use of force.

Passive Resistance: When a subject, without presenting a threat, fails to comply with the officer's commands to avoid, or prevent, being taken into custody without attempting to flee or pull away from the officer (e.g., dead weight, falling limp, refusing to use their own power to move, etc.).

Persons of Diminished Capacity: All persons encountered in the field who exhibit outward observable irrational, bizarre, or unpredictable behaviors that could be the result of intoxication, drug use, suicidal ideation, disability, or medical complications.

Positional Asphyxia: Occurs when the position of the body interferes with normal breathing, which may result in unconsciousness and/or suffocation.

Reasonable Belief: When facts or circumstances the officer knows are such to cause an ordinary and prudent officer to act or think in a similar way under similar circumstances.

Reportable Use of Force: Any use of force above minimal force. Reportable uses of force must be reported and reviewed pursuant to SOP 9.3 (Use of Force Reporting and Review).

Serious Physical Injury: A bodily injury that creates a:

- Substantial risk of death to the subject;
- Prolonged impairment of health or prolonged disfigurement; or
- Prolonged loss or impairment of a bodily organ or eye.

Special Impact Munitions Systems (SIMS): Departmentally-approved launchers and projectiles, which have the ability to incapacitate, with reduced potential for death or serious injury.

Standard CEW Cycle: An electrical discharge of up to five (5) seconds occurring after a successful application of CEW probes. The standard cycle may be shortened by turning the CEW off at any time during the cycle.

Takedown: Any maneuver utilized to swiftly bring a subject from an upright or standing position to the ground or to a surface, such as a car. Slowly guiding an individual to the ground without creating a likelihood of pain, or a complaint of pain, is considered minimal force and not a takedown.

Use of Force: Physical force used upon, or directed toward, the body of another person (LMCO 36.04).

Vehicle Strikes: Intentional contact made by a police vehicle to another occupied vehicle, which results in visible damage.

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9.1.3 DE-ESCALATION (KACP 1.3d)

Departmental members will, when it is safe, under the totality of circumstances, and both time and opportunity allow, attempt to resolve conflict or potential conflict through de-escalation techniques to decrease the likelihood that officers will resort to the use of force (LMCO 36.04).

When reasonable, under the totality of circumstances, officers should gather information about the incident, assess the risks, assemble resources, attempt to slow the momentum, and communicate and coordinate a response. In their interaction with subjects, officers should use advisement, warnings, verbal persuasion, and other de-escalation tactics as alternatives to force. Officers should recognize that they may withdraw to a position that is more tactically secure, or allows them greater distance in order to consider, or deploy, a greater variety of force options.

When considering the de-escalation techniques appropriate to the individual situation, officers should recognize they may be dealing with a person of diminished capacity who may display unpredictable conduct and/or not receive, or comprehend, commands or other forms of communication in the manner that the member would expect. It is the primary task of the members of the LMPD who confront these persons to resolve the encounter in the safest manner possible, in accordance with SOP 12.11 and SOP 12.20, as appropriate.

Officers who are responding to non-criminal mental health calls and wellness checks should determine whether the individual is experiencing a mental health or medical emergency and whether, and how, to de-escalate the situation. Officers should consider the risk in light of the person's mental or medical crisis. Officers are strongly encouraged to create distance, wait for appropriate backup, exhaust de-escalation tactics, and consider disengagement. Force should be resorted to only when the medical or mental health emergency has created an imminent threat of harm to the person, or others, and force is reasonably necessary to mitigate the threat. In assessing the appropriate force to be used, the person's diminished capacity must be considered. Deadly force will not be used if the person against whom the force is used only poses a threat to themselves.

When an officer is confronted with a situation that may necessitate the use of physical force, they should call for additional officers, when practicable. Supervisors will acknowledge and respond to incidents in a timely manner where law enforcement use of force is probable. The prospect of a favorable outcome is often enhanced when supervisors become involved in the management of an overall response to potential violent encounters by coordinating resources and officers' tactical actions.

9.1.4 USE OF PHYSICAL FORCE

An officer should, based on the facts known to them, utilize the lowest level of force reasonable to gain control of the subject (LMCO 36.04). Facts not known to an officer, no matter how compelling, cannot be considered later in determining whether the use of force was justified. All uses of force will be evaluated for compliance with LMPD policy, including whether the force was reasonable pursuant to the 4th Amendment as interpreted by *Graham v. Connor*. Accordingly, the totality of circumstances of each case will be considered with specific attention to the following factors:

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

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9.1.4 USE OF PHYSICAL FORCE (CONTINUED)

Pursuant to Kentucky Revised Statutes (KRS) 503.090, the use of physical force by an officer upon another person is justifiable when the officer, acting under official authority, is assisting in, or making, an arrest and:

- Believes such force is necessary to effect the arrest (KACP 1.3a);
- Makes known the purpose of the arrest or believes that it is otherwise known, or cannot reasonably be made known, to the person to be arrested; and
- Believes the arrest to be lawful.

An officer may also use physical force when they believe such force is reasonable in order to defend themselves or to defend another person (KRS 503.050). Officers may use physical force to protect a person if, under the circumstances reasonably perceived to be true, the person would have been justified in using such force to protect themselves.

Officers may also use physical force:

- To prevent the escape of an arrested person when the force could justifiably have been used to make the arrest under which the person is in custody (KRS 503.090).
- To move, or remove, any person who is obstructing a lawful police action in such a manner that the lawful police action cannot be accomplished.
- To prevent a person from committing suicide or inflicting serious physical injury upon themselves (KRS 503.100).

Officers are not required to allow any suspect to be the first to exercise force and gain an advantage in a physical confrontation. Officers are not required to engage in prolonged hand-to-hand combat before resorting to the use of force that will more quickly, humanely, and safely bring a resisting subject under physical control.

Hard empty hand control techniques directed at the head or face present a high potential of injury to both the officer and the person against whom the force is used; therefore, hard empty hand control techniques directed at the head or face are only permissible when active aggression is being directed at the officers, or others. Officers must justify each separate strike to the head/face.

Placing weight on a person's head or back, such as with their knees or arms, for a prolonged period may increase the risk of injury. Therefore, officers should avoid placing weight on a person's head or back for a period of time beyond that which is reasonable to gain and/or maintain control.

Additionally, officers should avoid placing weight on a person's neck for a prolonged period due to the increased risk of injury as a result of air and/or blood flow restriction. Carotid/vascular restraints are a use of physical force that are prohibited under the physical force policy (KACP 1.14).

SOP 9.2 provides specific guidance regarding when intermediate force tools can be used.

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9.1.5 RESTRAINED PERSON

Once a person is restrained or under control, the use of force is restricted to that which is reasonable to maintain control. Members are cautioned that the use of force that may be reasonable against an unrestrained person may not be reasonable when used on a restrained person.

A prisoner will not be placed leaning forward in a sitting position with their hands and legs restrained together. Restrained persons are to be seated or placed on their side. Members shall **not** allow a restrained person to remain in the following positions:

- Face-down, as it may cause positional asphyxia; or
- On their back, since it can cause nerve damage to the wrist and/or forearm area.

Handcuffs, by their design, are inherently uncomfortable. Officers should ensure that handcuffs are properly applied and double-locked (refer to SOP 10.5). Complaints of pain caused by wearing handcuffs should be addressed as soon as possible, and when it is safe and feasible to do so, by readjusting or otherwise ensuring proper application. Should any visible injury (e.g., bruising, swelling, bleeding, etc.) occur as a result of wearing handcuffs, or if there is a lasting complaint of pain following the removal of handcuffs, an Administrative Incident Report (AIR) will be completed as a Level 2 Reportable Use of Force.

When the prisoner is turned over to the Louisville Metro Department of Corrections (LMDC) facility or another authority, the officer will notify the receiving authority of known medical problems.

9.1.6 OFFICER INTERVENTION (KACP 1.13)

Departmental members should act to prevent or stop any officer, regardless of rank or assignment, from using unlawful, unnecessary, or excessive force (LMCO 36.04). Intervention may be verbal and/or physical.

Officers shall immediately report any incidents of unlawful or excessive force to their supervisor. Once notified of potentially unlawful, unnecessary, or excessive force, supervisors will immediately notify the Special Investigations Division (SID)/Professional Standards Division (PSD) Commander, as appropriate, through their chain of command. Members who are inhibited from reporting violations through the appropriate chain of command are required to submit the information directly to the SID/PSD Commander, as appropriate, or to the Chief of Police.

Members are prohibited from retaliating against any individual because they have prevented, intervened, or reported the unlawful or excessive use of force. Any member who engages in such retaliation will be subjected to discipline up to, and including, termination. Any member who feels they have been subjected to such retaliation should report this action through the appropriate chain of command, who then must escalate the complaint to the SID/PSD Commander, as appropriate, or directly to the Chief of Police. Any member who is inhibited from reporting retaliation through their chain of command should report the retaliation directly to the SID/PSD Commander, as appropriate, or to the Chief of Police.

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9.1.7 MEDICAL CARE

Following a use of force, officers should render medical aid consistent with their training and shall request Emergency Medical Services (EMS) to respond to the scene, as needed, when there is a visible injury, complaint of injury, sign of medical distress, or when medical attention is requested by any person.

EMS will be contacted to respond to all incidents involving the application of the Conducted Electrical Weapon (CEW).

9.1.8 USE OF DEADLY FORCE

Deadly force may not be resorted to unless other reasonable uses of force and de-escalation techniques have been exhausted or would clearly be ineffective. Deadly force is authorized in defense of oneself, or another, when the officer reasonably believes, based on the facts and circumstances, that the person against whom deadly force is used poses an imminent threat of death or serious injury to the officer, or another person (KACP 1.3b). Any force otherwise prohibited elsewhere in policy is permitted in deadly force situations. Deadly force will not be used if the person against whom the force is used only poses a threat to themselves.

Pursuant to KRS 503.090, deadly force is authorized to apprehend a felony suspect (KACP 1.3b) when, under the facts and circumstances known to the officer, it is reasonable to believe:

- The arrest is for a felony involving the use of, or the threatened use of, physical force likely to cause death or serious physical injury; and
- It is likely that the person to be arrested will clearly endanger human life unless they are apprehended without delay.

Departmental members should, if feasible, give a clearly audible verbal warning before the use of deadly force (LMCO 36.04). Warning shots are not permitted (KACP 1.3e).

Deadly force is also authorized to prevent the escape of an arrested person when deadly force could justifiably have been used to make the arrest under which the person is in custody (e.g., a serious, violent felony), and the officer believes that the person is likely to endanger human life unless apprehended without delay (KACP 1.3c).

