

OIR Use of Force Review

UOF Review 3-3-22 JH Unit G



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Contents

Summary of Facts.....	1
Lawful Requirements for Use of OC.....	1
Quantum of Force.....	2
Type of Force Used	2
Amount of Force Used	2
Governmental Interest.....	3
Severity of the Crime at Issue	3
Whether the Suspect Posed an Immediate Threat to the Safety of the Officers or Others.....	4
Whether the Suspect was Actively Resisting Arrest or Attempting to Evade Arrest by Flight	4
Balancing the Force Used Against the Need for Such Force.....	5
Compliance with Department Procedure	6
State Law.....	6
Department Procedure	6
Imminent Threat and De-escalation	6
Decontamination	7
Notifications and Procedures after Use of Force Incidents	8
Documentation	8
Use of Force Review Board	9
Conclusion.....	9
Recommendations	9

Summary of Facts

On March 3, 2022, at approximately 8:32 p.m., two Deputy Juvenile Correctional Officers (DJCOs) were supervising a group of youths in the day area.¹ Five youths were seated at a picnic-style table in front of the staff desk. Y1 and Y2 were seated next to each other on the same side of the table. DJCO 1, who was seated behind the staff desk, observed Y1 and Y2 turn to face each other, and heard the two youths begin to yell gang-related profanities at each other while still seated. DJCO 1 then observed both Y1 and Y2 stand up and continue to yell at each other. DJCO 1 directed both youths to sit down. Both youths ignored her directive to sit down, and instead took a fighting stance and began to square up to each other. Y2 then swung at Y1 and hit Y1 in the head with a closed-fist punch. Y1 fought back and the two youths engaged in a physical altercation involving multiple exchanges of closed-fist punches aimed towards each other's heads.

DJCO 1 and DJCO 2 both commanded the youths to "stop and get down" on multiple occasions. Y1 and Y2 continued to fight despite the commands. DJCO 2 then warned the youths that she would deploy Oleoresin Capsicum (OC) spray. The youths continued to swing at each other with closed fists. DJCO 2 yelled "OC clear," and deployed a one-second burst targeted at the youths' foreheads.

Following the first deployment of OC spray, the youths continued to swing at each other. DJCO 2 again commanded the youths to "get down." Y2 then abruptly ran away from Y1, and in the direction of DJCO 2. As Y2 ran away, Y1 went into the duck-and-cover position on the floor. As Y2 ran past DJCO 2, she directed him to "drop to the floor" because there was an uninvolved youth in the duck-and-cover position in the immediate area and she was "unaware of [Y2's] intentions." Y2 failed to stop and DJCO 2 gave a warning "OC clear" and then deployed another one-second burst of OC. Y2 then went to the floor and into a prone position.

Additional staff responded to the unit to assist in securing the youths. Staff escorted Y2 to the Unit G shower for decontamination. Y1 initially told staff that he had not been sprayed. As a result, he was not sent to decontamination, and was instead escorted to his room at 8:37 p.m. During a room check at 8:42 p.m., Y1 informed staff that he felt a burning sensation of his face and arms. At 8:45 p.m., staff responded to Y1's room and escorted him to the Unit H shower to decontaminate.

Y2 began decontamination at 8:35 p.m., within three minutes of the first deployment of OC spray. Y1 began decontamination approximately 13 minutes following the first deployment of OC spray, but within three minutes of informing staff that he was affected by the spray. When Y1 returned to Unit G, he was placed in a clean room, free of any OC spray residue.

Lawful Requirements for Use of OC

In determining whether a particular use of force was appropriate, courts analyze the force "under the Fourth Amendment's prohibition against unreasonable seizures using the framework articulated in *Graham v. Connor*."² The reasonableness of a seizure turns on whether the use of force was "objectively

¹ All information regarding the incident is taken from DJCO reports and video provided to the OIR. All information regarding statements made or commands given were taken from reports because the video contains no audio.

² *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

reasonable in light of the facts and circumstances confronting [the user of force], without regard to their underlying intent or motivation."³

Reasonableness is determined by balancing "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake."⁴

There are three steps in conducting the balancing required by *Graham*. The first step is to assess the "the quantum of force used."⁵ The second step is to measure "the governmental interests at stake by evaluating a range of factors."⁶ Finally, the third step is to balance the quantum of force used on the individual against "the government's need for that intrusion to determine whether it was constitutionally reasonable."⁷

Quantum of Force

Assessing the quantum of force used requires analyzing the nature and quality of the intrusion on the individual's Fourth Amendment interests, which, in turn, requires the fact finder to evaluate both the type of force inflicted, and the amount of force used.⁸

Type of Force Used

In this incident, the force used was Oleoresin Capsicum (OC), commonly known as pepper spray. OC is an oily organic resin derived from the fruit of plants in the *Capsicum* genus, such as chili peppers.

