

OIR Use of Force Review

UOF Review 8-22-22 YGC



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 | 6 |
| Imminent Threat and De-escalation | 6 |
| Decontamination | 6 |
| Notification and Procedures Required After Use of Force Incidents..... | 7 |
| Documentation | 8 |
| Use of Force Review Board | 9 |
| Conclusion..... | 9 |
| Recommendations | 9 |

Summary of Facts

On August 22, 2022, at approximately 1:28 p.m., Deputy Juvenile Correctional Officer (DJCO) 1 and DJCO 2 were supervising a group of youths during large muscle exercise in the weight room at the Youth Guidance Center (YGC).¹ Y2 was seated on a bench just outside the weight room talking with Y4. Y1 was in the weight room working out with the other youths. Y1 asked to get a drink of water from the water fountain. Y1 walked over to the water fountain and was followed by Y3, who had been working out with Y1. After getting water, Y1 and Y3 walked over to the bench where Y2 and Y4 were seated. Y1 was talking to Y2 with a “mean demeanor.” Y2 stood up and began to walk away. DJCO 1 then directed Y2 and Y1 to get away from each other. Y1 then started to strike Y2 in the head with closed fists. DJCO 1 immediately called a Code 2 over the radio and ran over to where Y2 and Y1 were. DJCO 2 remained with the other youths in the weight room.²

As he ran over to where the youths were fighting, DJCO 1 directed Y2 and Y1 to “[s]top” and “[g]et down.” Y2 and Y1 continued to swing at each other with closed fists, hitting each other on the body and head. When DJCO 1 reached Y2 and Y1, Y2 was going to the ground after being hit by Y1. DJCO 1 continued to yell “get down” to both youths. DJCO 1 then applied the foot block on Y1, and while he was on the ground with Y1, Y2 got up and lunged towards Y1. Y2 struck Y1 in the head once, and then swung at Y1 again, and nearly hit DJCO 1’s face. DJCO 1 released his hold on Y1, and Y1 jumped up and started to fight again with Y2. DJCO 1 unholstered his Oleoresin Capsicum (OC) spray and yelled “OC clear” and deployed a one-second burst from three to four feet towards Y1, targeting his face. Due to Y1’s movements, the OC contacted his left arm. DJCO 1 then deployed another one-second burst of OC from three to four feet directed towards Y2’s face. Due to Y2’s movements, the OC also contacted his left arm.

DJCO 1 again directed Y2 and Y1 to “stop” and “get down.” Y2 was on his knees swinging at Y1, as Y1 stood over Y2 and was striking him on his head. DJCO 1 deployed another one-second burst of OC directed at Y1’s face. The OC contacted the left side of Y1’s face. DJCO 1 then deployed another one-second burst of OC directed at Y2’s face. The OC contacted the right side of Y2’s face and his right ear. Both youths stopped fighting and immediately went to the ground.

DJCO 3 arrived on scene to assist, and secured Y2 in handcuffs. DJCO 3 then escorted Y2 to the decontamination station on the school deck to begin the decontamination process. Y2 began decontamination within four minutes of the first deployment of OC.

DJCO 4 also arrived to assist, and secured Y1 in handcuffs. At the direction of Supervising Juvenile Correctional Officer (SJCO) 1, DJCO 4 escorted Y1 to the handball courts to decontaminate using the water hose. Y1 began the decontamination process within five minutes of the first deployment of OC.

Two uninvolved youths (Y3 and Y4) were affected by overspray and were taken to the unit showers to decontaminate. Both youths began decontamination within seven minutes of the OC deployment.

¹ All information regarding the incident is taken from DJCO reports as no video of the incident was provided.

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

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*.”³ 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.”⁴

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.”⁵

There are three steps in conducting the balancing required by *Graham*. The first step is to assess the “the quantum of force used.”⁶ The second step is to measure “the governmental interests at stake by evaluating a range of factors.”⁷ 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.”⁸

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.⁹

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.”¹⁰ “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.’”¹¹ 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.”¹²

Recommendation

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

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

⁴ *Graham v. Connor* (1989) 490 U.S. 386, 397; *Blankenhorn v. City of Orange* (9th Cir. 2007) 485 F.3d 463, 477.

⁵ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

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

⁷ *Davis v. City of Las Vegas* (9th Cir. 2007) 478 F.3d 1048, 1054.

