

OIR Use of Force Review

UOF Review 8-24-22 JH Unit H



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Summary of Facts

On August 24, 2022, at approximately 3:18 p.m., Deputy Juvenile Correctional Officer (DJCO) 1 and DJCO 2 were supervising a group of youths during large muscle exercise on the unit patio.¹ Y1 and Y2 were playing basketball when they approached each other. The two youths exchanged words. One of the youths swung at the other “with closed fists and a fight amongst the two initiated.” DJCO 2 directed the youths to “stop, get down” but they continued to strike each other on the body and head. DJCO 2 called a Code 2 over the radio and attempted to take control of one of the youths using a foot block shoulder drag.² DJCO 2 and the youth both “landed against the wall, and the youth proceeded to get up and continued striking” the other youth.

DJCO 1 attempted a foot block shoulder drag on the second youth who “continued to throw closed fists toward the” other youth. The second youth removed his shirt and broke away from DJCO 1’s hold and began to swing back at the other youth.

DJCO 4 responded from Unit Golf and observed Y1 and Y2 “engaged in a physical altercation, while all other youth were down on the ground.” DJCO 4 heard DJCO 1 and DJCO 2 “directing both you to stop fighting, but they continued to exchange punches as they moved from the middle of the basketball court toward the wall of Unit Golf.” According to DJCO 4 the youths “moved to the wall where several youth were now underfoot” as they continued to exchange punches. DJCO 4 determined that, due to the proximity of other youths on the ground, that it would not be safe to physically engage Y1 or Y2. As a result, DJCO 4 unholstered his Oleoresin Capsicum (OC) spray and shouted, “OC clear!” After waiting approximately three seconds, and observing the youths continue to fight, DJCO 4 deployed a five-second burst of OC from five feet away. DJCO 4 directed the spray at each youth’s face, initially targeting one youth then redirecting his spray towards the other youth. DJCO 4 wrote in his report that he stopped spraying when he heard one of the youths say “ahh, it burns.”

DJCO 3 also indicated that she responded from an adjoining unit and observed Y1 and Y2 violently exchanging blows and ignoring staff directives to stop. DJCO 3 indicated in her report that she deployed a one-second burst of OC spray across both youths’ eyes from approximately five feet. Following the deployment, the youths continued to fight, but were forced to do so with their eyes closed.

Additional staff responded to assist in securing the involved youths in handcuffs. Y1 and Y2 were escorted to the showers in Units G and J to decontaminate. Both youths began decontamination within five minutes of the first deployment of OC. Y1 began decontamination at 3:23 p.m. and finished at 3:42 p.m. Y2 began decontamination at 3:23 p.m. and finished at 3:36 p.m.

Two uninvolved youths, Y3 and Y4, were affected by overspray and were taken to the Unit H showers to decontaminate. Y3 began decontamination within seven minutes of the OC deployment, and Y4 began decontamination approximately 12 minutes after 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 moderate. Two DJCOs deployed OC directed at both Y1 and Y2. DJCO 4 deployed a five second burst of OC spray from five feet away. The spray was directed at one youth and then redirected at the other youth. DJCO 4 stopped spraying when he heard one of the youths say that it burned. The five second duration of OC spray deployment by DJCO 4 exceeded the Department’s procedure limitation of “½ to 1 second bursts.”

DJCO 3’s deployment of OC spray was one second in duration and deployed from five feet away. DJCO 3’s OC spray was also directed at both youths. The reports reviewed by the OIR indicate that both deployments of OC occurred while Y1 and Y2 were engaged in mutually assaultive behaviors. However, none of the reports referenced both deployments of OC in the same report. As a result, it is impossible to tell whether DJCO 3 and DJCO 4 deployed OC at the same time or, if they deployed at different times, who deployed first.

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, Y1 was escorted to Unit J shower and Y2 was escorted to the Unit G shower to decontaminate. Y1 and Y2 began decontamination within five minutes of the first deployment of OC. The two uninvolved youths that were exposed to overspray began to decontaminate in the Unit H showers within seven minutes and 12 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

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].

necessary.”¹⁹ Courts have said that punching is “capable of inflicting significant pain and causing serious injury.”²⁰

Here, both DJCO 2 and DJCO 6’s reports indicate that Y1 and Y2 were exchanging closed-fist punches to each other’s head and torso. It was against this backdrop that both DJCO 3 and DJCO 4 deployed OC directed at both youths. DJCO 3’s report indicates that following her deployment, both youths continued to fight. DJCO 4’s report indicates that following his deployment “[r]esponding staff then moved past [him] and restrained the fighters...” Considering that Y1 and Y2 were throwing continuous punches at each other’s head and upper body which could result in serious injury, the assaults by Y1 and Y2 should 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 and Y2 posed an immediate threat to each other. Before DJCO 1 or DJCO 2 could reach the youths to intervene, they began to strike each other. DJCO 2 directed the youths to “stop, get down” but they continued to strike each other. DJCO 1 and DJCO 2 then attempted to intervene physically but both youths continued to fight. The youths clearly posed an immediate threat to each other as they exchanged closed-fist punches. Additionally, both youths were fighting and moving towards an area where there were several uninvolved youths in close proximity. These facts clearly establish that Y1 and Y2 posed an immediate threat to each other, as well as the youths near them, when DJCO 3 and DJCO 4 deployed the OC spray.

