

OIR Use of Force Review

UOF Review 4-30-22 YLA



Office of Independent Review
601 N. Ross St., 2nd Floor
Santa Ana, CA 92701

Robert P. Faigin, J.D., MPA
Executive Director

Contents

Summary of Facts.....	1
Lawful Requirements for Use of OC.....	2
Quantum of Force	2
Type of Force Used	2
Amount of Force Used	3
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.....	4
Compliance with Department Procedure	5
State Law.....	5
Department Procedure	5
Imminent Threat and De-escalation	5
Decontamination	6
Notifications and Procedures After Use of Force Incidents.....	7
Documentation	7
Observations	8
Use of Force Review Board	9
Conclusion.....	10
Recommendations	10

Summary of Facts

On April 30, 2022, at approximately 9:06 a.m., four youths were playing handball together, and another group of youths were congregated in the corner of the patio near a piece of workout equipment.¹ As the group of four youths continued their handball game, Y1 approached Y2 from behind and began to strike Y2 in the face and body with closed fists. Deputy Juvenile Correctional Officer (DJCO) 1 called a “Code 2” over the radio and ran towards Y1 and Y2 as she directed them to “Stop! Get down!”²

Y2 ran away from Y1, and Y3 grabbed Y1 from behind in an attempt to keep him from going after Y2. While Y1 was being held around the waist by Y3, he moved in the direction of Y2 and continued to throw punches at Y2. At the same time Y2 was attempting to fight Y1. Y3 was able to pull Y1 away from Y2 temporarily. Y2 then approached Y1 and brought his closed fists up to his chest as if he was preparing to swing at Y1. Y1 took a fighting stance and put his fists in front of his face. DJCO 1 again directed the youths to stop. DJCO 1 yelled “OC clear” and deployed a half-second burst of Oleoresin Capsicum (OC) spray directed at Y1. Due to Y3’s position, he was also sprayed with OC. DJCO 2 also deployed her OC spray in a ½ second to 1 second burst towards the youth at the same time as DJCO 1. DJCO 2 also accidentally got sprayed in the eyes and mouth area by DJCO 1’s OC spray.

Y1 then went to the ground in the “duck and cover” position and placed his hands behind his back. DJCO 3 immediately approached Y1 from behind and began to kneel to the right of Y1, preparing to secure his hands. As DJCO 3 knelt next to Y1, Y2 ran back towards Y1 and attempted to kick him. Y1 was able to move out of the way of the incoming kick, and the kick appeared to strike DJCO 3’s face. In the video, DJCO 3 can be seen going down to the ground.³ Y1 then got up and ran after Y2. Both youths moved towards the patio side entrance and continued to fight.⁴

A “Code 3” was broadcast over the radio and DJCO 4 responded from inside the unit day area to assist.⁵ Y1 and Y2 were exchanging punches when DJCO 4 arrived and attempted to separate them. DJCO 1 instructed DJCO 4 to step away from the youth, yelled “OC clear,” and deployed a half-second burst of OC at Y2. DJCO 4 was affected by overspray but was able to pull Y1 away from Y2.

Additional staff arrived and secured both Y1 and Y2 in handcuffs. The youths were escorted to unit showers on opposite sides of the unit to begin the decontamination process. DJCO 1 and DJCO 5 escorted Y1 to the showers on the right side of the unit. Y1 began decontamination at 9:08 a.m. DJCO 6 and DJCO 7 escorted Y2 to the showers on the left side of the unit and Y2 began decontamination at 9:11 a.m.

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

³ DJCO 3’s report indicates that she was kneeling to put handcuffs on Y1 when DJCO 1’s pepper spray hit her in the face, and she went to ground.

⁴ From this point forward, the facts as described herein are taken from the various incident reports submitted. No video footage of the rest of the incident exists as both Y1 and Y2 ran off camera and remained off camera for the remainder of the incident.

⁵ A Code 3 indicates that staff needs assistance.

Lawful Requirements for Use of OC

In determining whether a particular use of force was appropriate, courts analyze the use of force “under the Fourth Amendment’s prohibition against unreasonable seizures using the framework articulated in *Graham v. Connor*.”⁶ The reasonableness of a seizure turns on whether the use of force was “objectively reasonable in light of the facts and circumstances confronting [the user of force], without regard to their underlying intent or motivation.”⁷

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.”⁸

There are three steps in conducting the balancing required by *Graham*. The first step is to assess the “the quantum of force used.”⁹ The second step is to measure “the governmental interests at stake by evaluating a range of factors.”¹⁰ 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.”¹¹

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.¹²

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.”¹³ “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.’”¹⁴ 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.”¹⁵

Recommendation

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

⁶ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

⁷ *Graham v. Connor* (1989) 490 U.S. 386, 397; *Blankenhorn v. City of Orange* (9th Cir. 2007) 485 F.3d 463, 477.