The Ninth Circuit has clearly held that pepper spray is a form of "force capable of inflicting significant pain and causing serious injury."⁹ "Pepper spray 'is *designed* to cause intense pain,' and inflicts 'a burning sensation that causes mucus to come out of the nose, an involuntary closing of the eyes, a gagging reflex, and temporary paralysis of the larynx,' as well as 'disorientation, anxiety, and panic.'"¹⁰ As such, pepper spray is regarded as "intermediate force" that, "while less severe than deadly force, nonetheless present[s] a significant intrusion upon an individual's liberty interests."¹¹

Recommendation

Update PMI 3-1-056 to specifically state that OC spray is classified as an intermediate level of force.

Amount of Force Used

The amount of "intermediate force" (OC) used in this case was minimal. There were two bursts of OC sprayed by DJCO 2. The reports indicate, and the video confirms, that the first deployment of OC occurred while the youths were actively fighting each other. The burst lasted one second and was deployed from a distance of approximately six feet away and was aimed at the foreheads of Y1 and Y2. The youths continued to swing at each other after encountering the OC.

³ *Graham v. Connor* (1989) 490 U.S. 386, 397; *Blankenhorn v. City of Orange* (9th Cir. 2007) 485 F.3d 463, 477.

⁴ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

⁵ *Davis v. City of Las Vegas* (9th Cir. 2007) 478 F.3d 1048, 1054.

⁶ *Davis v. City of Las Vegas* (9th Cir. 2007) 478 F.3d 1048, 1054.

⁷ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

⁸ *Miller v. Clark County* (9th Cir. 2003) 340 F.3d 959, 964.

⁹ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

¹⁰ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

¹¹ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

The second deployment of OC occurred as Y2 was running away from Y1, past DJCO 2, and in the direction of the hallway where an uninvolved youth was in the duck and cover position. The second burst lasted one second and was deployed from approximately three to six feet away and targeted towards Y2's forehead.

Some courts have also held that the failure to act by not properly decontaminating a person exposed to OC can rise to the level of a constitutional violation.¹² Such is not the case here. Staff ensured that the length of time the Y2 felt the effects of the OC was limited. As soon as the youths were secured, Y2 was taken directly to the unit showers to begin the decontamination process. The reports and video footage reflect that only three minutes elapsed from the first deployment of OC and the time that Y2 began the decontamination process.

Staff was initially informed that Y1 was not affected by the OC spray and escorted him to his room instead of to a shower for decontamination. After remaining in his room for approximately five minutes, during a room check, Y1 informed staff that he was in fact feeling the effects of the OC spray. After being informed of this, staff acted quickly to escort Y1 to the adjoining unit for decontamination within three minutes of Y1's notification.

Governmental Interest

Intermediate force is a "significant level of force that must be justified by the governmental interest involved."¹³ In evaluating the government's interest in the use of force, courts look to: "(1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the safety of the officers or others, and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight."¹⁴

Severity of the Crime at Issue

The crimes at issue in this incident were violent crimes of assault and battery. Under California law, assault and battery are typically misdemeanor offenses.¹⁵ Battery involving the infliction of serious bodily injury and assault by means of force likely to produce great bodily injury are both felony offenses.¹⁶ A felony battery charge focuses on the actual injury inflicted, while a felony assault charge focuses on the force used and not whether the force produced great bodily injury. "The crime of assault by means of force likely to produce great bodily injury is completed before any injury is inflicted."¹⁷ "It is enough that the force used is likely to cause serious bodily injury. No injury is necessary."¹⁸ Courts have said that punching is "capable of inflicting significant pain and causing serious injury."¹⁹

Here, the video and reports show that the youths were engaged in punching each other with closed fists when DJCO 2 deployed the first burst of OC at both youths. However, when DJCO 2 deployed the second burst of OC spray aimed at Y2, Y2 was no longer engaging in assaultive behavior with Y1. In fact, Y1 was

¹² *Wilson v. Bucato* (E.D.Cal. Dec. 7, 2023, No. 1:23-cv-00023-HBK (PC)) 2023 U.S.Dist.LEXIS 218539.

¹³ *Bryan v. MacPherson* (9th Cir. 2010) 630 F. 3d 805, 826.

¹⁴ *Graham v. Connor* (1989) 490 U.S. 386 [109 S.Ct. 1865, 104 L.Ed.2d 443].

¹⁵ Pen. Code, §§ 240, 242, 243(a).

¹⁶ Pen. Code, §§ 242, 243(d), 245(a).

¹⁷ *People v. Hopkins* (1978) 78 Cal.App.3d 316 [142 Cal.Rptr. 572].

¹⁸ *People v. Hopkins* (1978) 78 Cal.App.3d 316 [142 Cal.Rptr. 572].

¹⁹ *Reaza v. County of Riverside* (C.D.Cal. Oct. 26, 2022, No. 5:20-cv-01188-MEMF (SPx)) 2022 U.S.Dist.LEXIS 198653.

on the floor in a prone position, and Y2 was running away from the scene when DJCO discharged her OC spray.

Whether the Suspect Posed an Immediate Threat to the Safety of the Officers or Others

Courts have said that the most important element of the *Graham* factors is whether the suspect poses an immediate threat to the safety of the officers or others.²⁰ Here, the video and reports make clear that Y1 and Y2 were engaged in mutual combative behavior and posed an immediate threat to each other at the time they were throwing closed fist punches at each other. The reports also establish that even after given multiple commands to “stop and get down” from both DJCO 1 and DJCO 2, the youths continued to punch each other. These facts establish that but for the DJCOs intervention, the fight would have continued. Therefore, at the time of the first deployment of OC, the youths posed an immediate and ongoing threat to each other.

The second burst of spray requires a different analysis. At the time of the second deployment of OC spray, the fight had ended, and Y2 was running in the opposite direction of Y1. DJCO 2 reported that Y2 “ran towards the hallway where there was another youth in a “duck and cover” position” and that she was “unaware of [Y2’s] intentions.” There is nothing in the video or the reports to suggest that Y2 was intending to assault the youth who was in the hallway in the “duck and cover” position. However, assessing the facts known to DJCO 2 at the time, a youth had just been engaged in a violent confrontation with another youth, and now was running away and disobeying commands to get on the ground. In evaluating whether Y2, in this moment, posed an immediate threat to the safety of the youth in the “duck and cover position,” the Ninth Circuit has stated that “a simple statement by an officer that he fears for his safety or the safety of others is not enough; there must be objective factors to justify such a concern.”²¹ The question is whether the objective factors cited above justified DJCO 2’s concern for the youth in the “duck and cover” position such that it was reasonable to consider Y2 to be a threat to the youth’s safety.

The United States Supreme Court has admonished that “[n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers’...violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.”²² Accordingly, DJCO 2’s assessment that Y2 posed a threat to the safety of other youths, when Y2 had seconds earlier been involved in a violent confrontation and was now running in the direction of another youth after refusing commands to get down on the floor, cannot be dismissed as unreasonable, even though it was somewhat speculative.

Whether the Suspect was Actively Resisting Arrest or Attempting to Evade Arrest by Flight

With respect to the first burst of OC spray, the youths were not attempting to evade the DJCOs, however, they were clearly refusing to comply with DJCO 1 and DJCO 2’s commands to “stop and get down” and continued to fight. DJCO 1 indicated in her report that she and DJCO 2 gave numerous commands to stop and that the youths continued to fight, even after DJCO 2 warned that she would

²⁰ *Chew v. Gates* (9th Cir. 1994) 27 F.3d 1432.

²¹ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156, 1163, citing *Deorle v. Rutherford*, 272 F.3d 1272, 1281; see also *Graham v. Connor* (1989) 490 U.S. 386, 396 (“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene . . .”).

²² *Graham v. Connor* (1989) 490 U.S. 386, 396-397, citing *Johnson v. Glick* (2nd Cir. 1973) 481 F. 2d 1028, 1033.

deploy OC. These facts show that Y1 and Y2 failed to submit to the DJCOs' authority to take them into custody. To place the non-compliant combative youths into custody, DJCO 2 ultimately had to do more than simply place compliant youths into handcuffs.

