

RECOMMENDATION SUBMISSION AND RESPONSE FORM

2020 Discipline and Accountability #10

DISCUSSED BY SCPRC	
RECEIVED BY SPD	02/08/2021
RETURNED TO SCPRC	

APPROVED AND IMPLEMENTED		PENDING FURTHER REVIEW	
APPROVED AND PENDING		SPD UNABLE TO IMPLEMENT	X
PARTIAL IMPLEMENTATION		DENIED	

SCPRC RECOMMENDATION

2. Automatic suspension without pay for an officer who uses lethal force against an unarmed person, regardless of whether it results in death.

Basis for recommendation includes, but is not limited to, the following:

- Suggested by a Sacramento City Council member.
- Rule 12.1, which provides the City Manager, or other official or Board in whom is vested disciplinary or removal power, the freedom on such matters. This means that the City Manager has the authority to discipline employees who have been found to have committed a violation set forth in Rule 12.2 “causes for discipline.” As such, the City Manager does not need union approval to administer disciplinary measures. Pursuant to Rule 12.1, administering discipline should not require consultation or approval from the union.
- Rule 12.2(n) provides: Discourteous treatment of any member of the public where, at the time of the incident, such member of the public could reasonably believe that the employee was acting within the scope of City employment.
- Rule 12.2(w) Any conduct rationally related to employment which impairs, disrupts, or causes discredit to the employee’s employment or the public service.
- Rule 12.3 (Letter of reprimand; Suspension; Withholding in-grade salary increase; In-grade salary reduction; Demotion; or Dismissal)
- A.B. 392, approved by the Governor on August 19, 2019 (2019-2020 Reg. Sess.) [prescribing when a peace officer is justified in using deadly force in California as either: (1) to defend against an IMMEDIATE threat of death or serious bodily injury to the officer or another person, or (2) to apprehend a fleeing person for a FELONY that THREATENED or resulted in DEATH or SERIOUS BODILY INJURY if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. (Pen. Code, § 835a, subd. (c), [emphasis added]) (Quoted from CA Attorney General’s Phase 2, SPD investigation, at page 23, footnote 4.)
- A.B. 392, approved by Governor, August 19, 2019 (2019-2020 Reg. Sess.) clarifies that a threat of death or serious bodily injury is imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person.” For example, harm “that, from appearances, must be instantly confronted and addressed.” (Pen. Code, § 835, subd. (e)(2).) (Quoted from CA Attorney General’s Phase 2, SPD investigation, at page 23, footnote 4.)
- Peace Officer Standard and Training, UOF Standards and Guidelines, Use of Firearms, at page 17, states: Officers, in carrying out their duties, shall, when feasible, apply de-escalation techniques before resorting to the use of force. Peace Officer Standard and Training, Learning Domain 20 sets forth application of Use of Force laws as set forth by this government entity, which was established in 1959 by the California Legislature for the purpose of setting minimum selection and training for California law enforcement. Cadets and officers are taught principles of law through studying “Learning Domains.” Use of Force concepts are set forth in Learning Domain 20. As relevant here, it states:
 - “An officer may use deadly force when it is objectively reasonable under the totality of the circumstances. Deadly force may be used in self-defense or defense of others when the officer has a reasonable belief that the officer or another person is in imminent danger of death or

serious bodily injury.” (See “Considerations Regarding the Use of Deadly Force”, Chapter 3, Use of Deadly Force.)

- “A peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary ... to defend against an imminent threat of death or serious bodily injury to the officer or to another person.” (citing Pen. Code 835a, subd. (c)(1)(A).) (See “Considerations Regarding the Use of Deadly Force”, Chapter 3, Use of Deadly Force.)
- “The decision to use deadly force in the apprehension of a fleeing person is guided by federal case law and California State law [emphasis added]: In 1985, the United States Supreme Court decided the case of Tennessee v. Garner, 471 U.S. 1, (1985), which established that a peace officer may use deadly force to prevent the escape of a fleeing suspect only if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. The Court applied the following points regarding when it would be objectively reasonable for an officer to use deadly force against a fleeing subject in this particular set of circumstances (e.g., using a firearm to stop a fleeing suspect escaping on foot), 1) “if the subject threatens the officer with a weapon or there is probable cause to believe that [the suspect] has committed a crime involving the infliction of serious physical injury [or death]...”; 2) “... probable cause to believe that the subject poses a threat of death or serious physical harm, either to the officers or others ...”; 3) “... probable cause to believe that the use of force is reasonably necessary ... “[to prevent escape], and 4) “... some warning be given prior to the use of deadly force, where feasible...” [emphasis added] (See “Considerations Regarding the Use of Deadly Force”, Chapter 3, Use of Deadly Force.)
- “According to Penal Code 835a, fear alone does not justify the use of deadly force. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that from appearances, must be instantly confronted and addressed. The courts have held that a simple statement of fear for [an officer’s] safety is NOT t enough; there must be objective factors to justify [the officer’s concerns] and [the fear] must be objectively reasonable, and [the fear] must be based on the facts and circumstances known to the officer at the time.” [emphasis added] (See “Considerations Regarding the Use of Deadly Force, Chapter 3, Use of Deadly Force.)
- “Circumstances under which homicide by a public officer may not be justified (based on mitigating factors): 1) pursuing nonviolent felons, e.g., nonviolent offenses such as forgery or grand theft; 2) arresting or pursuing a felon who DOES NOT PRESENT A THREAT TO LIFE, (A violent felony is one which threatens death or serious bodily harm.), and 3) when arresting or pursuing a misdemeanor who DOES NOT POSE IMMINENT DANGER of death or serious bodily injury to people.” (See “Learning Domain 20, Chapter 3, Use of Deadly Force.)

SCPRC RECOMMENDATION RATIONALE

C. DISCIPLINE: The Commission understands that some of these recommendations are already in practice at SPD. Nonetheless, the Commission recommends that SPD explicitly incorporate these items into its General Orders.

SPD RESPONSE

Sacramento City Council Meeting (Item #2) on 06/01/2021, presented by Deputy Chief Lester:

- 2:30 PM City Council (Special Meeting): <https://sacramento.granicus.com/player/clip/4964>
 - Minute Marker: 55:30
- Staff Report: https://sacramento.granicus.com/MetaViewer.php?view_id=21&meta_id=631887
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Currently, all officers are afforded due process by law and cannot be suspended without pay during an administrative investigation by law.

Any such modification would also be incumbent on contractual negotiations with applicable labor unions.

OTHER CITY DEPARTMENTS

N/A

APPENDIX

As of January 1, 2022, Senate Bill 2 was enacted and authorizes the California Commission on Peace Officer Standards and Training to decertify peace officers.

- https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB2