2-57 Use of Force—Review and Investigation by Department Personnel

Related SOP(s):

2-52 Use of Force: General
2-53 Use of Force: Definitions
2-54 Intermediate Weapons Systems
2-55 Use of Force: De-escalation
2-56 Use of Force: Reporting by Department Personnel

2-57-1 Purpose

It is the policy of the Albuquerque Police Department to objectively and thoroughly review every use of force and show of force by officers to reach a finding, supported by a preponderance of the evidence, concerning whether officers used the minimum amount of force that was reasonable, necessary, and proportional based on the totality of the circumstances to bring about a lawful objective.

The Department categorizes force based on the level of force used and the risk of injury or actual injury from the use of force. The category of force—Level 1, 2, or 3—determines the kind of review or investigation that will be undertaken.

The Department's goal in categorizing force is to promote efficiency and reduce the burden on first-line supervisors, while optimizing critical investigative resources on higher-level uses of force.

2-57-2 Policy

Supervisors and Force Investigation Section (FIS) detectives shall conduct timely, thorough, and accurate reviews or investigations of use of force by Department personnel.

Supervisors and FIS detectives reviewing and investigating use of force incidents shall determine whether the officer used the minimum amount of force that was reasonable, necessary, and proportional, based on the totality of the circumstances confronting an officer to bring about a lawful objective. All reviews and investigations into use of force incidents shall determine whether the application of de-escalation techniques was feasible.

Supervisors and FIS detectives reviewing use of force incidents shall consider the minimum legal requirements as set forth in the United States Supreme Court decision in *Graham v. Connor*, 490 U.S. 386 (1989), which established the objectively reasonable perspective of an officer involved in a use of force incident. Supervisors and FIS detectives shall consider the facts that a reasonable officer on scene would have known at the time the officer used force in evaluating whether the force was in compliance with Department policy.

Supervisors and FIS detectives shall also consider that an officer's decision to use force is sometimes made in tense, uncertain, and rapidly evolving situations. However, any review or investigation of use of force incidents shall consider that officers must at all times comply with the even stricter standards as set forth in Department policy.

Supervisors and FIS detectives reviewing use of force shall objectively weigh all evidence collected from an incident to reach a reliable finding based upon a preponderance of the evidence.

2-57-3 Use of Force Review by Supervisors and the Chain of Command

A. General Requirements

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1. A supervisor who was involved in a reportable use of force or show of force, including by participating in or ordering the use of force being reviewed, shall not be involved in reviewing the incident.

   "Participating" is defined as physically assisting in overcoming an individual's resistance.

N/A

2. Personnel will classify use of force according to the highest level of force used during an incident.

   For example, when an officer uses Level 1 and Level 2 force during an incident it will be investigated as a Level 2 use of force by a Force Investigation Section (FIS) detective.

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3. For Level 2 and Level 3 uses of force, the supervisor shall ensure that FIS is immediately notified and dispatched to the scene of the investigation to initiate the force investigation.

B. Supervisory Responsibilities for Classifying Force

1. The supervisor of an officer using force shall immediately respond to the scene to ensure that the use of force is appropriately classified based upon the Department's three-level force classification system.

N/A

   a. **Level 1 Use of Force:** Force that is likely to cause only transitory pain, disorientation and/or discomfort during its application as a means of gaining compliance.
      i. This includes techniques that are not reasonably expected to cause injury, do not result in an actual injury, and are not likely to result in a complaint of injury (i.e., pain compliance techniques and resisted handcuffing).
      ii. Shows of force, including: pointing a firearm, beanbag shotgun, 40 millimeter impact launcher, OC spray, or ECW at an individual, or using an ECW to "paint" an individual with the laser sight or utilizing a warning arc. A show of force is reportable as a Level 1 use of force.

iii. Level 1 use of force does not include interaction meant to guide, assist, or control an individual who is offering minimal resistance.