With respect to the second deployment, the video clearly shows Y2 running past DJCO 2 towards the hallway where there was another youth in a "duck and cover" position. DJCO 2 indicated in her report that she was unaware of Y2's intentions, so she directed him to drop to the floor. Y2 failed to stop as she "gave another warning, 'OC clear' and deployed a 1 second burst of OC targeted to his forehead. [Y2] then dropped to the floor and stopped resisting." Y2 was clearly resisting DJCO 2's attempts to gain control of him and appeared to be attempting to avoid apprehension by running towards the hallway.

Balancing the Force Used Against the Need for Such Force

Finally, in order to determine if force was excessive, courts "balance the gravity of the intrusion on the individual against the government's need for that intrusion."²³ Put another way, does the government's need for the force used, based on the severity of the crime, the threat to safety, and the resistance of the subject, outweigh the type and amount of force used?

The Ninth Circuit has said that the law is clearly established "that police officers employ excessive force in violation of the Fourth Amendment when they use pepper spray upon an individual who is engaged in the commission of a non-violent misdemeanor and who is disobeying a police officer's order but otherwise poses no threat to the officer or others."²⁴ That is not the situation that confronted the DJCOs in this incident.

As previously stated, the youths were engaged in, at a minimum, a violent misdemeanor, and potentially a violent felony, and they clearly disobeyed the DJCOs' order to "stop and get down" and continued to fight after being sprayed. The most important distinction, however, is the fact that by continuing to fight, the youths clearly posed a threat to each other.

The youths involved in the fight were under the custody and care of the Probation Department. As such, the Probation Department had an obligation to protect them from harm. Prior to the deployment of OC, the youths posed an immediate threat to each other. Additionally, the harm that could have occurred to one or more of the involved youths from closed-fist strikes justified the use of a one-second burst of OC when the youths failed to follow commands to "stop" and "get down." Thus, the first deployment of OC was justified when considering each of the above factors.

The second deployment of OC spray, directed only at Y2, was not deployed when the youths were actively engaged in assaultive behavior, but was deployed after Y2 had been fighting Y1, refused repeated commands to get on the ground, and attempted to flee into an area where another youth was in a "duck and cover" position. While it is not overwhelmingly evident that Y2 posed a threat to the youth in the duck and cover position, the concern for the safety of the youth posed by Y2 in this situation does not appear to be imagined or irrational. Those factors, coupled with the seriousness of the crime engaged in by Y2, along with his attempt to evade apprehension, clearly tilt the balance in favor of the need for deploying the second burst of OC spray.

²³ *Espinosa v. City & County of San Francisco* (9th Cir. 2010) 598 F.3d 528.

²⁴ *Silva v. Chung* (9th Cir. 2018) 740 F.App'x 883.

Compliance with Department Procedure

State Law

The State of California has set forth the requirements that a facility, which authorizes the use of chemical agents as a force option, must have in their policies and procedures.²⁵ Those requirements include that the policies mandate that chemical agents only be used when there is an imminent threat to the youth's safety or the safety of others and only when de-escalation efforts have been unsuccessful or are not reasonably possible;²⁶ that the policy outline the facility's approved methods and timelines for decontamination from chemical agents including that youth who have been exposed to chemical agents shall not be left unattended until that youth is fully decontaminated or is no longer suffering the effects of the chemical agent;²⁷ that the policy define the role, notification, and follow-up procedures required after a use of force incident involving chemical agents for medical, mental health staff and parents or legal guardians;²⁸ and that the policy provide for the documentation of each incident of use of chemical agents, including the reasons for which it was used, efforts to de-escalate prior to use, youth and staff involved, the date, time and location of use, decontamination procedures applied and identification of any injuries sustained as a result of such use.²⁹

Department Procedure

Imminent Threat and De-escalation

The Probation Department has two procedures that address the use of OC by DJCOs in the course and scope of their duties.³⁰ The OC Procedure provides that OC spray may “only be used when there is an imminent threat to the youth’s safety and/or the safety of the officer or others and only when de-escalation efforts have been unsuccessful or are not reasonably possible.”³¹ This verbiage is consistent with state law.

The reports regarding this incident make clear that Y1 and Y2 squared up for a fight and threw numerous closed fist punches at each other. Y1 swung first and Y2 fought back, resulting in full on mutual combat. As a result, at the time of the first use of OC, there was an imminent threat to the safety of the youths that were involved in the physical fight.

DJCO 1 and DJCO 2 both attempted to de-escalate the situation by providing verbal commands to Y1 and Y2 to “stop and get down.” Their de-escalation efforts were unsuccessful at ending the fight. As a result, DJCO 2 deployed a one second burst of OC while the mutual combat was occurring and only after the attempts at verbal de-escalation failed.