Deadly force is never authorized to apprehend a fleeing misdemeanor or non-violent felony suspect (NOBLE).

Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe:

- The subject has committed a felony involving the infliction, or threatened infliction, of serious physical injury or death; and
- The escape of the subject would pose an imminent danger of death or serious physical injury to the officer, or another person.

Officers are authorized to discharge a firearm for the following purposes:

- In defense of human life, including the officer's life, or in defense of any person who is in imminent danger of serious physical injury, or death, as described in this section.

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9.1.8 USE OF DEADLY FORCE (CONTINUED)

- Against any animal that is gravely injured, or poses an imminent danger to persons, as necessary, when no other disposition is practical and the safety of the persons has been given prime consideration.
- Training and qualifications.

Officers who are discharging a firearm should remain cognizant of the following:

- The direction in which the firearm is being discharged.
- The danger of discharging a firearm while running or moving.

Departmental members will not discharge their firearms either at, or from, a moving vehicle except in response to gunfire, potential gunfire, or, in the rare case, where the vehicle is intentionally being used as a weapon against the officer, or others (LMCO 36.04). Officers will not discharge their weapons at vehicles simply because a subject is attempting to flee. Officers will avoid tactics that unreasonably place them in a position where the vehicle can be used as a weapon against them.

9.1.9 REPORTING AND REVIEW

All members must report uses of force as required by SOP 9.3. Members must notify an uninvolved, permanent-rank supervisor immediately, or as soon as practicable, following a reportable use of force, as defined in SOP 9.3. A failure to notify a supervisor of the use of any reportable force may result in discipline.

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9.2 USE OF INTERMEDIATE FORCE TOOLS

9.2.1 POLICY

The purpose of this policy is to address the use of intermediate force tools that are available to sworn departmental members. Intermediate force tool options (e.g., conducted electrical weapons (CEWs), chemical agents, impact weapons, etc.) may assist officers in de-escalating potentially violent confrontations and provide additional alternatives to the use of deadly force.

Officers will only carry, and use, departmentally-approved force tools in which they are trained and qualified to use, except in exigent situations when an officer may use any resources at their disposal (KACP 1.3f, 1.8). Officers will use these tools consistent with departmental training.

Officers are required to report each use of an intermediate force tool, outside of a training setting, pursuant to Standard Operating Procedure (SOP) 9.3. Officers must justify each individual use of intermediate force tools.

9.2.2 CARRYING INTERMEDIATE FORCE TOOL OPTIONS (KACP 1.8)

Uniformed officers and sergeants will wear the CEW and either an impact weapon or Oleoresin Capsicum (OC) spray. If not carried, the OC spray must be readily available in the officer's vehicle. CEWs are optional equipment for the ranks of lieutenant or above.

On-duty plainclothes officers and sergeants will have a departmentally-approved impact weapon, OC spray, or CEW on their person.

Off-duty officers, while not in uniform, are not required to carry any intermediary force tools, but will be armed with a departmentally-approved firearm and their credentials.

9.2.3 USE OF CEWS (KACP 1.8, 1.11c)

The use of CEWs is authorized on subjects who present an imminent danger to the safety of the officers, or others. Mere non-compliance or passive resistance, either verbal or physical, does not constitute imminent danger. The subject must display behavior, through active physical or verbal means, which reasonably demonstrates an imminent danger to the officer, or another person.

When activating the CEW on an individual, the officer will activate the device the least number of times to mitigate the imminent danger. If a CEW deployment occurs, and no window of opportunity to restrain the subject presents itself (because they are not reasonably incapacitated enough to allow physical restraint), following three (3) standard CEW cycles, the officer will attempt another reasonable force option(s) to apprehend the subject.

No more than three (3) standard CEW cycles will be activated, unless exigent circumstances are present. Exigent circumstances may include a situation where, although the CEW has been effective, the officer is alone and unable to control the suspect's actions, placing the officer at-risk of imminent danger following the standard CEW cycles. In such a situation, the officer will notify the MetroSafe dispatcher that they are in need of assistance (e.g., voice transmission or by hitting the emergency button on their radio), and the officer will activate the device the least number of times reasonable, and for no longer than what is reasonable, until there

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9.2.3 USE OF CEWS (CONTINUED)

is no longer a threat of imminent danger.

A CEW will only be used on a fleeing subject when:

- They are, or were, using a deadly weapon or dangerous instrument;
- They are wanted for a violent felony; or
- They continue to be an imminent danger to the officer(s), or others.

When a subject is fleeing, the officer should make known their intent to arrest, and the offenses, before deploying a CEW, unless the officer reasonably believes that:

- Giving notice would endanger the life of the officer;
- Giving notice would endanger the life of other innocent persons; or
- The reason for the arrest is obvious.

Officers should not intentionally target the chest, eyes, neck, head, breasts, and/or groin areas. When deploying a CEW against a subject who is facing the officer, the officer will target the area below the sternum (KACP 1.11b).

Guidance Regarding CEW Use

- Officers should warn the suspect of their intentions to use the CEW, when tactically feasible. Before activating the weapon, the officer should verbally announce their intentions to others present by shouting the word "taser."
- Officers should evaluate the age, size, gender, apparent physical/mental capabilities, and health concerns of a suspect prior to the use of a CEW.
- More than one (1) CEW should generally not be used against any one (1) person during a use of force encounter. Some activations, however, are not successful because of poor probe spread, low muscle mass contact, missed probes, etc. In these situations, another officer may activate their CEW. If such activation occurs, the second officer will shout the word "taser" and deploy the CEW. The first deploying officer will discontinue use of their CEW and aid in securing the person, or consider another reasonable force alternative.
- During, and following, any standard CEW cycle, the arresting officer(s) will focus on the window of opportunity when the subject may be disabled by the CEW to physically restrain and secure the subject, in order to minimize the number of standard CEW cycles (e.g., cuffing under power).
- When using the CEW, officers will continually assess each standard CEW cycle to determine whether further applications are warranted or a different tactic should be used.
- Officers may utilize the CEW on aggressive animals which present a physical threat to the officer, or any other person (refer to SOP 8.33).

When CEWs Should Not Be Used

The CEW should not be used:

- On obviously pregnant persons, elderly persons, young children, and visibly frail persons, unless an exigent circumstance exists that causes an imminent danger to the officer, or another person.

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9.2.3 USE OF CEWS (CONTINUED)

- When a subject is in an elevated position, where a fall is likely to cause serious injury or death, unless the subject poses a threat of serious physical injury to the officer, or others (KACP 1.3b, 1.11b).
- When a subject is in a location where they could drown.
- When a subject is operating an automobile, motorcycle, truck, all-terrain vehicle (ATV), bicycle, scooter, or any other motorized vehicle or hazardous machinery.
- When a subject is restrained by handcuffs or other restraints, unless the prisoner is a violent felon who is attempting to escape, where the officer reasonably believes the prisoner's actions create the risk of imminent danger to the officer, or another person.
- When a subject is in a flammable environment or has come in contact with flammable liquids.
- To prevent the swallowing of evidence or to dislodge, or retrieve, evidence from a suspect's mouth or other body cavities.
- To obtain compliance for evidence gathering.

Medical Care After CEW Contact

In cases where the CEW probes are deployed, officers will only remove the probes in a manner consistent with their training. In situations where the probes are in the head, neck, breasts, groin, buttocks, or other sensitive areas, medical personnel will perform the removal. The subject's injuries will be treated in a manner consistent with the CEW manufacturer's recommendations and departmental training, as soon as practical. Emergency Medical Services (EMS) will be contacted to respond to all incidents involving the application of a CEW. Officers should not transport the subject prior to the arrival of EMS. Additionally, officers will update dispatch in situations where the subject displays any of the following unusual reactions:

- The subject complains of chest pains.
- Through observation or complaint, the subject experiences shortness of breath.
- The subject is, or was, unconscious as a result of the use of the CEW.
- The subject is evidently under the influence of drugs.
- The subject displays a continued state of agitation after the use of the CEW.
- The subject falls after the use of the CEW and is injured as a result of the fall, unless the injury is a minor scrape or cut.

After removing the probes from the subject, the officers will collect the probes by putting them in a proper sharps container in an ambulance, at a medical facility, or at the Evidence and Property Unit (EPU) for disposal. If a subject displayed unusual reactions as a result of the use of the CEW, the cartridge and probes will be turned in to the EPU as evidence.

Officers will obtain the Medical (Med) Unit number and the names of the EMS personnel who are treating the subject and this information will be recorded on the Administrative Incident Report (AIR). Officers will obtain the EMS run number and will notate the number on the arrest citation so the Louisville Metro Department of Corrections (LMDC) can reference it. If the arrested person displays any of the unusual reactions listed above, but refused treatment from EMS, officers should immediately transport them to University of Louisville Hospital for examination by emergency room (ER) personnel.

All persons who have been subjected to a CEW activation will be monitored regularly while in police custody, even if they receive medical care.

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9.2.3 USE OF CEWS (CONTINUED)

Downloading CEW Data

After an officer uses their CEW, their commanding officer, as a standard procedure in a use of force investigation, will ensure that the involved CEW battery is docked and data is uploaded to Evidence.com. The CEW download report will be linked as an attachment to the BlueTeam entry as part of the AIR documentation, in accordance with SOP 9.3.

If an officer is suspected of misusing their CEW, their commanding officer, the Professional Standards Division (PSD), or Public Integrity Unit (PIU) may retrieve the CEW from the officer and download the data by docking the battery. The downloaded information will be stored as a departmental record and as evidence.

CEW Maintenance and Inspections

Officers will maintain a fully-loaded CEW magazine. At the conclusion of an incident in which a CEW was activated, the officer will obtain replacement cartridges from the EPU.

Officers are responsible for verifying their CEWs and batteries are in working order before the start of their tour of duty. During formal inspections, commanding officers will inspect their officers' CEWs for damage, low batteries, and a full magazine.

9.2.4 USE OF CHEMICAL AGENTS (KACP 1.8, 1.11c)

With the exception of the Special Weapons and Tactics (SWAT) Team and Special Response Team (SRT) (as noted below), the use of chemical agents is limited to OC spray and pepper ball munitions.

OC Spray

The use of OC spray is permitted against subjects who display active resistance or present an imminent danger to officers, or others. OC spray may also be used:

- On prisoners who attempt to escape or attempt to damage the property of others, provided a verbal warning has been issued and the officer has allowed a reasonable amount of time for compliance.
- In defense of any person.

Pepper Ball Launchers

Pepper ball launchers can be utilized for a dual purpose, both as a chemical agent dispersal system and as an impact weapon. When used as a chemical dispersal system, officers should avoid aiming directly at subjects, instead directing munitions at the ground or another hard surface nearby. When used as a chemical agent dispersal system, pepper ball launchers may be deployed where the use of OC spray would be authorized.