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

While the youth were not attempting to evade DJCO 1 or DJCO 2, both youths were actively resisting DJCO 1 and DJCO 2’s attempts to physically take them into custody. Both DJCOs indicated in their reports that they went hands on, and attempted foot block shoulder drags on the youths. However, the youths broke free and continued to assault each other.

When the youths continued to engage in mutual combat, they were also clearly refusing to comply with DJCO 2’s commands to “stop” and “get down.” Neither youth complied with the directives and instead, continued to strike each other. Both DJCO 3 and DJCO 4 also provided warnings (“OC clear”) prior to the deployment of OC, which did not deter the youths from continuing their assaultive behavior. Ultimately, to place the combative youths into custody, the DJCO’s had to do more than simply place passive youths in handcuffs.

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

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.

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 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 deployments of OC, Y1 and Y2 posed immediate threats to each other. Additionally, the harm that could have occurred to either youth from closed-fist strikes justified the deployments of OC when the youths continued to assault each other even after being directed to stop and get down.

DJCO 3's deployment of OC was one second in length and appeared to have minimal effect on the youths, as they continued to engage in assaultive behaviors following the deployment. While this deployment involved a minimal amount of force utilized to prevent the potential harm caused by the mutual assault, it is impossible to determine whether it was justified as the reports do not indicate when the OC spray was deployed in relation to DJCO 4's deployment of OC.

DJCO 4's deployment requires a different analysis. The OC burst was five seconds in length and was applied continuously to the faces of Y1 and Y2 in succession. According to the report prepared by DJCO 4, he stopped the spraying when one of youths verbally expressed feeling the physical effects (burning sensation) caused by the spray.

According to DJCO 4's report, the youths were engaged in mutually assaultive behaviors and posed a safety threat to each other when the OC deployment occurred. While the governmental interest in ceasing the assault was important, the five second application of intermediate force was a more significant intrusion.

In his report, DJCO 4 noted that "The fighters moved to the wall where several youths were now underfoot... and continued to exchange punches. At this point I determined that it would not be safe to physically engage the fighters because of the youth on the ground, so I aimed my OC Pepper Spray and shouted, 'OC clear!'" While this statement clearly articulates a justification for the use of OC spray rather than physically engaging the youths, it does not, by itself, justify the continued deployment of OC spray for a duration of five seconds.²⁴

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

²⁴ This should not be construed as a determination that the five-second deployment was legally *unjustified*. Rather, the lack of an explanation in the report for the extended duration of the burst prevents a sound analysis of whether such an extended burst was legally justified. In short, the problem is one of reporting, not necessarily an

DJCO 4's report does not discuss whether the youths continued to fight during the entire five-second duration of the spray, nor does it indicate whether DJCO 4 reassessed the need for continuing the spray past the Department authorized one second burst. While the initial OC deployment may have been appropriate, no information or justification was provided for why deployment for five seconds was necessary. Without this information, it is impossible to balance the quantum of force against the governmental need for such force, and therefore not possible to determine whether a five second burst of OC spray was appropriate.

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.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.

excessive use of force (Although depending on the explanation for the burst, the duration being excessive could be a possible conclusion).

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.

The reports regarding the deployment of OC make clear that Y1 and Y2 posed an imminent threat to each other. As mentioned above, both youths were continuously punching each other in the head and body. DJCO 2 attempted to de-escalate the situation by directing the youths to “stop” and to “get down.” DJCO 2’s attempts to verbally de-escalate were unsuccessful, and the youths continued their mutual assault despite these commands. DJCO 3 and DJCO 4 also attempted to verbally de-escalate the situation by giving the youths notice that they were about to deploy OC spray by yelling “OC clear.” These verbal de-escalation attempts also did not stop Y1 and Y2’s mutual assault on each other.

Both DJCO 1 and DJCO 2’s reports indicate that, prior to the deployment of OC, they also tried to physically de-escalate the situation by utilizing the foot block shoulder drag. However, both youths were able to break free and continued the mutual assault.