At the time of DJCO 2’s second deployment of OC, Y2 had “failed to stop,” leaving DJCO 2 barely enough time to issue another warning, “OC clear,” and deploy a second burst of OC targeted at Y2’s forehead as he ran past her and headed for the hallway.

²⁵ Cal. Code Regs., tit. 15, § 1357 – Use of Force.

²⁶ Cal. Code Regs., tit. 15, § 1357(b)(2).

²⁷ Cal. Code Regs., tit. 15, § 1357(b)(3).

²⁸ Cal. Code Regs., tit. 15, § 1357(b)(4).

²⁹ Cal. Code Regs., tit. 15, § 1357(b)(5).

³⁰ Procedure Manual Item 3-1-056 Oleoresin Capsicum (OC) Spray – Facilities;
Procedure Manual Item 3-1-015 Use of Force – Facilities.

³¹ Procedure Manual Item 3-1-056 I(C) General Information.

Decontamination

The Probation Department's OC Procedure requires that "[f]or youth exposed to OC spray, through a direct spray or over spray, decontamination measures must be undertaken as soon as practical after a youth is subdued and restrained."³² The OC Procedure further states that youth shall be placed, "fully clothed, into a shower, at a sink, or on the patio with the garden hose, allowing cold water to freely fall onto the youth until the youth no longer feels the effects of the OC spray."³³

According to DJCO 1, Y1 and Y2 were both affected by the OC spray. As soon as the youths were secured, Y2 was escorted to the unit showers to decontaminate. Reports indicate that Y2 began the decontamination process within three minutes of the first deployment of OC.

Although DJCO 2 deployed OC spray targeted at "their foreheads," meaning Y1 and Y2, Y1 initially informed responding staff that "he had not been sprayed." Staff relied on Y1's statement and escorted him to his room once he was secured. Approximately five minutes later, Y1 informed staff that he was feeling the effects of OC and staff responded to escort him to decontaminate in an adjoining unit shower within three minutes of being notified.

The OC Procedure also states that the youth will then remove contaminated clothing and be issued clean clothing. The contaminated clothing shall be disposed of in a marked plastic bag.³⁴ The reports reviewed by the OIR indicated that both affected youths were provided with clean clothing, and the contaminated clothes were bagged in a water-soluble bag and labeled accordingly. In addition, Y1 was provided with a clean room, to ensure that he would not be re-exposed to OC on any items that he may have touched during the five minutes that he was in his room prior to decontamination, as well as a clean linen bundle.

Staff are also required to be with "the youth throughout the entire decontamination process."³⁵ As it relates to Y2, the DJCO's report clearly states in the narrative that "I supervised the decontamination process for youth" Y2. As it relates to Y1, the DJCO that escorted Y1 to the shower indicated in his report that he escorted the youth to the shower and that Y1 "began his decontamination at 8:44 p.m. and ended at 8:48pm by his own choice." The report also indicated that the DJCO escorted Y1 back to Unit G at 8:55 p.m. The report does not, however, indicate that the DJCO stayed "with the youth throughout the entire decontamination process."

Recommendation

Update the portion of the Use of Force/Restraint SIR form relating to Pepper Spray and Decontamination to add an entry field that requires the report writer to specifically indicate which DJCO(s) stayed with each youth during the entire decontamination process.

Although Y1 told staff that he had not been sprayed, Y1 was clearly exposed to a chemical agent, and accordingly he should have been sent for decontamination and not left unattended in his room. Given

³² Procedure Manual Item 3-1-056 II(F)(3) Decontamination/Aftercare Procedures. (The Department's Use of Force Policy, Procedure Manual Item 3-1-015 VIII(E) Medical and Mental Health Considerations, has been renumbered and amended to include language that decontamination measures must be undertaken as soon as practical after a youth is subdued and restrained.)

³³ Procedure Manual Item 3-1-056 II(F)(4) Decontamination/Aftercare Procedures.

³⁴ Procedure Manual Item 3-1-056 II(F)(7) Decontamination/Aftercare Procedures.

³⁵ Procedure Manual Item 3-1-056 II(F)(10) Decontamination/Aftercare Procedures.

that DJCO 2 in her own report stated that she sprayed Y1 and Y2 targeted at their foreheads, it would have been reasonable for staff to treat Y1 as if he had been affected by the OC spray, even if he stated otherwise.