Pepper ball launchers may be utilized as an impact weapon on subjects who display active resistance or present an imminent danger to officers, or others. Unlike Special Impact Munitions Systems (SIMS) (e.g., 40mm launcher/sock round), the pepper ball launchers, when used as an impact weapon, should not cause death, even when striking prohibited areas. Officers are **NOT** authorized to target the head, neck, spine, and groin, unless exigent circumstances exist.

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9.2.4 USE OF CHEMICAL AGENTS (CONTINUED)

Areas of the body contaminated with chemical agents will be treated in a manner consistent with the manufacturer's recommendations and departmental training, as soon as practical. For any exposed mucous membranes, the officer will ensure decontamination is offered with fresh water and/or saline solution.

The use of chemical agents by the SWAT Team and SRT will be in accordance with the manufacturer's recommendations and the respective team's operations manual. The use of chemical agents for crowd control or civil disturbance will be conducted pursuant to SOP 12.6.5.

9.2.5 USE OF SPECIAL IMPACT MUNITIONS SYSTEMS (SIMS) (KACP 1.8, 1.11c)

The use of SIMS is authorized on subjects who present an imminent danger to the safety of the officers, or others, when the officer reasonably believes the use of SIMS may mitigate the imminent danger. These include the 40mm launcher and the sock round, which is deployed from designated shotguns. The use of SIMS by the SWAT Team and SRT will be in accordance with the manufacturer's recommendations and the respective team's operations manual.

The potential exists for SIMS projectiles to inflict serious injury, or death, when they strike the head, neck, spine, groin, or chest. Officers will avoid intentionally targeting these body areas, unless deadly force is authorized. SIMS projectiles are designed to be direct impact munitions. Officers are prohibited from deploying sock rounds through intermediate barriers, such as glass, unless deadly force is authorized, due to the potential for serious injury or death (KACP 1.11b).

Lethal force backup must be in place as support, prior to the deployment of SIMS. Any time a SIMS is used, EMS will be contacted to evaluate the subject and transport them to the hospital, if necessary.

9.2.6 USE OF IMPACT WEAPONS (KACP 1.8)

The use of impact weapons to strike is authorized on subjects who present imminent danger to the safety of the officers, or others, when the officer reasonably believes the use of the impact weapon will mitigate the imminent danger. Impact weapons are authorized as a means of:

- Physical restraint or control.
- Defense of any person.

Because of the potential for serious injury, or death, officers will avoid intentional strikes to the head, neck, throat, clavicle, spine, or kidney area with an impact weapon of any sort, unless deadly force is justified (NOBLE) (KACP 1.11b).

9.2.7 USE OF CANINE

The Canine Unit provides highly-trained canine teams that can be deployed in situations to enhance officer effectiveness and the safety of citizens and officers alike. The use of a canine in the direct apprehension of subjects constitutes a use of force and poses a risk of injury, so careful consideration must be given prior to making the decision to deploy. Canine handlers and/or canine commanding officers will consider the circumstances surrounding a search, the safety of others, and the safety and capabilities of the canine. The

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9.2.7 USE OF CANINE (CONTINUED)

use of canines must be objectively reasonable, under the totality of circumstances and will be evaluated under the guidelines of *Graham v. Connor* (490 U.S. 386 (1989)) for adherence to Constitutional Law. In addition to the requirement that canine use be objectively reasonable, it is the policy of the Louisville Metro Police Department (LMPD) that canines will only be deployed for direct apprehension when the handler has probable cause to believe the subject(s) being sought has/have:

- An arrest warrant for a violent felony (pursuant to SOP 12.1.1) or is otherwise wanted for fresh charges for the commission of a violent felony **AND** the subject is displaying active resistance; **OR**
- An arrest warrant for a felony, or is otherwise wanted for fresh charges for the commission of a felony (unless the only felony charge is fleeing), and who poses an imminent threat to officers and/or civilians, or has concealed themselves and has refused to surrender after warnings have been given **AND** a search of the premises would expose officers to a risk of injury.

Canine handlers will not deploy canines against subjects where there is a reason to believe the subject is a juvenile, unless the juvenile is wanted for a violent felony offense and is displaying active resistance.

In rare circumstances, and with prior approval of a canine commanding officer, a canine can be used on a lead to determine the direction of travel of non-felony criminal suspects. In this circumstance, at no time will a canine be deployed to engage in the direct apprehension of any non-felony criminal suspect, unless the suspect becomes wanted for a felony and the criteria above is met.

Unless it is unsafe to do so, and only if the handler has specific and articulable facts to indicate that making a canine announcement would put the handler, other officers, and/or the public in additional and unnecessary danger, canine handlers will give loud verbal warnings prior to releasing a canine to search or make a direct apprehension. Canine announcements are made to prevent innocent people from inadvertently being injured by the canine and to allow the suspect(s) an additional opportunity to surrender. When a canine is about to be released for the purpose of locating or direct apprehension of a suspect, the handler will issue verbal warnings consisting of:

- Identification of authority.
- Directions to the suspect (i.e., "Speak to me now," "Come out," etc.).
- Intention (i.e., "Police officer, come out or I will release my dog," "When my dog finds you, he will bite you," etc.) and result (i.e., dog will be released if directions are not followed and the suspect could be bitten).

Unless it is unsafe to do so as described above, verbal warnings will be issued at least three (3) times prior to deploying the canine and, depending on the size of the search area, warnings should be given throughout the search, unless not tactically sound. Sufficient time should be given between each warning to allow the subject to surrender. The warnings should be repeated as the officer moves into areas outside of the earshot of the initial warning. These warnings should be given in Spanish if the suspect is reasonably believed to be a Spanish-speaking, and/or Limited English Proficient (LEP), individual.

There may be situations in which a subject surrenders after a canine is deployed but before an interaction between the subject and canine occurs. In these situations, canine handlers will attempt to down, or recall, the canines in any instance of a surrendering subject. In no instance of an actual surrender should a canine be deployed to bite, or otherwise make contact with, the subject.

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9.2.7 USE OF CANINE (CONTINUED)

In instances where a canine apprehends a suspect by biting them, the handler will remove the canine as soon as officers have control, or surrender, of the suspect and the canine can be safely released, taking into account that the average person will struggle if seized, or confronted, by a canine.

When safe and feasible, canine handlers will make all reasonable efforts to keep the police canine in sight and auditory range.

Canine teams will not be used for crowd control.

EMS will be contacted to respond to all incidents of canine bites.

Any instance in which a canine is involved in the direct apprehension of a subject, regardless of whether a bite occurs, will be a reportable use of force (refer to SOP 9.3). An AIR will also be completed, via the BlueTeam link, located on the LMPD Intranet (refer to SOP 3.1).

An unintended canine bite or injury which is not related to an intentional canine deployment is not reported as a use of force but will be reported separately through an AIR (refer to SOP 3.1 and SOP 9.3).

9.2.8 REPORTING AND REVIEW

All members must report uses of force as required by SOP 9.3. Members must notify an uninvolved, permanent-rank supervisor immediately, or as soon as practicable, following a reportable use of force.

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9.3 USE OF FORCE REPORTING AND REVIEW (KACP 1.11a-c)

9.3.1 POLICY

The purpose of this policy is to set forth the requirements for reporting and reviewing a use of force incident to ensure a fair, thorough, and impartial assessment of officer actions.

9.3.2 REPORTABLE LEVELS OF FORCE

Levels of Force: The LMPD categorizes force into four (4) levels for reporting and review purposes. Use of force requires reporting when it exceeds minimal force. The levels are as follows:

- **Level 1 Reportable Force:** Includes any instance when the below types of force are utilized, resulting in no obvious injury, or complaint of injury, by the subject:
 - Pain compliance techniques
 - Takedowns
 - Canine apprehension without a bite or physical contact between a canine and the subject
 - Pointing a firearm at a subject (Federal Task Force Officers (TFOs) are exempt from this requirement during the execution of their respective unit duties)
 - Deployment of the grappler, in which the grappler makes contact with an occupied vehicle
- **Level 2 Reportable Force:** Any instance of force resulting in physical injury, or complaint of injury, **OR** any instance when the following types of force are utilized (that do not result in serious physical injury):
 - Conducted Electrical Weapon (CEW) activation (regardless of whether the probes contact the individual) resulting in three (3), or fewer, standard CEW cycles to an individual during a single encounter
 - Canine apprehension resulting in a bite or physical contact between a canine and the subject
 - Punches, strikes, elbows, or kicks to any area of the body
 - Use of a chemical agent
 - Discharge of a less-lethal launcher/munition
 - Any strikes with an impact weapon to areas not defined as a Level 3 Reportable Force
 - Takedowns of handcuffed subjects
 - Vehicle Strikes
- **Level 3 Reportable Force:**
 - Any use of force that results in the loss of consciousness or admittance to a hospital (treatment in an emergency room (ER) does not constitute hospitalization)
 - Any strikes with an impact weapon to sensitive areas (i.e., head, neck, sternum, spine, groin, or kidney area)
 - Any application of more than three (3) standard CEW cycles to an individual during a single encounter, regardless of whether the applications are by the same, or different, officers
 - Any use of chokeholds or carotid/vascular restraints

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9.3.2 REPORTABLE LEVELS OF FORCE (CONTINUED)

- **Level 4 Reportable Force:** Any instance of force resulting in death or serious physical injury **OR** any instance when the following types of force are utilized (that do not result in death or serious physical injury):
 - Discharge of a firearm at a subject
 - Any use of bladed/edged weapons on a subject

9.3.3 OVERVIEW OF FORCE REPORTING AND REVIEW PROCESS

Officers are not required to report minimal force. However, Officers are required to report on all levels of reportable uses of force:

- Level 1 Reportable Force reports will be completed by an officer who was involved and reviewed by an uninvolved, permanent-rank supervisor.
- Level 2 and Level 3 Reportable Force investigations and reports will be completed by an uninvolved, permanent-rank supervisor and reviewed through a division lieutenant before submission to the Force Investigations Review Unit (FIRU), with a copy to the division major.
- Level 4 Reportable Force investigations will be conducted by the Public Integrity Unit (PIU), in accordance with the PIU Operations Manual.

When an incident involves multiple types of force or multiple members, the entire incident will be reported and investigated at the highest level of force used by any member during the incident.

9.3.4 NOTIFICATION

Any member who is involved in a use of force, or witnesses a use of force, will verbally notify an uninvolved, permanent-rank supervisor as soon as practical. Only one (1) notification is required for a group of officers who are involved in a use of force incident.