⁸ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

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

¹⁰ *Davis v. City of Las Vegas* (9th Cir. 2007) 478 F.3d 1048, 1054.

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

¹² *Miller v. Clark County* (9th Cir. 2003) 340 F.3d 959, 964.

¹³ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

¹⁴ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

¹⁵ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

Amount of Force Used

The amount of “intermediate force” (OC) used in this case was moderate. There were a total of three half-second deployments of OC deployed, and each youth was sprayed twice. The first two sprays were deployed simultaneously while Y1 and Y2 were fighting. One burst of spray, by DJCO 2, was directed at both youths, and the other burst of spray (by DJCO 1, which was sprayed simultaneously to that of DJCO 2) was directed only at Y1. The third burst of spray, deployed by DJCO 1, was directed only at Y2, and came later, after Y1 got up off the ground and both Y1 and Y2 continued to engage in a physical altercation. The reports indicate that all three deployments of OC occurred while Y1 and Y2 were fighting. After each deployment, the youths continued to fight, and staff ultimately had to physically separate them.

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.¹⁶ Here, staff ensured that the length of time the youths felt the effects of the OC was limited. As soon as the youths were secured, they were both taken directly to the unit showers to begin the decontamination process. According to the reports, both youths began decontamination within eight minutes of the first deployment of OC.

Governmental Interest

Intermediate force is a “significant level of force that must be justified by the governmental interest involved.”¹⁷ 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.”¹⁸

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 misdemeanor offenses.¹⁹ However, battery involving the infliction of serious bodily injury and assault by means of force likely to produce great bodily injury are both felony offenses.²⁰ The felony battery charge focuses on the actual injury inflicted, while the 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.”²¹ “It is enough that the force used is likely to cause serious bodily injury. No injury is necessary.”²² Some courts have said that punching is “capable of inflicting significant pain and causing serious injury.”²³

Here, the reports show that Y1 and Y2 were exchanging closed-fists punches when DJCO 1 and DJCO 2 deployed the first two sprays of OC. The youths did not stop and were still fighting when DJCO 1

¹⁶ *Wilson v. Bucato* (E.D.Cal. Dec. 7, 2023, No. 1:23-cv-00023-HBK (PC)) 2023 U.S.Dist.LEXIS 218539.

¹⁷ *Bryan v. MacPherson* (9th Cir. 2010) 630 F. 3d 805, 826.

¹⁸ *Graham v. Connor* (1989) 490 U.S. 386 [109 S.Ct. 1865, 104 L.Ed.2d 443].

¹⁹ Pen. Code, §§ 240, 242, 243(a).

²⁰ Pen. Code, §§ 242, 243(d), 245(a).

²¹ *People v. Hopkins* (1978) 78 Cal.App.3d 316 [142 Cal.Rptr. 572].

²² *People v. Hopkins* (1978) 78 Cal.App.3d 316 [142 Cal.Rptr. 572].

²³ *Reaza v. County of Riverside* (C.D.Cal. Oct. 26, 2022, No. 5:20-cv-01188-MEMF (SPx)) 2022 U.S.Dist.LEXIS 198653.

deployed the third burst of OC. Based on these facts, the force used by the two youths was likely to cause serious bodily injury.

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.²⁴ Here, the reports make clear that Y1 attacked Y2 and punched him, and that Y2 fought back. After given commands to “stop” and “[g]et down,” they both continued to fight. Even after he was able to get away from Y1, Y2 returned to continue the fight. Y1 and Y2 clearly posed an immediate threat to each other as they threw closed-fist punches at each other. The video footage also establishes that even after each youth had initially been sprayed with OC, and Y1 went to the ground, Y2 went after him and re-engaged Y1 in the fight. Similarly, even after Y2 was sprayed a second time, the DJCOs had to physically pull the two youths apart to end the fight. These facts establish that at the time of the deployments of OC, the youths posed an immediate and ongoing threat to each other.

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

While the youths were not attempting to evade DJCO 1, both youths were clearly refusing to comply with her commands to “stop” and “[g]et down” and submit to her authority. Instead, they continued to assault each other. DJCO 1 also yelled “OC clear” prior to her deployment of OC, which did not deter the youths from continuing their assaultive behavior.