b. **Level 2 Use of Force:** Force that causes injury, could reasonably be expected to cause injury, or results in a complaint of injury.
   i. Level 2 use of force includes:
      - Use of an ECW, including where an ECW is fired at an individual but misses;
      - Use of a beanbag shotgun or 40 millimeter impact launcher, including where it is fired at an individual but misses;
      - OC spray use including where it is sprayed at an individual but misses;
      - Empty-hand techniques (e.g., strikes, kicks, takedowns, distraction techniques, or leg sweeps); and
      - Strikes and attempted strikes with impact weapons.
        - This excludes strikes to the head, neck, throat, chest, or groin with a beanbag shotgun or 40 millimeter impact launcher and strikes to the head, neck, throat, torso, or groin with a baton or improvised impact weapon, which are considered Level 3 uses of force.

c. **Level 3 Use of Force:** Force that results in, or could reasonably result in, serious physical injury, hospitalization, or death.
   i. Level 3 use of force includes:
      - Use of deadly force;
      - Critical firearm discharges;
      - Use of force resulting in death or serious physical injury;
      - Use of force resulting in hospitalization;
      - Strikes to the head, neck, throat, chest, or groin with a beanbag shotgun or 40 millimeter impact launcher and strikes to the head, neck, throat, torso, or groin with a baton or improvised impact weapon;
      - Use of force resulting in a loss of consciousness;
      - Police Service Dog bites;
      - Three or more applications of an ECW on an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different officers;
      - ECW application on an individual during a single interaction for longer than 15 seconds, whether continuous or consecutive, regardless of the mode of application;
      - Neck holds;
      - Four or more strikes with a baton or improvised impact weapon; and
      - Any Level 2 use of force against a handcuffed individual.

C. On-Scene Responsibilities of Supervisors Reviewing Use of Force (Refer to On-Scene Response Handbook)

1. The supervisor of an officer using force shall perform the following duties at the scene of a use of force:

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a. Examine personnel and the individual for injuries and request medical attention, where appropriate;
b. Identify the involved and witness officers to the use of force;
c. Supervisors will separate the involved and witness officers once the scene is secure. If, due to staffing levels, the supervisor cannot separate the involved and witness officers, the supervisor will give a direct order to the involved and witness officers to not speak about the use of force and shall ensure that the command is recorded using their OBRD;

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d. Review the involved officer's OBRD video to determine whether the incident involves a Level 1 use of force;
e. Review the OBRD video of other officers where uncertainty remains about whether the incident rises to a Level 2 or Level 3 use of force;
f. Preserve any evidence located at the scene of a Level 1 use of force or higher;
g. Capture photographs of the officer(s) and the individual(s) involved in Level 1 use of force;
h. Require submission of a use of force statement from the involved officer(s) by the end of the shift; and
i. Conduct any other necessary fact-gathering activities to reach reliable conclusions, including obtaining a statement from the detained individual(s) after providing them with a *Miranda* warning, regarding the officer's use of Level 1 force.

2. Where a supervisor determines that the use of force by an officer(s) involves a Level 2 or Level 3 use of force, they shall immediately contact FIS to conduct the investigation.

D. Supervisor Documentation of Level 1 Use of Force

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1. Supervisors shall generate a BlueTeam entry for the use of force without regard to the number of involved or witness officers.

2. The investigating supervisor shall ensure involved and witness officer(s) OBRD video, and any other video of the use of force, is attached to the corresponding BlueTeam entry.

a. First line Level 1 use of force reviews will require the supervisor to watch all of the involved and witness officer's videos from before the point of contact with the individual to after the individual is secured in a vehicle or is released from the scene.
b. Video Review Unit (VRU) shall watch all Level 1 use of force OBRD video within 10 days of the use of force incident. VRU will mark all portions of the video which indicate possible deficiencies and concerns with training, tactics, equipment, policy, supervision, and all policy violations.
c. Commanders and Lieutenants will be responsible for watching all videos that capture the use of force and all marked portions of the video, which include all possible deficiencies and concerns with training, tactics, equipment, policy, supervision, and all policy violations.

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3. Supervisors shall complete and document a supervisory force review of a Level 1 use of force within seventy-two (72) hours after the supervisor leaves the scene of a use of force.

   a. Where a supervisor is unable to complete a review within the initial seventy-two (72) hour deadline the supervisor may seek a seven-day extension by completing the extension request form in BlueTeam, outlining the reason(s) for an extension, to the involved officer's commander.
   b. The Lieutenant in the involved officer's chain of command will have ten calendar days from receiving the supervisor's review to complete a review of a Level 1 use of force.
   c. The Commander in the involved officer's chain of command will have ten calendar days from receiving the lieutenant's review to complete the review of a Level 1 use of force.