9.3.5 CLASSIFYING THE LEVELS OF FORCE

The supervisor will inquire about injuries and the nature of the force used to properly categorize the use of force. If there is any doubt as to the level, the supervisor will respond to the scene to make the final determination. The chain of command may reclassify the level of force based on the facts of the event during their investigation or review.

9.3.6 SUPERVISOR RESPONSE TO THE SCENE TO INVESTIGATE

An uninvolved, permanent-rank supervisor must respond to investigate Level 2 and Level 3 Reportable Force incidents. Supervisor response to the scene of a Level 1 Reportable Force incident is not required, unless they are notified that the officer's Body-Worn Camera (BWC) did not capture the incident in its entirety.

If a supervisor is involved in a Level 2 or Level 3 Reportable Force incident, the investigation and report will be completed by an uninvolved, permanent-rank supervisor (of equal or higher rank).

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9.3.6 SUPERVISOR RESPONSE TO THE SCENE TO INVESTIGATE (CONTINUED)

If, for any reason, there is no permanent-rank supervisor of equal or higher rank working in the division of the occurrence, the involved supervisor will contact MetroSafe and have them check all channels for a supervisor of appropriate rank. In certain instances, the Night Commander may have to be contacted to investigate the use of force. The report will be submitted for review to an uninvolved lieutenant in the division of the primary involved member prior to submission to the FIRU.

9.3.7 OFFICERS REPORTING REQUIREMENTS

For all use of force incidents, an involved officer will notify their commanding officer of the use of force. If the commanding officer confirms that the force falls within the Level 1 Reportable Force category, the officer will be responsible for completing an Administrative Incident Report (AIR), via the BlueTeam link, located on the Louisville Metro Police Department (LMPD) Intranet. The report must be completed and forwarded to an uninvolved, permanent-rank supervisor of the division in which the incident occurred within 72 hours or by the end of the next tour of duty, whichever is later. In addition to attaching relevant BWC footage, photos, and citations to the BlueTeam entry as part of the AIR documentation, the officer will complete a narrative that contains, at a minimum:

- The legal reason for initial police presence;
- A specific description of the acts that led to the reportable use of force;
- The level of resistance or threat encountered;
- A description of every type of reportable use of force that was used; and
- Any injuries, or complaint of injuries, related to the use of force incident.

Officers must articulate the justification for each use of force. Officers shall avoid conclusory statements, boilerplate, or canned language, including, but not limited to, “furtive movement” or “assaultive behavior” without supporting incident-specific details in the use of force reporting.

If the BWC did not capture the incident in its entirety (e.g., a failure to activate or the camera being displaced from their body), officers will contact a supervisor to respond to the scene to search for additional sources of video. This search will be documented in the BlueTeam entry and any obtained video will be attached.

Involved officers must specifically ask the subject if there are any injuries. If any physical injuries are indicated, the force is a Level 2 Reportable Force, or above, and an uninvolved, permanent-rank supervisor must respond to the scene, assume control of the investigation, and complete the AIR, via the BlueTeam link, located on the LMPD Intranet. Officers shall obtain medical treatment for the subject’s injuries, as needed.

For Level 2 and Level 3 Reportable Force incidents, the involved officer will complete a written Use of Force Statement form (LMPD #24-0001). This form can be found on the LMPD Intranet by clicking on the “Electronic Forms” link. This statement will contain a narrative with the same elements as a Level 1 Reportable Force report listed above. This statement must be signed and forwarded to the investigating commanding officer by end of the officer’s tour of duty. The Chief of Police may waive the requirement to complete this form, in extenuating circumstances, in order to maintain operational efficiency.

An uninvolved, permanent-rank supervisor will review the AIR for accuracy, completeness, and compliance with policy, including whether the force was objectively reasonable. Reviewers should also make note of any policy violations and address these violations pursuant to policy. The reviewing supervisor may reclassify the level of

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9.3.7 OFFICERS REPORTING REQUIREMENTS (CONTINUED)

force and/or consult with the chain of command regarding potential violations of policy and appropriate corrective actions.

9.3.8 SUPERVISOR REVIEW OF LEVEL 1 REPORTABLE FORCE INCIDENTS

If a supervisor is involved in the Level 1 Reportable Force incident (actively participates or orders), then the supervisor will complete the AIR, via the BlueTeam link, located on the LMPD Intranet, and it will be reviewed by an uninvolved lieutenant.

The report will be forwarded, via BlueTeam, through the chain of command, to the division commander for review and disposition. At each level of review, the report will be checked for accuracy, completeness, and compliance with policy, including whether the force was objectively reasonable. All Level 1 Reportable Force reports should be forwarded, via BlueTeam, by the division commander to the Professional Standards Division (PSD) Adjutant Lieutenant within 21 days of the incident. If there are any concerns about the reasonableness of the use of force, the report will be routed, via BlueTeam, to the appropriate Bureau Commander and then to the Legal Advisor in lieu of the PSD Adjutant Lieutenant.

9.3.9 SUPERVISOR INVESTIGATION OF LEVELS 2 AND 3 REPORTABLE FORCE INCIDENTS

An uninvolved, permanent-rank supervisor will conduct a thorough investigation into the use of force incident for the purposes of objectively documenting the incident and assessing whether the force was objectively reasonable and complied with policy, based on the totality of the circumstances.

The supervisor's responsibilities include:

- Recording the entire on-scene investigation on their BWC.
- Ensuring medical treatment has been sought for any injuries to involved subjects, or officers.
- Immediately contacting an uninvolved lieutenant for Level 3 Reportable Force incidents to respond to the scene and supervise the investigation being performed. The lieutenant will notify the division commander immediately, via phone. The division commander will then determine the need to contact the PIU to investigate, based on the likelihood the injury sustained by the subject may rise to a serious physical injury **OR** the need to conduct a criminal investigation.
- Separating officers involved in the incident until statements can be obtained, if the scene is secure.
- Obtaining oral statements from witness officers who are on-scene, if applicable. These oral statements and all other oral statements described in this section should be captured on the supervisor's BWC. The supervisor should avoid using leading questions.
- Obtaining written Use of Force Statement forms from all involved officers by the end of their tour of duty. Statements should be completed electronically, signed, and attached to the BlueTeam entry as part of the AIR documentation. In the event that the use of force incident involves a charge of Assault 3rd Degree, for an assault on the involved officer, the investigating commanding officer will interview the involved officer on-scene in order to complete the citation and incident report for the charge of Assault 3rd Degree.
- Attempting to obtain an oral statement from the subject upon whom the force was used.
- Canvassing the area for any witnesses to the incident and attempt to obtain oral statements. Notate identifying information for inclusion in the AIR. Keep in mind that these statements are voluntary and witnesses cannot be detained, or otherwise compelled, to speak to officers.

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9.3.9 SUPERVISOR INVESTIGATION OF LEVELS 2 AND 3 REPORTABLE FORCE INCIDENTS (CONTINUED)

- Actively looking for the presence of surveillance cameras, or cell phone video, in the area that may have captured the incident and attempting to obtain the video for inclusion in the AIR. Keep in mind that this video must be obtained voluntarily and cannot be seized, or otherwise compelled. Should the media be unable to be uploaded to Evidence.com, the supervisor should contact the Video Forensics and Analysis Squad (VFAS) to arrange for assistance.
- Photographing the scene for any items/objects pertinent to the investigation. Note that personal property/belongings may not be “seized” for the purpose of this administrative investigation.
- Photographing involved officers; at least four (4) photos will be taken – two (2) stand-up photos (one (1) showing the front of the officer and one (1) showing the back) and one (1) photo each of the front and back of the hands. Also, any injuries sustained by officers and/or any damage to equipment, uniforms, or property will be photographed.
- Photographing the arrested subject sufficiently to document any injury, or the lack of any injury; at least two (2) stand-up photos (one (1) showing the front of the suspect and one (1) showing the back) will be taken. Additionally, photos will also be taken of any injuries or areas where there is a complaint of injury.
- Photographing any damage as a result of the officer’s involvement.
- Uploading evidence to the AIR, via the BlueTeam link, located on the LMPD Intranet. At the conclusion of the on-scene investigation, supervisors will attach all relevant documentation, BWC footage, third-party video, photographs, officer’s written Use of Force Statement forms, and CEW audit trails to the BlueTeam entry as part of the AIR documentation.

For all use of force incidents, the supervisor will, by the end of their shift, send an email to the Air Notification Group, at Impdair@louisvilleky.gov, located within the department’s email distribution list, pursuant to SOP 3.1.1, which notifies command of a use of force incident. The AIR will be completed, via the BlueTeam link, located on the LMPD Intranet, within 72 hours of the incident or by the end of the next tour of duty, whichever is later. If additional time is needed, (e.g., to obtain video), the division commander may approve an extension of time, in writing, that contains a detailed explanation as to why the extension is needed. This authorization must be subsequently attached to the BlueTeam entry as part of the AIR documentation. A failure to complete the AIR timely may result in disciplinary action.

If a Level 2 or Level 3 Reportable Force incident overlaps with an investigation of a violent felony, such that interviewing the witnesses and gathering evidence could jeopardize the criminal investigation of the suspect, the criminal investigation of the matter will take precedence over the use of force administrative investigation. In such event, a Level 2 or Level 3 Reportable Force investigation may be necessarily limited in-scope, as a matter of practicality.

9.3.10 SUPERVISOR ASSESSMENT AND REPORT FOR LEVELS 2 AND 3 REPORTABLE FORCES

The investigating supervisor shall ensure all required documentation has been submitted and will review the available evidence to assess compliance with policy. This determination will include a specific assessment as to whether force was objectively reasonable, in accordance with *Graham v. Connor* (490 U.S. 386 (1989)).

The investigating supervisor will:

- Ensure all required documentation has been submitted.

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9.3.10 SUPERVISOR ASSESSMENT AND REPORT FOR LEVELS 2 AND 3 REPORTABLE FORCES (CONTINUED)

- Address any discrepancy, confusion, or lack of information in the provided information through supplementary statements or documentation in the AIR. The supervisor will document, in the BlueTeam entry as part of the AIR documentation, any issue that cannot be resolved.
- Summarize their investigation in a written report, via the BlueTeam link, located on the LMPD Intranet. The report will include a detailed narrative description of the incident that describes the force used by the officer(s) and the subject(s), any injuries sustained by the officer(s) and the subject(s), and the sequence of events comprising the incident. Additionally, it will document the supervisor's actions in reviewing, or screening, the incident.
- Evaluate the event and all uses of force for compliance with LMPD policy, in writing, including whether each use of force was objectively reasonable. The supervisor will document and address any violation of policy.
- Document any other relevant concerns, such as additional policy violations and actions taken by the supervisor, to address the involved officers.
- Refer potential misconduct and/or criminal conduct to the PIU or PSD, as appropriate, pursuant to policy.