Ultimately, to place the combative youths into custody, the DJCOs had to do more than simply place passive youths into handcuffs. The DJCOs had to physically pull the two youths apart and take them to the ground to take them into custody.

Balancing the Force Used Against the Need for Such Force

Finally, in order to determine if force used was excessive, courts “balance the gravity of the intrusion on the individual against the government’s need for that intrusion.”²⁵ 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.”²⁶ 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 DJCO 1’s order to 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.

²⁴ *Chew v. Gates* (9th Cir. 1994) 27 F.3d 1432.

²⁵ *Espinosa v. City & County of San Francisco* (9th Cir. 2010) 598 F.3d 528.

²⁶ *Silva v. Chung* (9th Cir. 2018) 740 F.App’x 883.

The youths involved in the fights 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, Y1 and Y2 were an immediate threat to each other. Additionally, the harm that could have occurred to either youth from closed-fist strikes justified the use of a single burst of OC when the youths failed to follow commands to “stop” and “[g]et down.” The second burst of OC was similarly justified, as the youths continued to punch each other. Thus, each deployment of OC was justified when considering each of the above factors.

Compliance with Department Procedure

State Law

The State of California has set forth requirements that a facility, which authorizes the use of chemical agents as a force option, must have in their policies and procedures.²⁷ Those requirements include, in part, 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;²⁸ 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;²⁹ 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;³⁰ 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.³¹

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.³² 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.”³³ This verbiage is consistent with state law.

The reports regarding this incident make clear that Y1 and Y2 posed an imminent threat to each other. DJCO 1 attempted to de-escalate the situation by directing both youths to “stop” and “get down.” DJCO 1’s attempts to verbally de-escalate the situation were unsuccessful, as neither youth complied with her directives to stop. Instead, the youths continued to engage in mutually assaultive behaviors.

²⁷ Cal. Code Regs., tit. 15, § 1357 – Use of Force.

²⁸ Cal. Code Regs., tit. 15, § 1357(b)(2).

²⁹ Cal. Code Regs., tit. 15, § 1357(b)(3).

³⁰ Cal. Code Regs., tit. 15, § 1357(b)(4).

³¹ Cal. Code Regs., tit. 15, § 1357(b)(5).

³² Procedure Manual Item 3-1-056 Oleoresin Capsicum (OC) Spray – Facilities;
Procedure Manual Item 3-1-015 Use of Force – Facilities.

³³ Procedure Manual Item 3-1-056 I(C) General Information.

Given that Y1 and Y2 were actively punching each other with closed fists, it was clear that they posed an imminent threat to each other when DJCO 1 deployed OC spray on both occasions.

DJCO 2 also deployed OC spray towards both youths. However, her report does not indicate that she gave a warning or attempted to de-escalate the situation. Instead, DJCO 2 indicated that after witnessing the altercation between Y1 and Y2, she immediately got up, took out her OC, and deployed it. Given that DJCO 2's report indicated that she deployed her OC at the same time as DJCO 1, and that she also deployed her OC while the youths were involved in a physical altercation, it is also clear that there was an imminent threat to Y1 and Y2's safety when DJCO 2 deployed her OC.

Decontamination

The Probation Department's OC Procedure requires that "[f]or youth exposed to OC spray, through a direct spray or overspray, decontamination measures must be undertaken as soon as practical after a youth is subdued and restrained."³⁴ 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."³⁵

Y1 and Y2 came into direct contact with, and were affected by, the OC spray. As soon as the youths were secured, Y1 was escorted to the showers on the right side of the Youth Leadership Academy, and Y2 was escorted to the showers on the left side of YLA to decontaminate. According to the reports, both youths began decontamination within eight minutes of the first OC deployment.

Y3 was affected by overspray when he attempted to separate Y1 and Y2. According to the reports, staff offered Y3 the opportunity to decontaminate in the showers. However, he declined and chose to decontaminate using the sink water in his room. Staff did not document when Y3 began decontamination, or when he stopped decontamination, but reported that Y3 "...began and ended decontamination by choice without a time limit." Due to a lack of detailed documentation, it is unclear when Y3 began decontamination.

The OC Procedure also states that the youth will then remove contaminated clothing and be issued clean clothing. The contaminated clothing shall be placed in a marked plastic bag.³⁶ According to DJCO 1's report, Y1 and Y2's old clothes were placed in a bag and labeled. Y3 "was offered clean linen but only wanted a new shirt and sweatshirt." Y3's "dirty linen was placed in a black bag and was labeled."