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

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

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.

¹² *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 minimal. There were four total deployments of OC. Both Y1 and Y2 were sprayed twice because the first two bursts landed on their arms (and were therefore ineffective) due to their constant movement while fighting. Each deployment was one second in duration and deployed from a distance between three and four feet. The reports indicate that all deployments of OC occurred while Y2 and Y1 were striking each other in the head with closed fists.

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.¹³ Such is not the case here. Staff ensured that the length of time that the youths felt the effects of the OC was limited. As soon as the youths were secured, Y2 was taken directly to the decontamination station, and Y1 to the patio hose, to begin the decontamination process. Y2 and Y1 both began decontamination within five minutes of the first deployment of OC. The two uninvolved youths that were exposed to overspray began to decontaminate in unit showers within seven 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.”¹⁴ 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.”¹⁵

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.¹⁶ 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.¹⁷ 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.”¹⁸ “It is enough that the force used is likely to cause serious bodily injury. No injury is necessary.”¹⁹ Courts have said that punching is “capable of inflicting significant pain and causing serious injury.”²⁰

Here, the reports indicate that Y2 and Y1 were exchanging closed fist punches to the body and head (one of which nearly contacted DJCO 1's face) when DJCO 1 deployed the first two bursts of OC at each of the youths. These initial deployments of OC contacted Y1 and Y2's arms. Following the first two deployments of OC, Y2 continued to swing at Y1, while Y1 struck Y2 on the head. DJCO 1 then deployed

¹³ *Wilson v. Bucato* (E.D.Cal. Dec. 7, 2023, No. 1:23-cv-00023-HBK (PC)) 2023 U.S.Dist.LEXIS 218539.

¹⁴ *Bryan v. MacPherson* (9th Cir. 2010) 630 F. 3d 805, 826.

¹⁵ *Graham v. Connor* (1989) 490 U.S. 386 [109 S.Ct. 1865, 104 L.Ed.2d 443].

¹⁶ Pen. Code, §§ 240, 242, 243(a).

¹⁷ Pen. Code, §§ 242, 243(d), 245(a).

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

¹⁹ *People v. Hopkins* (1978) 78 Cal.App.3d 316 [142 Cal.Rptr. 572].

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

one additional burst of OC directed at each youth. Following these deployments, both youths stopped fighting immediately and got down on the ground. Staff secured them in handcuffs. Given that punches, especially to the head, can cause serious injury, the assaults by Y1 and Y2 must be considered severe.

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.²¹ Here, the reports make clear that Y1 approached Y2 with the intent to fight. Before DJCO 1 could reach the youths to intervene, Y1 began to strike Y2, and both youths then began to strike each other in the head. While DJCO 1 was on the ground with Y1, Y2 swung at Y1, striking him in the face. As a result, the youths clearly posed an immediate threat to each other as they exchanged closed-fist punches to the head at the time of the first OC deployment.

Following the first round of OC deployment, both youths continued to fight. Y1 was standing over Y2 striking him in the head and Y2 was fighting back when DJCO 1 deployed the second round of OC. As such, each youth clearly continued to pose an immediate threat to each other prior to the second round of OC.

DJCO 1's report also makes clear that the Y1 and Y2 posed an immediate threat to DJCO 1's safety. DJCO 1 attempted to use physical force to separate Y1 and Y2. While DJCO 1 was on the ground with Y1, Y2 threw a second punch and nearly struck DJCO 1 in the face. Clearly Y1 and Y2's ongoing fight posed an immediate threat to the safety of DJCO 1 as he worked to physically separate the two combating youths.

These facts make clear that but-for DJCO 1's deployment of OC, the mutual assault would have continued. Therefore, at the time of the deployments of OC, Y1 and Y2 posed a significant, immediate, and ongoing threat to the safety of DJCO 1 and each other.

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

While the youth were not attempting to evade DJCO 1, both youths were clearly refusing to comply with his commands to "stop" and "get down." Neither youth complied with directives and instead, they continued to strike each other. More importantly, the youth continued to fight despite the fact that DJCO 1 physically intervened by using a foot block to take Y1 to the ground.