9.3.11 DETERMINING THE REASONABLENESS OF FORCE

Uses of force must comply with LMPD policy, to include being "objectively reasonable," as required by the United States Constitution and federal law (*Graham v. Connor*). *Graham v. Connor* maintains that applying the Constitution's 4th Amendment to uses of force requires "attention to the severity of the crime at issue, the immediate threat to the safety of others, whether the subject is actively resisting or attempting to evade arrest by flight." Further, this assessment "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."

When determining whether an officer has used reasonable force under the totality of circumstances, the facts and circumstances known, or reasonably should be known, by the officer that should be considered include, but are not limited to:

- The severity of the suspected offense or reason for contact with the individual;
- Whether the subject posed a threat of injury to themselves, the officer, or others, and the immediacy of the threat;
- The resistance of the individual who is being confronted by the officer and whether, and how, the subject fled;
- Prior knowledge of the subject's violent tendencies or propensity to carry weapons;
- The officer's and subject's age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, and the number of officers versus subjects;
- The effects of drugs and alcohol;
- The subject's mental state or capacity;
- Proximity to weapons or dangerous improvised weapons/devices;
- The degree to which the subject has been effectively restrained and their ability to resist, despite being restrained;
- The training and experience of the officer;
- The environment wherein the incident is occurring/presence of bystanders; and/or
- The risk of escape.

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9.3.12 CHAIN OF COMMAND REVIEW OF LEVEL 2 AND 3 REPORTABLE FORCE REPORTS

A lieutenant will typically be the last level of review within a division before a report is submitted to the FIRU. When a lieutenant conducts the force investigation because a sergeant or lieutenant was involved in the use of force incident, an uninvolved lieutenant shall review the report prior to submission to the FIRU. The division commander will be copied on all AIR submissions to the FIRU. Additionally, if there are any concerns about the reasonableness of the force or violations of the use of force policies, the AIR will be routed to the division commander, via BlueTeam, prior to submission to the FIRU.

The chain of command shall review Level 2 and 3 Reportable Force AIRs to ensure completeness and accuracy and that the use of force was consistent with policy, including whether the findings are supported by a preponderance of the evidence.

The chain of command will:

- Return for correction any use of force review that is incomplete, inconsistent, erroneous, lacking relevant information, and/or is not supported by a preponderance of the evidence.
- If necessary, re-classify a use of force review to the appropriate level and ensure the force is investigated based on the appropriate level.
- Document in the BlueTeam entry, as additional documentation for the AIR, any counseling given, training referrals made, or recommendations for discipline related to the member's actions or the supervisor's use of force review.
- Immediately refer misconduct or potential criminal activity to the PIU or PSD, as appropriate, pursuant to policy.
- Forward the completed use of force review to the FIRU, via BlueTeam, within 21 days of the incident, without exception, with a copy to the division commander.

9.3.13 REVIEW OF BODY-WORN CAMERA (BWC) FOOTAGE (KCAP 17.13c)

Supervisors and reviewers in the chain of command shall review sufficient video footage to make an evidence-based determination regarding whether the force was in compliance with LMPD policy. In conducting a use of force review, the supervisor or reviewer shall, at a minimum, view available BWC video and/or third-party video of the following:

- The entire use of force incident, from the initial contact with the individual against whom the force was used up to the point at which the individual is in custody on-scene and finally secured in a police or emergency vehicle.
- Any interactions between involved officers and civilians, or other officers, preceding a use of force incident that provide information about the subject upon whom the force was used.
- The transition of the prisoner from the police vehicle to the custody of jail personnel.

The supervisor and reviewer shall utilize discretion as to whether or not to review video that is irrelevant to the determination of whether the use of force complied with LMPD policy. This provision does not preclude the reviewer from looking at additional video of the incident.

Supervisors will ensure that bookmarks are applied to BWC footage that pertains to the use of force, all deficiencies with policy, supervision, tactics, and/or training, and all potential policy violations. Additionally, supervisors will bookmark all investigative steps taken on Level 2 and Level 3 Reportable Force reports.

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9.3.14 FORCE INVESTIGATIONS REVIEW UNIT REVIEW (FIRU) FOR LEVELS 2 AND 3 REPORTABLE FORCES

The FIRU will conduct an administrative assessment of all Level 2 and Level 3 Reportable Force incidents after the chain of command has completed its review, pursuant to SOP 2.35. The FIRU will review these incidents to assess:

- Whether the findings by the chain of command regarding the use of force are consistent with all departmental policies and are supported by a preponderance of the evidence.
- Whether the investigation was complete.
- Whether there are tactical, equipment, or policy considerations to be addressed.

After completing its assessment, the FIRU will:

- Return any reports requiring corrective action by the chain of command.
- Determine if any action involved possible misconduct by any officer and notify, and refer the incident to, the PIU or PSD, as appropriate, for investigation, pursuant to policy.
- Document the findings of its review and any subsequent corrective actions recommended and taken.

9.3.15 LEVEL 4 REPORTABLE FORCE INCIDENTS

All use of force incidents categorized as Level 4 Reportable Force incidents will be investigated by the PIU in accordance with the PIU Operations Manual.

An uninvolved, permanent-rank supervisor shall promptly respond to the scene. This supervisor shall ensure that the PIU is responding to the scene to assume the investigation. Prior to the arrival of the PIU, the supervisor shall ensure that appropriate medical treatment has been rendered to any injured person and that the integrity of the scene is preserved.

9.3.16 REPORTS ON ASSAULTS AGAINST OFFICERS

All incidents of Assault 3rd Degree on an LMPD officer requires the involved officer to immediately notify their supervisor. The supervisor will respond to the scene, investigate the incident, and complete the Records Management System (RMS) incident report and the Kentucky Uniform Citation, listing themselves as the reporting and charging officer. An on-duty detective may complete the citation and RMS incident report at the discretion of the supervisor. If the incident includes a reportable use of force, the supervisor will complete an AIR, via the BlueTeam link, located on the LMPD Intranet, and will add "Assault 3" as a category on the AIR. An assaulted officer should never be the reporting or charging officer in any case in which they are a victim. The PIU may also conduct an investigation of the incident based on the criteria set forth in SOP 1.9.

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9.1 USE OF FORCE

9.1.1 POLICY

It is the policy of the Louisville Metro Police Department (LMPD) that all members recognize the sanctity of human life, respect basic human rights, and have an intolerant attitude towards the abusive treatment of all persons. The use of force by officers must be conducted in an impartial manner, free of bias, and in accordance with applicable laws and the Standard Operating Procedures (SOPs) of this department. Bearing this in mind, officers' use of force will be value driven, utilizing only the force reasonable under the circumstances in order to minimize the chance of injury to themselves and others (NOBLE).

Officers are sometimes confronted with situations where control must be exercised to affect arrests and to protect public safety. Control may be achieved through de-escalation tactics (e.g. advice, persuasion, warnings, etc.) or by the use of physical force. While the use of reasonable physical force may be necessary in situations that cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would reasonably be ineffective under the particular circumstances (KACP 1.3a). When utilizing force, officers will only use departmentally-approved equipment in which the officers are trained and qualified to use, except in exigent situations when an officer may use any resource at his/her disposal (KACP 1.3f, 1.8). Officers are permitted to use whatever force is reasonable to protect others or themselves from bodily harm.

Commanding officers are required to complete an Administrative Incident Report (AIR), via the BlueTeam link, located on the LMPD Intranet, on all use of force incidents resulting in any injury, or the complaint of any injury, to either the officer or subject or when physical force other than a control hold is used (Louisville Metro Code of Ordinances (LMCO) 36.04) (refer to SOP 3.1).

All use of force incidents resulting in any injury, or the complaint of any injury, to either the officer or subject, the use of physical force other than a control hold, or a fresh arrest resulting in a charge of Resisting Arrest and/or Assault 3rd Degree on a Police Officer requires the involved officer to immediately notify his/her commanding officer (LMCO 36.04). The commanding officer will respond to the scene, investigate the incident, and complete the AIR and other necessary paperwork, pursuant to section 9.1.14 of this SOP. If the primary officer is off-duty at the time of the incident, a commanding officer from the division where the incident occurred is responsible for responding to the scene, investigating the incident, and completing the AIR and other necessary paperwork.

An AIR will be completed to document the use of force. The commanding officer will complete the AIR, via the BlueTeam link, located on the LMPD Intranet, and comment on the appropriateness of the use of force in the given situation. This report will be forwarded, via BlueTeam, through the appropriate chain of command. For the purposes of this policy, an acting sergeant is considered a commanding officer.

An AIR will be completed by the officer, via the BlueTeam link, located on the LMPD Intranet, and routed, through the officer's chain of command, when a show of force (as defined in SOP 9.1.2) incident occurs (LMCO 36.04) or a subject, who is placed into custody, is injured prior to police contact (refer to SOP 3.1).

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9.1.2 DEFINITIONS

Activate: Depressing the trigger or Arc display, Re-energize and Cartridge advance (ARC) switch of a Conducted Electrical Weapon (CEW) causing a CEW to arc or to fire probes.

Active Aggression: An overt act of assault through physical means, coupled with the present ability to carry out the assault, which reasonably indicates that an assault or injury to any person is imminent.

Active Resistance: When a subject's physical actions are intended to prevent an officer from placing the subject in custody or taking control, but are not directed at harming the officer (e.g. pulling, walking or running away, or breaking an officer's grip).

Chemical Agent: A departmentally-approved less-lethal weapon, which consists of a chemical compound that irritates the eyes to cause tears, discomfort, and a temporary loss of visual capacity (e.g. pepper spray, Mace, Oleoresin Capsicum (OC) spray).

Compliant: No threats or resistance (subject is cooperating and following all directions/commands from the officer).

Conducted Electrical Weapon (CEW): Departmentally-approved less-lethal weapons designed to disrupt a subject's central nervous system by means of deploying battery powered electrical energy, sufficient to cause intense muscle contractions, affecting the individual's motor nervous system and/or disruption of the individual's sensory nervous system and central nervous system. A CEW provides the user with the capability of discharging probes, drive-stunning, or a combination of both during a use of force encounter.

Control Hold: A technique with a low probability of injury to the officer or subject, utilized to maintain physical control of a subject (e.g. transport wrist-lock or straight arm-bar).

Deadly Force: Force, which the officer knows to create a substantial risk of causing death or serious physical injury. Head, neck, throat, or clavicle injuries caused by an impact weapon, of any sort, can lead to death or serious physical injury.