4. The supervisory review of all Level 1 use of force shall include:

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   a. All written or recorded use of force narratives or statements provided by personnel or others;
   b. A list of evidence that was gathered, including sufficient identifying information of civilian witnesses (names, phone numbers and addresses) to the use of force. The supervisor shall specifically note if there were no witnesses to the use of force. The supervisor shall also explain why witness information was not gathered in circumstances where there were witnesses to the use of force that were not documented;
   c. The report shall also include all available identifying information for anyone who refuses to provide a statement;
   d. The names of all other Department employees witnessing the use of force;
   e. A narrative evaluating the use of force, based on the supervisor's analysis of the evidence gathered, including determining whether the officer's actions complied with Department policy based on a preponderance of evidence;
   f. An assessment of the incident for tactical and training implications, including whether the need to use force could have been reduced or eliminated through the use of de-escalation techniques;
   g. Documentation from the supervisor of any tactical issues found during the review which shall be included as part of the BlueTeam entry; and
   h. Documentation of any apparent policy violations along with a written referral to Internal Affairs Professional Standards (IAPS) for the initiation of an administrative investigation. All apparent misconduct shall be reported to IAPS.

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5. The supervisor shall forward a Level 1 use of force review through the involved officer's chain of command once it has been completed. The commander of the involved officer shall assess the BlueTeam entry to ensure that it is complete and that the findings are supported by a preponderance of the evidence.

   a. Where two or more officers are involved in a Level 1 use of force, such reviews will be forwarded through the investigating supervisor's chain of command.

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6. Each time a supervisor conducts a deficient force review it will be documented in work performance records by their immediate supervisor.

7. A supervisor conducting two or more deficient force reviews shall receive the appropriate corrective and/or disciplinary action, including training, demotion and/or removal from a supervisory position.

E. Chain of Command Review of Level 1 Use of Force

1. After a Level 1 use of force review has been completed, the reviewing supervisor's chain of command shall order additional review when it appears there is additional relevant evidence that may assist in resolving inconsistencies or improving the reliability or credibility of the findings.

2. Where the findings of a supervisory review are not supported by a preponderance of the evidence, the involved officer's Commander shall document the reasons for such determination in their review.

   The supervisor's commander shall take appropriate action to address the inadequately supported determination and any deficiencies that led to it.

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3. The chain of command shall suspend a Level 1 use of force review and immediately notify IAFD and the Chief of Police upon the discovery of apparent criminal conduct in the use of force by an officer, with notice to the affected officer.

   Upon this notification, IAFD shall immediately initiate an administrative and criminal investigation into the use of force.

4. When the chain of command discovers that a use of force is more appropriately categorized as a Level 2 or Level 3, then FIS shall be notified immediately to conduct the investigation, with notice to the affected officer.

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5. When collateral misconduct is discovered during a Level 1 use of force review, an administrative investigation will be initiated by the officer's supervisor, or IAPS, depending on the nature of the alleged misconduct.

F. Performance Review Unit (PRU) Audit of Level 1 Use of Force Reviews

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1. Upon receipt of a Level 1 use of force review from a commander, the PRU shall conduct a review to ensure it is complete and the findings are supported by the preponderance of evidence.

2. After completing its review, the PRU shall ensure that the file is forwarded to IAFD for recordkeeping.

3. Where the PRU determines that a Level 1 use of force review is deficient, it will be sent back to the originating supervisor for correction.

4. Deficiencies noted by the PRU detective in a completed Level 1 use of force review shall be forwarded to the affected commander by the Deputy Chief of the Compliance Bureau to assure entry of the findings into the work performance records of the reviewing chain of command.