Even after being sprayed with OC, the youths again failed to comply with DJCO 1's second directive to "stop" and "get down," and continued to engage in mutually assaultive behaviors. The fact that Y1 and Y2 continued to fight after the first deployment of OC showed that they were willfully refusing to comply with the force used to get them to submit to the DJCO's authority to take them into custody. Ultimately, to place the non-compliant combating youths into custody, DJCO 1 had to do more than simply place a compliant youth into handcuffs, he had to deploy a second round of OC spray.

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."²² Put another way, does the

²¹ *Chew v. Gates* (9th Cir. 1994) 27 F.3d 1432.

²² *Espinosa v. City & County of San Francisco* (9th Cir. 2010) 598 F.3d 528.

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."²³ 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 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, Y2 and Y1 posed an immediate threat to each other. Additionally, the harm that could have occurred to either youth from closed fist strikes to the head and face justified the deployments of OC, particularly when the youths continued their violent assault even after being directed twice to stop and get down. 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.²⁴ 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;²⁵ 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;²⁶ 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;²⁷ 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.²⁸

²³ *Silva v. Chung* (9th Cir. 2018) 740 F.App'x 883.

²⁴ Cal. Code Regs., tit. 15, § 1357 – Use of Force.

²⁵ Cal. Code Regs., tit. 15, § 1357(b)(2).

²⁶ Cal. Code Regs., tit. 15, § 1357(b)(3).

²⁷ Cal. Code Regs., tit. 15, § 1357(b)(4).

²⁸ Cal. Code Regs., tit. 15, § 1357(b)(5).

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.²⁹ 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.”³⁰ This verbiage is consistent with state law.

The reports regarding this incident make clear that Y2 and Y1 posed an imminent threat to each other. DJCO 1 initially attempted to verbally de-escalate the situation before it became physical by yelling at the two youths “to get away from each other.” Once the fight began, DJCO 1 continued to attempt to verbally de-escalate the situation by directing the youths to “stop” and “get down” on several occasions. DJCO then attempted to physically intervene in the fight by using a foot block to take Y1 to the ground. This too proved unsuccessful as Y1 and Y2 continued their mutual assaults.

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.”³¹ 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.”³²

According to the reports, Y2 and Y1 came into direct contact with, and were affected by, the OC spray. As soon as the youths were secured, Y2 was escorted to use the decontamination station on the school deck, while Y1 was escorted to the field to use the hose to decontaminate. According to the reports, both youths began decontamination within five minutes of the OC deployment.

The main narrative also states that both youths were given a shower after the initial decontamination. Y2 showered approximately four minutes after his initial decontamination ended and Y1 showered approximately seven minutes after his decontamination ended. Y2 then requested and was given a second shower 18 minutes after his first shower.

Y3 and Y4, who were uninvolved in the fight, were affected by overspray and each was taken to a unit shower to decontaminate. Each youth began decontamination approximately seven minutes after the OC deployment.

²⁹ Procedure Manual Item 3-1-056 Oleoresin Capsicum (OC) Spray – Facilities;
Procedure Manual Item 3-1-015 Use of Force – Facilities.

³⁰ Procedure Manual Item 3-1-056 I(C) General Information.

³¹ 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.)

³² Procedure Manual Item 3-1-056 II(F)(4) Decontamination/Aftercare Procedures.

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.³³ According to DJCO 1's Special Incident Report (SIR), all four youths' clothing were "changed, bagged, and labeled."

Staff are also required to be with "the youth throughout the entire decontamination process."³⁴ None of the reports specifically state that a particular DJCO stayed with the youths during the entire decontamination process. However, DJCO 4's narrative states that she escorted Y1, under the supervision of SJCO 1, so that he could decontaminate. Additionally, the main SIR states that both Y1 and Y2 "...volunteer[ed] ending" their decontamination. The main SIR also states, "[d]irect supervision for all youths involved." These statements imply that someone was present for the youths to alert to the fact that they were voluntarily ending their decontamination. However, it remains unclear whether a staff member was continuously present with the youths throughout the decontamination process.

It is also unclear which staff members participated in the decontaminations of Y3 and Y4. While the SIR prepared by DJCO 1 specifies that Y1 was decontaminated by DJCO 4, it does not contain similar details for the other youths. Moreover, the Use of Force/Restraint reports, which list details of each youth's decontamination, are all authored by DJCO 1 and do not specify the staff members that participated in the decontaminations.

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.