De-Escalation: A desired outcome achieved by utilizing decision-making, communication, and tactics to resolve conflict or potential conflict, which is ethically based on the preservation of life and the avoidance of the use of force (LMCO 36.04).

Drive-Stun: Making direct contact with the CEW to any part of an individual's body (X26 model only: after a CEW cartridge has been expended or removed) and activating the CEW without a probe deployment.

Empty Hand Control: The use of bodily force to gain control of an individual.

Excited Delirium: State of extreme mental and physiological excitement, characterized by extreme agitation, hyperthermia, hostility, and exceptional strength and endurance without fatigue. Causes include, but are not limited to, drug use, hypoxia, hypoglycemia, stroke, or intracranial bleeding.

Hard Empty Hand Control: The use of punches, strikes, or kicks to restrain an individual.

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9.1.2 DEFINITIONS (CONTINUED)

Hyperthermia: Unusually high body temperature.

Hypoglycemia: Lower than normal level of blood glucose.

Hypoxia: An inadequacy in the oxygen reaching the body's tissues.

Imminent Danger: Also known as "impending danger." An action or event that is likely to occur at any moment which is likely to cause injury to an officer or another person.

Intervene: To act verbally or physically to prevent or alter a result or course of events.

Mental Illness: A medical condition that disrupts a person's thinking, feeling, mood, ability to relate to others, and daily functioning. Mental illnesses are medical conditions that often result in a diminished capacity for coping with the ordinary demands of life.

Neuro-Muscular Incapacitation: The desired effect of a successful CEW probe deployment causing intense muscle contractions affecting the individual's motor nervous system and/or disruption of the individual's sensory nervous system and central nervous system.

Passive Resistance: When a subject is not complying with an officer's commands and is uncooperative, but is taking only minimal physical action to prevent an officer from placing the subject in custody and taking control (e.g. standing stationary and not moving upon lawful direction, falling limply and refusing to use his/her own power to move, holding onto a fixed object, or locking arms to another during a protest or demonstration).

Persons of Diminished Capacity: Encompasses all persons encountered in the field who exhibit unusual behaviors commonly referred to as irrational, bizarre, or unpredictable. These outward observable symptoms could be the result of intoxication, drug use, suicidal ideation, disability, or medical complications.

Positional Asphyxia: Occurs when the position of the body interferes with normal breathing. The inability to breathe creates a lack of oxygen in the body which may result in unconsciousness or suffocation. The inability to breathe properly may result from the body's position interfering with the muscular or mechanical function of breathing, from compromise or blocking of the airway, or from some combination of the following:

- The body position most likely to contribute to positional asphyxia is that of being "hog-tied" (handcuffed behind the back, feet bound and raised towards hands, and placed face down). However, positional asphyxia may occur even though the subject is not restrained in this manner.
- Additional factors that may contribute to positional asphyxia include:
 - The mental condition of the subject.
 - The presence of cocaine or other drugs/alcohol in the subject's system.
 - The body type/physical size of a subject.

Reasonable Belief: When facts or circumstances the officer knows are such to cause an ordinary and prudent officer to act or think in a similar way under similar circumstances.

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9.1.2 DEFINITIONS (CONTINUED)

Safety Priorities: Are used to evaluate risks as part of the decision-making process and include:

- Hostage(s)/Victim(s)
- Civilian(s)
- Officer(s)
- Suspect(s)

Serious Physical Injury: A bodily injury that:

- Creates a substantial risk of death to the victim.
- Creates a prolonged impairment of health or prolonged disfigurement.
- Creates a prolonged loss or impairment of a bodily organ.

Show of Force: A show of force is defined as:

- Pointing a firearm directly at, or towards, another person. This action does not have to be accompanied by a verbal command or by illuminating the person with a weapon-mounted light (WML). Merely drawing the weapon from the holster will not be considered a show of force.
- The display of a CEW arc when used to prevent subject(s) from causing an imminent danger to an officer or others.

Soft Empty Hand Control: The use of grabs, holds, or joint locks to restrain an individual.

Special Impact Munitions Systems (SIMS): Departmentally-approved launchers and projectiles, with the ability to incapacitate, with reduced potential for death or serious injury.

Standard CEW Cycle: A five (5) second electrical discharge occurring when a CEW trigger is pressed and released.

- The standard five (5) second cycle may be shortened by turning the CEW off at any time during the cycle.
- If a CEW trigger is pressed and held beyond five (5) seconds, the CEW may continue to deliver an electrical discharge until the trigger is released.
- Any electrical discharge over five (5) seconds would not be considered a standard CEW cycle under LMPD policy and procedure.

Stapling: A technique utilized to complete a circuit to induce a neuro-muscular incapacitation following a one (1)-probe hit or close-probe spread.

Use of Force: Physical force used upon, or directed toward, the body of another person (LMCO 36.04).

Vascular Restraint: Also known as a “choke hold” or “choking techniques.” Any application of pressure to the neck or throat that compromises or obstructs blood flow to the brain, or obstructs air flow and the ability to respire.

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9.1.2 DEFINITIONS (CONTINUED)

Vehicle Ramming Attack: A form of attack in which a perpetrator deliberately rams, or attempts to ram, a motor vehicle into a building, person, crowd of people, or another vehicle with the intent of inflicting serious injuries and/or causing the deaths of others.

Verbal Non-Compliance: A subject's refusal to comply with an officer's orders or commands.

9.1.3 DE-ESCALATION (KACP 1.3d)

At times, policing requires that an officer must exercise control of a violent or resisting subject in order to make an arrest, or to protect the officer, other officers, or the public from the risk of imminent harm. Clearly, not every potentially violent confrontation can be de-escalated, but officers have the ability to impact the direction and the outcome of many situations that they encounter, based on their decision-making and the tactics that they choose to employ. It is the policy of the LMPD that officers resolve situations in an impartial manner, free of bias, and in accordance with applicable laws and the SOPs of this department. Department members will, when reasonable under the totality of the circumstances, attempt to resolve conflict or potential conflict through de-escalation techniques to decrease the likelihood that officers will resort to the use of force (LMCO 36.04).

When considering de-escalation techniques appropriate to the individual situation, officers should recognize they may be dealing with a person of diminished capacity. People suffering from intoxication, suicidal tendencies, medical complications, or mental illness may present members with a wide range of behaviors usually different than those exhibited by other persons in the community or persons involved in criminal activity. Persons of diminished capacity may display conduct that is bizarre, irrational, unpredictable, and/or threatening. They may not receive or comprehend commands or other forms of communication in the manner that the member would expect. These persons often do not respond to authoritative persons or the display of force. It is the primary task of the members of the LMPD who confront these special needs persons to resolve the encounter in the safest manner possible. Officers should refer to SOP 12.20 (Persons of Diminished Capacity) if the circumstances lead the officer to believe he/she may be encountering a person of diminished capacity. Officers should refer to SOP 12.11 (Crisis Intervention Team (CIT)) if the circumstances lead the officer to believe he/she may be encountering a situation requiring a CIT response. If the circumstances lead the officer to believe he/she may be encountering a subject who is experiencing excited delirium, he/she will refer to SOP 12.21 (Excited Delirium).

When reasonable, under the totality of circumstances, officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum, and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion, and other tactics as alternatives to higher levels of force. Officers should recognize that they may withdraw to a position that is tactically more secure or allows them greater distance in order to consider or deploy a greater variety of force options. Officers should perform their work in a manner that avoids unduly jeopardizing their own safety, or the safety of others, through poor tactical decisions.

The prospect of a favorable outcome is often enhanced when supervisors become involved in the management of an overall response to potential violent encounters by coordinating resources and officers' tactical actions. Supervisors should possess a good knowledge of tactics and supervise officers under their command in regard

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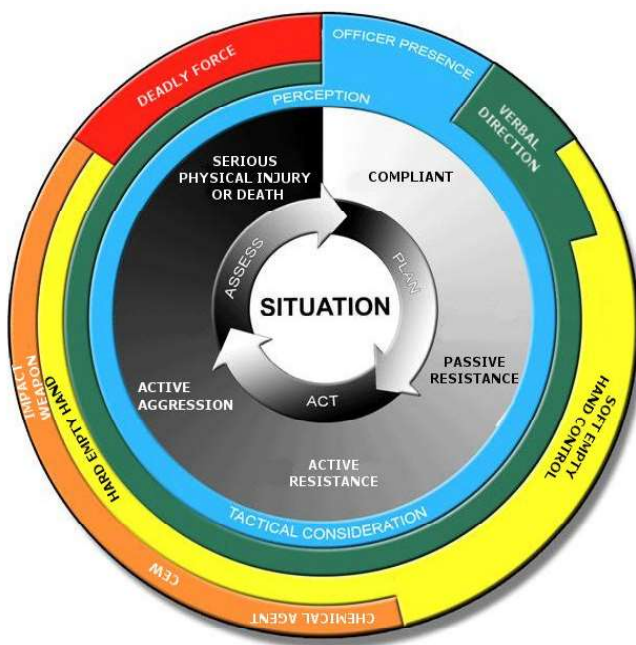
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9.1.3 DE-ESCALATION (CONTINUED)

to proper training standards., supervisors will acknowledge and respond to incidents in a timely manner where law enforcement use of force is probable.

9.1.4 PROGRESSION OF FORCE (KACP 1.3d)

An officer should, to the extent possible, utilize the lowest level of force reasonable, depending on the situation. The following graphic depicts the situationally dependent force options an officer should consider:



9.1.5 USE OF PHYSICAL FORCE

Justification for the use of force must be limited to what reasonably appears to be the facts known, or perceived, by an officer under the circumstances. Facts not known to an officer, no matter how compelling, cannot be considered later in determining whether the use of force was justified. When an officer is confronted with a situation that may necessitate the use of physical force, he/she should call for additional officers, when practicable. Supervisors should respond to the scene.

Department members will, based on facts known to the officer, utilize the lowest level of force reasonable to gain control of the subject (LMCO 36.04). Once a person is restrained or under control, the use of force is restricted to that which is reasonable to maintain control. Good judgment is extremely important in deciding which tactics to use and how much force to apply. Hard empty hand control techniques directed at the head or face present a high potential of injury to both the officer and the person against whom the force is used; therefore, hard empty hand control techniques directed at the head or face are only permissible when active

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9.1.5 USE OF PHYSICAL FORCE (CONTINUED)

aggression is being directed at the officers or others.

The inappropriate placement of a person may obstruct the airway and cause positional asphyxia. A person in the face down position or leaning over may experience trouble breathing. The person's body type/physical size, mental condition, and/or drug and alcohol use may also increase the risk of breathing difficulty. These conditions, coupled with a prior violent struggle and the prisoner being handcuffed behind the back, can make him/her vulnerable to death by positional asphyxia.