N/A

G. Chief of Police Authority to Re-assign Reviews and Resolve Level 1 Use of Force Policy Violations

1. The Chief of Police may assign or re-assign a Level 1 use of force review with notice to the affected officer.

2. The Chief of Police may return a Level 1 use of force to the original supervisor for further analysis.

3. The Chief of Police shall explain any assignment or re-assignment of a Level 1 use of force review in writing.

4. Where a Level 1 use of force by an officer could have violated Department policy, the Chief of Police shall:

   a. Refer the matter to the chain of command to conduct an administrative investigation into the potential policy violation; or
   b. Refer the matter to IAPS to conduct an administrative investigation into the alleged misconduct.

5. The Chief of Police shall ensure that policy, training, or equipment concerns noted during a Level 1 use of force review are resolved through the referral of such issues to the appropriate Departmental division for corrective action.

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6. Once a commander finds that a Level 1 use of force review finding by a supervisor is supported by a preponderance of the evidence, the file shall be forwarded to the PRU.

7. The quality of supervisory force investigations shall be taken into account in the performance evaluations of the officers performing such reviews.

2-57-4 Level 2 and Level 3 Use of Force Investigations by the Force Investigation Section

A. General Requirements

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1. FIS shall respond to the scene and conduct investigations of Level 2 and Level 3 uses of force.

2. FIS shall also conduct administrative investigations into uses of force indicating apparent criminal conduct by an officer, with notice to the affected officer.

3. Where a Level 2 or Level 3 use of force investigation indicates apparent criminal conduct by an officer in the use of force, IAFD shall refer the incident to an investigator from the Criminal Investigations Division (CID) for investigation. The criminal investigator shall have no involvement in the administrative investigation into the use of force. Notice of such a referral shall be provided to the affected officer.

   The criminal investigation shall remain separate from and independent of the administrative investigation into the use of force.

4. In instances where the Multi-Agency Task Force (MATF) is conducting the criminal investigation of a use of force, the IAFD shall conduct the administrative investigation.

B. Level 2 and Level 3 Use of Force Investigations by the Force Investigation Section

1. In conducting its investigations of Level 2 or Level 3 uses of force, FIS detectives shall:

   a. Respond to the scene and consult with the on-scene supervisor to ensure that all personnel and individual(s) involved in a use of force have been examined for injuries and provided necessary medical attention;
   b. Advise the individual involved in the use of force incident of his or her rights where it is necessary to gather additional information about injuries;
   c. Categorize the use of force in accordance with the Department's classification procedures;
   d. Ensure all evidence to establish material facts related to the use of force, including but not limited to audio and video recordings, photographs, and other documentation of injuries or the absence of injuries, is collected;
   e. Canvass for and interview witness(es). In addition, witnesses shall be encouraged to provide and sign a written statement in their own words;
   f. Ensure each officer witnessing a Level 2 or Level 3 use of force provides a use of force narrative of the facts leading to the use of force;
   g. Provide a written admonishment to involved and witness officer(s) to the use of force that they are not to speak about the force incident until they are interviewed by the investigator of the FIS;
   h. Conduct only one-on-one interviews with involved and witness officers;
   i. Review all use of force reports to ensure that these statements include information required by Department policy;
   j. Ensure that all use of force reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when the incident occurred;
   k. Conduct investigations in a rigorous manner designed to determine the facts and, when conducting interviews, avoid asking leading questions and never ask officers or other witnesses any questions that may suggest legal or procedural justifications for officers' conduct;
   l. Record all interviews;

m. Consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate, and make credibility determinations, if feasible; and
n. Make all reasonable efforts to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force described by the officer and any injuries to personnel or subjects.

2. An investigator with the FIS shall complete an initial use of force data report for all Level 3 use of force incidents and submit it through the chain of command to the Chief of Police as soon as possible, but in no circumstances later than twenty-four (24) hours after the use of force.

3. An investigator with the FIS shall complete Level 2 or Level 3 administrative investigations within two months after learning of the use of force. Any request for an extension to this time limit must be approved by the Commander of IAFD through consultation with the Chief of Police.