Notification and Procedures Required 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.³⁵ 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."³⁶ The responsibility for contacting the youth's parent or legal guardian is assigned to the SJCO/Duty Officer or designee.³⁷ 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.³⁸

While not noted in the main SIR, DJCO 4's report indicates that SJCO 1 was on scene and aware of the deployment of OC. The report further indicates that DJCO 4 escorted Y1, under the supervision of SJCO 1, so that Y1 could decontaminate. Similarly, DJCO 3's supplemental narrative indicated that SCJO 2 witnessed as he "assisted Y2 to his feet and escorted" him to the school deck to start decontamination.

The main SIR also indicates that staff notified the guardians of Y2 and Y1. The Use of Force reports for Y3 and Y4, who were affected by overspray, also reflect that staff notified their guardians.

³³ Procedure Manual Item 3-1-056 II(F)(7) Decontamination/Aftercare Procedures.

³⁴ Procedure Manual Item 3-1-056 II(F)(10) Decontamination/Aftercare Procedures.

³⁵ Procedure Manual Item 3-1-056 II(E)(1) Notification and Documentation.

³⁶ Procedure Manual Item 3-1-056 II(F)(13) Decontamination/Aftercare Procedures.

³⁷ Procedure Manual Item 3-1-056 II(F)(18) Decontamination/Aftercare Procedures.

³⁸ Procedure Manual Item 3-1-056 II(F)(17) Decontamination/Aftercare Procedures.

The Use of Force reports indicate that the medical unit was notified of the incident and that all four youths were seen by medical staff within 30 minutes of the start of the incident.

Finally, the main SIR indicates that the Clinical Evaluation Guidance Unit (CEGU) was notified of the incident and the Use of Force forms for each youth reflect that CEGU staff responded and saw all four youths immediately upon being notified.

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).³⁹ Further, the procedure requires 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.⁴⁰

DJCO 1 completed the main SIR for this incident and two other DJCOs prepared supplemental incident reports. The main SIR identified the youths involved as well as the actions taken by DJCO 1 to attempt to de-escalate prior to the use of force. DJCO 1 also prepared a Use of Force report for each youth to document the intentional deployment of OC directed at Y2 and Y1, as well as the two uninvolved youths exposed to overspray, Y3 and Y4. The report also clearly sets forth the activities that occurred after the uses of force except for whether staff members remained with the youths throughout the decontamination process.

During a review of this incident, the OIR observed that some of the times stated in DJCO 1's main SIR were not consistent with his Use of Force report. For example, in the main SIR narrative DJCO 1 indicated that Y1 "was seen by Nurse Louie at 1:40pm." However, DJCO 1's use of force report indicates that Y1 was seen by medical at 1:46 p.m. Similarly, the Use of Force reports indicate that CEGU saw all four youths at 02:20, but the main SIR narrative only indicates that CEGU saw Y2.

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.

Another area of concern is the fact that staff members that assisted with decontamination of Y3 and Y4, the two uninvolved youths, did not prepare narrative reports to document their participation and actions.

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.

³⁹ Procedure Manual Item 3-1-015 VIII(F) DJCO Responsibilities.

⁴⁰ Procedure Manual Item 3-1-056 II(E)(2) Notification and Documentation.

Use of Force Review Board

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

The Board recommended that staff ensure times and other specifics listed in the UOF form be accurately reflected in the narratives.

The Board also discussed the need for the main body of the report to be a narrative overview of the entire incident, including all steps.

The Board also noted a discrepancy, in that one of the reports mentioned a specific DJCO drafting an SIR. However, there was not an SIR from that staff member.

Finally, the Board also observed that there were no narrative reports for the two youths who were over sprayed and recommended that if staff are a witness to the decontamination process that they write a narrative to document the process was completed.

Conclusion

A review of the SIRs and Use of Force reports established that the force used by DJCO 1 was within law and policy. The reports indicate that DJCO 1 began by providing simple verbal commands and minimally increased the level of force to a physical foot block as Y1 and Y2 disregarded his commands and continued to batter each other. Also clear from DJCO 1's report is the fact that he only deployed intermediate force after it became clear that minimal force alone would not be enough to get Y1 and Y2 to cease their mutual combat. Had DJCO 1 not deployed OC, Y2 and Y1 would have continued their mutual assaults, possibly resulting in serious injuries.

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 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.
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.