A prisoner will not be placed in control restraints and allowed to remain lying on his/her back or stomach. A prisoner will not be placed leaning forward in a sitting position with hands and legs restrained together. Either of these positions can contribute to obstruction of the airway, resulting in positional asphyxia. Officers should not put weight on a person's back or head, such as with their knees or arms, for a prolonged period of time. Due to the increased risk of injury, officers should avoid placing weight on a person's neck.

In order to minimize the potential for positional asphyxia death, officers should take the following precautions:

- As soon as a person is handcuffed, move him/her off of his/her stomach.
- Ask if he/she has used drugs or alcohol or suffers from a disease that can cause breathing difficulties.
- Monitor the person carefully and obtain medical treatment, if necessary. Monitor the person by watching the three (3) ABCs: airway, breathing, and circulation:
 - Airway – path is free of obstruction and allows the flow of air to the lungs
 - Breathing – air flows to, and from, the lungs
 - Circulation – heartbeat and pulse are present
- When the prisoner is turned over to the Louisville Metro Department of Corrections (LMDC) facility or another authority, the officer will notify the receiving authority of existing medical problems.

Officers are not required to allow any suspect to be the first to exercise force and gain an advantage in a physical confrontation. Officers are not required to engage in prolonged hand-to-hand combat before resorting to the use of force that will more quickly, humanely, and safely bring a resisting subject under physical control.

Pursuant to Kentucky Revised Statutes (KRS) 503.090, the use of physical force by an officer upon another person is justifiable when the officer, acting under official authority, is assisting in, or making, an arrest and he/she:

- Believes such force is necessary to effect the arrest (KACP 1.3a);
- Makes known the purpose of the arrest or believes that it is otherwise known, or cannot reasonably be made known, to the person to be arrested; and
- Believes the arrest to be lawful.

An officer may also use physical force when he/she believes such force is reasonable in order to defend himself/herself or to defend another person (KRS 503.050).

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9.1.5 USE OF PHYSICAL FORCE (CONTINUED)

Officers may use physical force to protect a person if, under the circumstances reasonably perceived to be true, the person would have been justified in using such force to protect himself/herself.

Officers may also use physical force:

- To prevent the escape of an arrested person when the force could justifiably have been used to make the arrest under which the person is in custody (KRS 503.090).
- To move or remove any person who is obstructing a lawful police action in such a manner that the lawful police action cannot be accomplished.
- To prevent a person from committing suicide or inflicting serious physical injury upon himself/herself (KRS 503.100).

9.1.6 OFFICER INTERVENTION (KACP 1.13)

Department members -will act to prevent or stop any other officer, regardless of rank or assignment, from using unlawful, unnecessary, or excessive force (LMCO 36.04). Intervention may be verbal and/or physical.

Officers should immediately report any incidents of unlawful or excessive force to their supervisor. Once notified of potential unlawful, unnecessary, or excessive force supervisors will immediately notify the SID commander through their chain of command. Members who are inhibited from reporting violations through the appropriate chain of command are required to submit the information directly to the Chief of Police or the Special Investigations Division (SID) Commander.

Members are prohibited from retaliation against any individual because he/she has prevented, intervened, or reported the unlawful or excessive use of force. Any member who engages in retaliation against an individual who has prevented, intervened, or reported the unlawful or excessive use of force may be subject to discipline. Any member who feels he/she has been subjected to such retaliation should report this action through the appropriate chain of command, to the division commander, who will then forward the information to the SID Commander or directly to the Chief of Police. Any member who is inhibited from reporting retaliation through his/her chain of command should report the retaliation directly to the SID Commander or the Chief of Police.

9.1.7 INTERMEDIARY OPTIONS (KACP 1.8)

Intermediary options may assist officers in de-escalating potentially violent confrontations and provide additional alternatives to the use of deadly force. Uniformed officers and sergeants will wear the CEW and are strongly encouraged to wear both a departmentally-approved impact weapon and OC spray as intermediate weapons. However, if an officer is physically unable to fit all of the equipment on the duty belt or if wearing all three (3) weapons causes physical discomfort or problems with weapon accessibility, he/she will carry the CEW and a departmentally-approved impact weapon. If not carried, the chemical agent must be readily available in the officer's vehicle. On-duty plainclothes officers and sergeants will have, on their person, a departmentally-approved impact weapon, chemical agent, or CEW. Having these alternatives available to all on-duty personnel will increase an officer's options regarding the level of force used when confronted with the necessity to gain control of a suspect. CEWs are optional equipment for the ranks of lieutenants or above.

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9.1.7 INTERMEDIARY OPTIONS (CONTINUED)

Off-duty officers, while not in uniform, are not required to carry any intermediary weapons, but will be armed with a departmentally-approved firearm and their credentials.

9.1.8 USE OF CEWS (KACP 1.8)

Officers are permitted to carry and use only CEWs that have been issued by the department. The use of CEWs will be consistent with departmental training and is authorized on subjects who present an imminent danger to the safety of the officers, or others, when the officer reasonably believes the use of the CEW may mitigate the imminent danger. Officers should refer to SOP 4.21 for more detailed procedures regarding the use of CEWs.

Officers should not intentionally target the chest, eyes, neck, head, breasts, and/or groin areas. When activating the CEW on an individual, the officers will activate the device the least number of times and for no longer than what is reasonable to mitigate the imminent danger.

If a probe deployment occurs, and no window of opportunity to restrain the subject presents itself because he/she is not reasonably incapacitated enough to allow physical restraint, following three (3) standard CEW cycles, the officer will attempt another reasonable force option(s) to apprehend the subject. Activation cycles will not exceed the standard CEW cycle of five (5) seconds.

Standard CEW cycles given by drive-stun need not be considered when counting the three (3) standard CEW cycles discussed above; however, any drive-stun activation will not exceed the standard CEW cycle of five (5) seconds. Drive-stuns will be used the least number of times and for no longer than what is reasonable. The drive stun requires the same level of justification as a probe deployment.

Officers may utilize the CEW on aggressive animals which present a physical threat to the officer or any other person (refer to SOP 8.33).

Emergency Medical Services (EMS) will be contacted to respond to all incidents involving the application of a CEW. Officers should not transport the subject prior to the arrival of EMS.

9.1.9 USE OF CHEMICAL AGENTS (KACP 1.8)

Officers are permitted to carry and use only chemical agents approved by the department. The use of chemical agents should be consistent with departmental training. The use of a chemical agent is authorized in circumstances when the officer reasonably believes that a degree of force is necessary to overcome actual, or anticipated, resistance by the suspect (NOBLE).

Chemical agents may also be used:

- On actively aggressive persons who are combative and present a physical danger to themselves, the officer, or any other person.
- On prisoners who attempt to escape, cause physical injury to themselves, or attempt to damage the property of others.

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9.1.9 USE OF CHEMICAL AGENTS (CONTINUED)

- In defense of any person.

Pepper ball guns can be utilized for a dual purpose, both as a chemical agent dispersal system and as an impact weapon. Unlike SIMS (e.g. 40mm launcher/sock round), the pepper ball guns, when used as an impact weapon, should not cause death, even when striking prohibited areas. However, officers are not authorized to target the head, neck, and face, unless exigent circumstances exist.

The use of chemical agents by the Special Weapons and Tactics (SWAT) Team and Special Response Team (SRT) will be in accordance with the manufacturer's recommendations and the team's operations manual. The use of chemical agents for crowd control or civil disturbance will be pursuant to SOP 12.6.5.

9.1.10 POST-USE OF CHEMICAL AGENTS (KACP 1.8)

Contaminated areas of the body will be treated in a manner consistent with the manufacturer's recommendations and departmental training, as soon as practical.

Officers are required to contact appropriate medical personnel if the subject displays unusual reactions to the chemical agent.

9.1.11 USE OF SPECIAL IMPACT MUNITIONS SYSTEMS (SIMS) (KACP 1.8)

SIMS will only be utilized by officers trained and qualified in their use. The use of SIMS will be consistent with departmental training for that particular system and is authorized on subjects who present an imminent danger to the safety of the officers, or others, when the officer reasonably believes the use of SIMS may mitigate the imminent danger. These include the 40mm launcher and the sock round, which is fired from designated shotguns.

The potential exists for SIMS projectiles to inflict injury or death when they strike the face, eyes, and neck.

Officers will avoid intentionally targeting these body areas unless deadly force is authorized. SIMS projectiles are designed to be direct impact munitions. Officers are prohibited from deploying sock rounds through intermediate barriers, such as glass, unless deadly force is authorized, due to the potential for serious injury or death.

Lethal force backup must be in place as support, prior to the deployment of SIMS. Any time a SIMS is used, the subject will be transported to the hospital for examination.

The use of SIMS by the SWAT Team and SRT will be in accordance with the manufacturer's recommendations and the team's operations manual.

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9.1.12 IMPACT WEAPONS (KACP 1.8)

Officers are permitted to carry and use only impact weapons approved by the department. The use of impact weapons will be consistent with departmental training and is authorized on subjects who present an imminent danger to the safety of the officers, or others, when the officer reasonably believes the use of the impact weapon will mitigate the imminent danger.

Impact weapons are authorized as a means of:

- Physical restraint or control.
- Defense of any person.

Because of the potential for death or serious injury, officers will avoid intentional strikes to the head, neck, throat, or clavicle with an impact weapon of any sort, unless deadly force is justified (NOBLE).

9.1.13 USE OF DEADLY FORCE

Justification for the use of deadly force must be limited to what reasonably appears to be the facts known, or perceived, by an officer under the circumstances. Facts not known to an officer, no matter how compelling, cannot be considered in later determining whether the use of deadly force was justified. Deadly force, as with all uses of force, may not be resorted to unless other reasonable alternatives have been exhausted, would clearly be ineffective, or exigent circumstances exist. Department members will, when reasonable under the totality of the circumstances, exhaust all reasonable alternative uses of force prior to using firearms (LMCO 36.04). Deadly force is authorized in defense of oneself or another when the officer reasonably believes, based on the facts and circumstances, that the person against whom the force is used poses an imminent threat of death or serious injury to the officer or to another person (KACP 1.3b). Deadly force will not be used if the person against whom the force is used only poses a threat to themselves.

Pursuant to KRS 503.090, deadly force is authorized to apprehend a felony suspect (KACP 1.3b), when under the facts and circumstances known to the officer, it is reasonable to believe:

- The arrest is for a felony involving the use of, or threatened use of, physical force likely to cause death or serious physical injury, and
- It is likely that the person to be arrested will clearly endanger human life unless he/she is apprehended without delay.