Recommendation

Update PMI 3-1-056 to require that any youth, who is the intended recipient of an OC deployment, receive decontamination, regardless of whether the youth does not immediately feel the effects.

Notifications and Procedures after Use of Force Incidents

The OC Procedure requires that a DJCO who discharges an OC canister notify his or her supervisor as soon as possible.³⁶ The OC Procedure also makes clear that “[t]he staff member who sprayed the individual is responsible for advising medical personnel or others of the decontamination procedures.”³⁷ The responsibility for contacting the youth’s parent or legal guardian is assigned to the SJCO/Duty Officer or designee.³⁸ Lastly, while the OC Procedure requires that the youth must be referred to Mental Health staff immediately following decontamination, it does not specifically identify whose responsibility it is to ensure that this section of the procedure is followed.³⁹

None of the reports indicate whether a Supervising Juvenile Correctional Officer (SJCO) was on scene or made aware of the deployment of OC. Even though DJCO 2 deployed the OC, it appears that DJCO 1 prepared the primary Special Incident Report. DJCO 1’s report indicated that “[m]edical was called” for both youths involved in the altercation and that both were seen by medical staff shortly after being called. The report also indicated that the guardians for both youths were notified. Finally, the report established that the Clinical Evaluation Guidance Unit (CEGU) was notified of the incident, and the youth involved, shortly after the Code 2 was called.⁴⁰

Documentation

Department procedure related to use of force provides that any DJCO involved in, or a witness to, a use of force, which includes the use of Chemical - Oleoresin capsicum (OC) spray, shall write and submit a Special Incident Report (SIR).⁴¹ Further, the procedure requires that a SIR and Use of Force Report must include a clear and factual justification for the use of OC, efforts to de-escalate prior to use and reasons why de-escalation was not reasonably possible, the youth and staff involved, the date, time and location of use, decontamination procedures applied, and identification of any injuries and medical treatment.⁴²

DJCO 1 completed the main SIR for this incident and six other DJCOs prepared supplemental incident reports. The main SIR identified the youth involved as well as the actions taken by DJCO 1 and DJCO 2 prior to the uses of force. DJCO 2 completed the use of restraint/force and pepper spray portions of a SIR for each of the exposed youth. DJCO 1’s report identified the reason for each deployment of OC and the effect of the OC on each of the youths. The report clearly laid out the activities that occurred after

³⁶ Procedure Manual Item 3-1-056 II(E)(1) Notification and Documentation.

³⁷ Procedure Manual Item 3-1-056 II(F)(13) Decontamination/Aftercare Procedures.

³⁸ Procedure Manual Item 3-1-056 II(F)(18) Decontamination/Aftercare Procedures.

³⁹ Procedure Manual Item 3-1-056 II(F)(17) Decontamination/Aftercare Procedures.

⁴⁰ A Code 2 indicates that there is a fight in progress.

⁴¹ Procedure Manual Item 3-1-015 VIII(F) DJCO Responsibilities.

⁴² Procedure Manual Item 3-1-056 II(E)(2) Notification and Documentation.

the use of force except for whether the youths were seen by the CEGU, and whether someone remained with Y1 throughout the entire decontamination process.

Use of Force Review Board

On March 24, 2022, the Department's Use of Force Review Board convened and reviewed this use of force incident. The Board recommended that staff ensure that documentation was consistent between the SIR and the UOF Restraint/Force/Pepper Spray forms. The Board further recommended that staff document which staff member notified the affected youths' parents or guardians.⁴³

Conclusion

A review of the SIR and Use of Force reports established that the first use of force by DJCO 2 was within law and policy, and therefore appropriate. It is clear from the reporting that had DJCO 2 not deployed force, the youths would have continued to strike each other, possibly resulting in serious injuries. The second use of force by DJCO 2, targeting only Y2 after the youth had stopped fighting and Y2 began running into the hallway, was also within law and policy.

Recommendations

1. Update PMI 3-1-056 to specifically state that OC spray is classified as an intermediate level of force.
2. Update the portion of the Use of Force/Restraint SIR form relating to Pepper Spray and Decontamination to add an entry field that requires the report writer to specifically indicate which DJCO(s) stayed with each youth during the entire decontamination process.
3. Update PMI 3-1-056 to require that any youth, who is the intended recipient of an OC deployment, receive decontamination, regardless of whether the youth does not immediately feel the effects.

⁴³ While this information was not contained within DJCO1's SIR, the OIR was able to find it in DJCO2's UOF Restraint/Force/Pepper Spray forms.