Staff are also required to be with "the youth throughout the entire decontamination process."³⁷ None of the reports specifically state that a particular DJCO stayed with the youths during the entire decontamination process. However, the main SIR states that Y1's decontamination was supervised by DJCO 5 and DJCO 7. Only one of the DJCOs who supervised Y1's decontamination prepared a

³⁴ 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.)

³⁵ Procedure Manual Item 3-1-056 II(F)(4) Decontamination/Aftercare Procedures.

³⁶ Procedure Manual Item 3-1-056 II(F)(7) Decontamination/Aftercare Procedures.

³⁷ Procedure Manual Item 3-1-056 II(F)(10) Decontamination/Aftercare Procedures.

supplemental report, and it does not state that he or the other staff member remained with Y1 throughout his decontamination.

The SIR narrative prepared by DJCO 6, who was tasked with assisting with Y2's decontamination, states that Y2 "...ended his shower by choice." This statement implies that someone was present for Y2 to alert to the fact that he was voluntarily ending his decontamination. However, it remains unclear whether a staff member was continuously present with Y2 throughout the 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.

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.³⁸ 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."³⁹ The responsibility for contacting the youth's parent or legal guardian is assigned to the SJCO/Duty Officer or designee.⁴⁰ 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 policy is followed.⁴¹

The main SIR indicates that SJCO 1 was on scene and assisted in directing staff to escort youth for decontamination. In addition, the main SIR indicates that DJCO 4 attempted to notify the guardians of the youths. According to DJCO 1's report, a voicemail was left for Y2's parents, however, none was left for Y1's parents as their voicemail was full. There is no documentation indicating that staff notified Y3's parent or guardian. DJCO 1's report also indicates that the medical unit was notified within five minutes of the incident. Y1 was seen by medical staff within 13 minutes of medical staff being notified, Y2 was seen within 27 minutes, and Y3 was seen within 19 minutes.

Recommendation

Provide additional training to remind supervisors and staff that parental notification procedures should be followed, not just with respect to youths who were the target of OC spray, but also for youths who encountered overspray.

Finally, DJCO 1's report establishes that the Clinical Evaluation Guidance Unit (CEGU) was notified of the incident and that CEGU staff responded to the unit two days following the incident. According to the report, both Y1 and Y2 declined to meet with CEGU staff.

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

³⁸ Procedure Manual Item 3-1-056 II(E)(1) Notification and Documentation.

³⁹ Procedure Manual Item 3-1-056 II(F)(13) Decontamination/Aftercare Procedures.

⁴⁰ Procedure Manual Item 3-1-056 II(F)(18) Decontamination/Aftercare Procedures.

⁴¹ Procedure Manual Item 3-1-056 II(F)(17) Decontamination/Aftercare Procedures.

Special Incident Report (SIR).⁴² Further, the procedure requires that a SIR and Restraint Report must include a clear and factual justification for the use of OC, efforts to de-escalate prior to use or reasons why de-escalation was not reasonably possible, youths and staff involved, the date, time and location of use, a complete description of decontamination procedures applied, and identification of any injuries and medical treatment.⁴³

DJCO 1 completed the main SIR for this incident and six other DJCOs prepared supplemental incident reports. The main SIR identified the youths involved as well as the actions taken by DJCO 1 prior to the use of force. The report also clearly lays out the activities that occurred after the use of force except for whether staff members remained with the youths throughout the decontamination process.

Noticeably absent from the main SIR is the deployment of OC by DJCO 2. No mention of DJCO 2 deploying OC is made in DJCO 1's narrative.

DJCO 1 and DJCO 2 both completed an SIR narrative, as well as separate Use of Force reports, for the use of pepper spray on Y1 and Y2. DJCO 1's SIR narrative also addressed the basis for Y3 being over sprayed, as well as information related to decontamination and medical notification. DJCO 1 also completed a separate Use of Force report for Y3, however, the Use of Force report for Y3 does not indicate whether Y3's parent or guardian was called.

There were multiple staff members that responded to assist with the incident, including applying restraints and handcuffs and assisting with escorts and decontamination. One of the staff members who assisted with decontamination did not prepare a report to document their involvement.

Recommendation

Update PMI 3-1-056 to require that all staff members assisting with decontamination, even of uninvolved youth affected by overspray, prepare reports documenting their role in the decontamination process.