The officer must be able to justifiably articulate his/her actions.

Department members should, if feasible, give a clearly audible verbal warning before the use of deadly force (LMCO 36.04). Warning shots are not permitted (KACP 1.3e). Deadly force is never authorized to apprehend a fleeing misdemeanor or non-violent felony suspect (NOBLE).

Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe:

- The subject has committed a felony involving the infliction, or threatened infliction, of serious physical

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9.1.13 USE OF DEADLY FORCE (CONTINUED)

- injury or death; and
- The escape of the subject would pose an imminent danger of death or serious physical injury to the officer or to another person.

Deadly force is also authorized to prevent the escape of an arrested person, when deadly force could justifiably have been used to make the arrest, under which the person is in custody (e.g. a serious, violent felony), and the officer believes that the person is likely to endanger human life, unless apprehended without delay (KACP 1.3c).

Officers are authorized to discharge a firearm for the following purposes:

- In defense of human life, including the officer's life, or in defense of any person in imminent danger of serious physical injury or as described in this section.
- Against any animal that is gravely injured or poses an imminent danger to persons, as necessary, when no other disposition is practical and the safety of persons has been given prime consideration.
- Training and qualifications.

Officers discharging a firearm should remain cognizant of the following:

- The direction in which the firearm is to be discharged.
- The danger of discharging a firearm while running or moving.

Department members will not discharge their firearms either at, or from, a moving vehicle except in response to gunfire, potential gunfire or in the rare case where the vehicle is intentionally being used as a weapon against the officer or others. Officers will not discharge their weapons at vehicles simply because a subject is attempting to flee. Officers will avoid tactics that unreasonably place them in a position where the vehicle can be used as a weapon against them.

Choking techniques are considered deadly force. (LMCO 36.04) (KACP 1.14).

9.1.14 DUTIES OF A COMMANDING OFFICER AT A USE OF FORCE SCENE (KACP 1.11a-c)

The commanding officer will:

- Conduct a thorough investigation into the use of force incident.
- Seek medical treatment for any injured party.
- In the case of an assault against the officer (Assault 3rd Degree or higher), complete the Records Management System (RMS) incident report and the Kentucky Uniform Citation, listing himself/herself as the reporting and charging officer. An on-duty detective may complete these reports and be listed as the reporting and charging officer at the request of the on-duty commanding officer. An assaulted officer should never be the reporting or charging officer in any case in which he/she is a victim. The Public Integrity Unit (PIU) may also conduct an investigation of the incident based on the criteria set forth in SOP 1.9.
- Photograph any injuries sustained by officers and/or any damage to equipment, uniforms, or property.

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9.1.14 DUTIES OF A COMMANDING OFFICER AT A USE OF FORCE SCENE (CONTINUED)

- Photograph the arrested subject to document any injury or the lack of any injury. At least two (2) stand-up photos, one (1) showing the front of the suspect and one (1) showing the back, will be taken of all suspects charged with Resisting Arrest and/or Assault 3rd Degree of a police officer.
- Notate witnesses' contact information and attempt to conduct preliminary interviews with all witnesses who are present at the scene.
- Download CEW data, if applicable, and upload the CEW download report as an attachment to the BlueTeam entry as part of the AIR documentation.
- Complete the AIR, via the BlueTeam link, located on the LMPD Intranet, and forward it, through the appropriate chain of command (refer to SOP 3.1).

When an AIR is not required, nothing in this policy prohibits officers from either taking photographs of prisoners to document a lack of injury or requesting a commanding officer to respond to the scene.



Craig Greenberg
Mayor

Edward J. Meiman III
Executive Director

TO: All Communications Personnel

FROM: Angela Downes
MetroSafe Assistant Director

DATE: **Revised July 25, 2024**

RE: Crisis Call Deflection Program
Emergency Services MetroSafe GM 22-005

Revised July 25, 2024 to change the way we send calls to deflection when criteria is met

Purpose: Define 911 Operator responsibilities in the **Crisis Call Deflection Program**

Background: CCD focuses on diverting non-emergent mental health related calls away from LMPD and to a **Behavioral Health Hub** located in the 911 center. **Crisis Triage Workers** will be available in MetroSafe 24 hours a day/7 days a week and can receive eligible calls transferred directly from 911 Operators.

CTW 1 - sits at Position 32
CTW 2 - sits at Position 33
CTW 3 - sits at Position 34

Crisis Triage Workers Core Functions:

1. Call Diversion
2. Call Consult
3. Call De-escalation

Calls Not Eligible for CTW Intervention:

- An individual in **physical possession** of firearms, knives, or any other weapons (i.e., simply having a weapon in the home is not a disqualifier)
- An individual under the influence of alcohol or drugs to the extent requiring medical intervention (overdose or detox)
- An individual **in the process of** hurting/killing self or threatening to hurt/kill others with the means and intent
- An individual requiring medical attention because of a self-inflicted injury

- An individual with known violent tendencies (i.e., dangerous location indicator) or exhibiting violent behavior
- When the individual in crisis or another person on scene has committed a violent crime (e.g., family violence)
- If the caller is 3rd party

Calls Eligible for CTW Intervention:

- 1st party CIT callers in any LMPD division experiencing a Mental Health (MH) crisis and **NOT** actively attempting suicide or physically violent toward themselves or others
- 2nd party caller (person with the CIT subject) in any LMPD Division, who is with the subject experiencing a Mental Health (MH) crisis who is NOT actively attempting suicide or physically violent toward themselves or others.
- Repeat CIT callers in Jefferson County, experiencing a Mental Health crisis and NOT actively attempting suicide or physically violent toward themselves or others.
 - “Repeat CIT Caller” is defined as a caller with a CIT history in CAD or known to the Call Taker, who has called more than once in the last 3 months and is experiencing a Mental Health crisis and NOT actively attempting suicide or physically violent toward themselves or others.
 - If it has been more than 3 months ago, they are not considered a “repeat CIT caller”.

Calls from LMPD Eligible for CTW Intervention:

- Any LMPD division that responds or self-initiations on a CIT subject, secures the scene, and believes intervention from the CTW or MCRT will be beneficial.
 - The officer will call MetroSafe, provide the MetroSafe call taker with the location, and ask to be transferred to the Behavioral Health Hub/CTW.
 - The 911 call taker will find the event and copy it to the CTW (if available) using “DEFLECTION” and subtype POLICE_REQ and transfer the officer to the Behavior Health Hub to speak to the CTW. This new subtype was created to track the calls for service where an officer requests deflection.

CTW Responsibilities:

- CTW’s will triage the call circumstances for safety following safety guidelines
- If there is no serious threat, de-escalate and problem solve with the caller over the phone. If the situation requires face to face intervention and no safety threat has emerged, the Mobile Crisis Response Team (MCRT) may be dispatched by the CTW
- If there IS a threat, CTW’s will transfer the call back to the 911 operator.

911 Operator Process:

Answering the initial call:

- Operators may ask the following questions in addition to normal call triage to help determine if DEFLECTION is appropriate.
 - Are you experiencing a mental health crisis?
 - Do you have any weapons in your possession right now, or anything you want to harm yourself with?
 - Have you been drinking or taken any drugs requiring medical assistance?
 - Have you harmed yourself, if so how?

Transferring a call to the CTW:

- When a call meets the criteria listed above and a CTW is available:
 - See if the CTW is available in the phone system and use the transfer button to send to all available CTWs.
 - The 911 operator will use the event type “DEFLECTION” to send the call for service to the CTW. They will then transfer the caller to the CTW if they are not on another call.
 - If the CTW is on another phone call, the 911 operator can ask the caller if the Crisis Triage Worker can call them back.
 - If the caller agrees you will send the call for service up in CAD using “DEFLECTION” and put a note in the narrative that says to call the complainant back.
 - CTW’s will monitor calls in their pending queue and will make call backs as soon as they are available.

- If the caller doesn’t want to wait for the CTW to call them back:
 - Change the event type to **10-14 Mental Health (CIT Deflection not available)** and put a note in the call for service on why it needs to be dispatched (i.e., CTW on another call and caller refused call back).

- If the CTW isn’t available: i.e., not working, but meets all other criteria.
 - Send the call for service up as a **10-14 Mental Health (Deflection not available)**.
 - The SGT’s do have the ability to cancel the run out like they do now, but we will be able to track for future expansion and staffing.

- When the CTW is handling a call and it needs to be sent to police:
 - The CTW will transfer the call back to a call taker and advise them of the situation.
 - The Call Taker will copy the event to Police using one of the following subtypes under **10-14 Mental Health**
 - **CIT**
 - *used for all CIT’s that do not meet deflection criteria i.e. 3rd party calls, weapons in possession*
 - **Deflection not available**
 - *call fits the deflection criteria but the CTW isn’t available*
 - **Assist Deflection**
 - *used if the Mobile Response Team needs police assistance non-emergency- CTW should contact call taker/dispatcher to request this event type be sent*
 - **MIW**
 - *used for serving an MIW including self-initiation by officers*

- **Refused Deflection** 1478
 - *Used if the caller fits the deflection criteria but ~~refuses to be transferred to the CTW or refuses the CTW's help or MCRT.~~*
- *When transferring a call to deflection that meets the criteria, you will tell the caller; "Let me get someone on the line to help", and then transfer the caller to the CTWs. You will no longer ask if the caller wants to be transferred.*

- The CTW will then close the event using a disposition code

Cancelled
Duplicate Event
Handled by Deflection
Test
Transferred to Metro
Refused Deflection

- There has been an additional option under **10-30 Responder in Trouble** to include **"DEFLECTION"**. This will be used if the MCRT comes up on Mutual Aid needing emergency assistance.

Revised May 10, 2022 – to include 1st division

Revised July 22, 2022 – to include 2nd division effective July 25, 2022

Revised November 2, 2022 – to include 3rd division effective November 7, 2022

Revised November 7, 2022 – to include all repeat callers meeting repeat caller criteria : e.g. J-town, Shively ETC.

Revised January 25, 2023 – to include the 5th and 6th division effective January 30th.

Revised March 10, 2023 – to add a subtype of Refused Deflection under 1014 and Police Request under DEFLECTION.

Revised March 21, 2023 – to include LMPD Divisions 7 and 8. This is now all LMPD Divisions.

Revised June 12, 2023 – to expand to 12 hours a day; 1000-2200 effective July 1, 2023.

Revised January 22, 2024 – to expand to 16 hours a day; 1000-0200 effective February 4, 2024.

Revised June 10, 2024 – to expand to 24 hours a day; 7 days a week, and a few cosmetic changes(in red).

Revised July 25, 2024- to change the way call takers send eligible deflection calls to deflection effective July 29, 2024.