C. Level 2 and Level 3 Use of Force Investigation Reports by the Force Investigation Section

1. At the conclusion of each use of force investigation, the FIS shall prepare an investigative report with findings based upon the preponderance of evidence. The report shall include:

a. A narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the officer's conduct based on the FIS's independent review of the facts and circumstances of the incident;
b. Documentation of all evidence that was gathered, including names, phone numbers, addresses of witnesses to the incident, and all underlying use of force data reports. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number, or address of those witnesses, the report shall state the reasons why such information was not recorded. The report shall also include all available identifying information for anyone who refuses to provide a statement;
c. The names of all other officers or employees witnessing the use of force;
d. The investigator's narrative evaluating the use of force, based on the evidence gathered, including a determination of whether the officer's actions complied with Department policy and state and federal law. The narrative shall also include an assessment of the incident for tactical and training implications, including whether the use of force could have been avoided through the use of de-escalation techniques or lesser force options;
e. If a weapon was used by an officer, documentation indicating whether or not the officer's certification and training for the weapon were current at the time of the incident; and
f. The complete disciplinary history of the officers involved in the use of force.

D. Level 2 and Level 3 Use of Force Investigation Review by the Force Investigation Section Chain of Command

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1. Upon completion of the FIS investigation report, the FIS investigator shall forward the report through his or her chain of command to the IAFD Commander.

2. The IAFD Commander shall review the report to ensure that it is complete and that, for administrative investigations, the findings are based upon the preponderance of the evidence.

3. The IAFD Commander shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings.

4. For administrative investigations, where the findings of the FIS investigation are not supported by a preponderance of the evidence, the IAFD Commander shall document the reasons for this determination and shall include this documentation as an addendum to the original investigative report.

5. The IAFD Commander shall take appropriate action to address any inadequately supported determination and any investigative deficiencies that led to it.

6. The IAFD Commander shall be responsible for the accuracy and completeness of investigation reports prepared by the FIS.

7. Where an investigator of the FIS repeatedly conducts deficient force investigations, the investigator shall receive the appropriate corrective and/or disciplinary action, including training or removal from the FIS. These actions shall be in accordance with performance evaluation procedures.

8. When the IAFD Commander determines that the force investigation is complete and the finding is supported by a preponderance of the evidence, the commanding officer shall forward the investigation report to the Force Review Board with a copy to the Chief of Police.

N/A

E. Chief of Police Authority to Re-assign Reviews and Resolution of Level 1 Use of Force Policy Violations

1. At the discretion of the Chief of Police, a force investigation may be assigned or re-assigned for investigation to the MATF or the Federal Bureau of Investigation (FBI), or may be returned to the FIS for further investigation or analysis. This assignment or re-assignment shall be documented in writing with notice to the affected officer.

2. After an administrative force investigation, where a use of force is found to violate policy, the Chief of Police shall direct and ensure appropriate discipline and/or corrective action.

3. Where a force investigation indicates apparent criminal conduct by an officer, the Chief shall ensure that a CID detective or the MATF consults with the Bernalillo County District Attorney's Office (BCDA) or the United States Attorneys' Office (USAO) as appropriate.

4. In use of force investigations, where the incident indicates policy, training, tactical, or equipment concerns, the Chief of Police shall ensure that necessary training is delivered and that policy, tactical, or equipment concerns are resolved.

F. Role of the Multi-Agency Task Force in the Review of Level 2 or Level 3 Use of Force for Potential Criminal Conduct

1. Where appropriate to ensure the fact and appearance of impartiality, and with the authorization of the Chief of Police, APD may refer a use of force indicating apparent criminal conduct by an officer to the MATF for criminal investigation, with notice to the affected officer.

2. To ensure that criminal and administrative investigations remain separate, APD's Violent Crimes Section may support the FIS of IAFD, or the MATF in the investigation of any Level 2 or Level 3 use of force, including critical firearm discharges, in-custody deaths, or police initiated actions in which a death or serious physical injury occurs.

3. If the MATF completes a criminal investigation into a use of force with reason to believe that criminal conduct has occurred, the Chief of Police shall instruct that the investigation is to be forwarded to the appropriate prosecuting authority.

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4. Where APD refers a use of force incident to the appropriate prosecuting authority for potential criminal prosecution, the FIS will delay any compelled interview of the target officer(s). No other part of the administrative investigation shall be held in abeyance unless specifically authorized by the Chief of Police, and after consultation with the prosecuting agency.