The OIR also observed some inconsistencies within reports as to which DJCO interacted with which youth. For example, DJCO 2's report indicated that she and DJCO 7 guided Y2 "to his feet so we could escort youth to his room," however, DJCO 7's use of force report appears to indicate that he used force on Y1. Similarly, DJCO 7's SIR narrative identifies DJCO 6 as one of the persons involved with him in the decontamination process, however DJCO 6 completed a use of force report related to Y2, not Y1.

Recommendation

Provide additional training reminding supervisors of the importance of making sure that DJCOs' reports are accurate and complete. Supervisors should also be reminded of their role in making sure that inconsistencies in, or between, reports are addressed before reports are approved.

Observations

While the use of OC was a reasonable force option in this incident, other force options may have been more appropriate given the circumstances present at the time of deployment.

⁴² Procedure Manual Item 3-1-015 VIII(F) DJCO Responsibilities.

⁴³ Procedure Manual Item 3-1-056 II(E)(2) Notification and Documentation.

First, the video shows that there were at least six uninvolved youths who were within approximately 20 feet of the DJCOs when they both deployed their OC. Second, Y3, who was not involved in the fight, but was holding Y1 back from further engaging with Y2, was sprayed in the face when the DJCOs deployed their OC. Third, DJCO 2 indicated in her report that because DJCO 1 was spraying at the same time, she “accidentally got sprayed in the eyes and mouth area. At that point my vision was temporally impaired.” Fourth, DJCO 3 indicated in her narrative that she “was kneeling ready to put handcuffs on [Y1] when the pepper spray hit [her] in the face” and she went to the ground. As a result, she was unable to secure Y1. Fifth, DJCO 4 indicated in his report that “[a]s soon as I attempted to separate [Y1 and Y2], I was pepper sprayed in both of my eyes by staff. I was unsuccessful separating them and I begin having trouble seeing clearly.”

In this incident it appears that the use of OC hindered the DJCOs’ attempts to secure both Y1 and Y2. Prior to deploying OC, DJCOs should take into consideration the potential effects that deployment may have on uninvolved parties and staff. OC deployment may make it more difficult for staff to place youth into restraints. More importantly, inadvertently spraying staff can inhibit their ability to see, as in this case, which would make them unable to defend themselves if a youth were to attempt to assault them.

Recommendation

Provide additional training reminding staff that they should consider all available tactics and force options before deploying OC spray. While OC should not be considered a force option of “last resort,” it also should not be employed in circumstances where a different tactic would be likely to lead to a better outcome, or where the use of OC may be counterproductive.

Use of Force Review Board

On June 27, 2022, the Department’s Use of Force Review Board convened and reviewed this use of force incident.

The Board recommended corrective action due to the fact that there was “no documentation that parent/guardian of the over sprayed youth was contacted,” which is not in compliance with procedure.

The Board also made additional recommendations including that, in addition to individual DJCO reports, one staff member be identified to write a “main body” SIR which includes all details from an incident.

The Board further recommended that staff acting as the primary staff responsible for supervising the youth during the decontamination process complete an SIR documenting the steps of the decontamination procedure, as described in the OC procedure.

Finally, the Board recommended that staff ensure that the specific actions listed in the UOF form are also accurately reflected in the narratives. “For example: OC spray distances and time parents/guardians called.”

Conclusion

A review of the SIRs, Use of Force reports, and video footage established that the use of force by DJCO 1 and DJCO 2 was within law and policy, however, it may not have been the best course of action. While it is clear from the reporting that had the staff members not deployed some type of force, Y1 and Y2 would have continued to fight, it is possible that some other type of minimal force, such as going hands on to separate the youths may have been more appropriate.

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. Provide additional training to remind supervisors and staff that parental notification procedures should be followed, not just with respect to youths who were the target of OC spray, but also for youths who encountered overspray.
4. Update PMI 3-1-056 to require that all staff members assisting with decontamination, even of uninvolved youth affected by overspray, prepare reports documenting their role in the decontamination process.
5. Provide additional training reminding supervisors of the importance of making sure that DJCOs' reports are accurate and complete. Supervisors should also be reminded of their role in making sure that inconsistencies in, or between, reports are addressed before reports are approved.
6. Provide additional training reminding staff that they should consider all available tactics and force options before deploying OC spray. While OC should not be considered a force option of "last resort," it also should not be employed in circumstances where a different tactic would be likely to lead to a better outcome, or where the use of OC may be counterproductive.