Spray Duration

The Probation Department’s OC Procedure provides guidance for the manner in which OC spray may be deployed and includes limits on spray duration. The procedure provides that custodial officers are to “ensure that no greater amount of OC spray is used than is necessary to subdue the youth. OC sprays shall not be used on youth who are resistive, but not physically aggressive. Press actuator to fire at subject’s face in ½ to 1 second bursts.”³² Additionally, the OC procedure directs that “[i]f you are unable to restrain the subject after 3, ½ to 1 second bursts, employ the next appropriate force option.”³³

While DJCO 4’s OC deployment may have been initially justified by Y1 and Y2’s mutual assault, DJCO 4 continued to deploy OC well past the one-second limit set forth in the Department’s OC procedure. According to his report, DJCO 4 deployed a five-second burst of OC directed at both youths. The spray duration was far longer than allowed by Department procedure, and it was deployed all in one spray instead of shorter successive bursts. Failure to comply with the Department’s procedure regarding OC spray duration prevents a DJCO from properly assessing the effect OC has on the sprayed youth. More specifically, it prevents a DJCO from ascertaining whether a youth will comply without the need for additional OC spray.

Recommendation

Provide additional training reminding staff that pursuant to the OC procedure, OC bursts may be no more than ½ to 1 second in duration.

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.”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

³² Procedure Manual Item 3-1-056 II(C)(4) Use of OC Spray.

³³ Procedure Manual Item 3-1-056 II(C)(4) Use of OC Spray.

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.

According to the reports, Y1 and Y2 came into direct contact with, and were affected by, the OC spray. As soon as the youths were secured, the youths were escorted to separate unit showers to decontaminate. According to the reports, both youths began decontamination within five minutes of the OC deployment. Two youths who were uninvolved in the fight were affected by overspray and each youth was taken to the Unit H showers to decontaminate. One youth began decontamination approximately seven minutes after the OC deployment, and the other began decontamination approximately 12 minutes after the OC deployment.

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 The main Special Incident Report (SIR) states that all four youths were issued fresh clothing and the Use of Force reports for each indicate that soiled clothing was properly bagged and labeled accordingly.

Staff are also required to be with “the youth throughout the entire decontamination process.”³⁷ For Y1, the main SIR narrative indicates that DJCO 7 and DJCO 8 “took over the supervision of [Y1’s] decontamination.” DJCO 7’s narrative stated that “DJCO 8 and I supervised Y1 in the shower. I continually asked Y1 if he needed more time. At approximately 3:42PM Y1 requested to stop the decontamination.” This verbiage implies, without specifically saying, that DJCO 7 and DJCO 8 were with Y1 throughout the entire decontamination process.

For Y2, the main SIR narrative reports “DJCO 9, DJCO 4, and DJCO 11 took the youth in the shower where he started the decontamination process.” DJCO 4’s narrative indicated that, “Y2 began his decontamination at 15:24, under the supervision of myself, SJCO 2, DJCO 9, and DJCO 11. Y2 ended it voluntarily at 15:36.” DJCO 4’s verbiage implies, without specifically saying, that DJCO 4, DJCO 9, DJCO 11, and SJCO 2 were present with Y2 throughout the entire decontamination process.

For Y3 and Y4, the main SIR narrative reports that Y3 and Y4 “were both decontaminated in Unit Hotel’s shower with DJCO 10 supervising.” This statement implies that DJCO 10 was present throughout the entire decontamination with the youths.

The statements above imply that someone was present throughout the entire decontamination with the youths.

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.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 Supervising

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.

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.

Juvenile Correctional Officer (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 procedure is followed.⁴¹

While not noted in the main SIR, several supplemental reports indicate that two SJCOs were on scene and supervised the securing of the youths and escorts for decontamination. In addition, the main SIR and Use of Force forms indicate that staff notified the guardians of Y1 at 4:00 p.m. and the mother of Y2 at 3:47 p.m. Another record indicated a voicemail was left notifying Y4's parent and that staff attempted to notify Y3's parents but voicemail was not set up.

The SIR narratives also indicate that the medical unit was notified of the incident and that all four youths were seen by medical staff within one hour of the start of the incident. The main SIR indicates that the medical unit was notified within 10 minutes of the incident. Y1 declined to be seen initially at 4:11 p.m., and later changed his mind and was seen and cleared by medical personnel at 6:37 p.m. Y2 was seen, according to reports, at 3:52 p.m. and/or at 4:17 p.m. and placed on Head Injury Precaution. Y3 and Y4 were seen at 4:12 p.m. and cleared by medical personnel.

Finally, the main SIR indicates that the Clinical Evaluation Guidance Unit (CEGU) was notified of the incident and that CEGU staff responded to evaluate Y1 and Y2 within 45 minutes of being notified. However, there is no documentation to reflect that CEGU referrals were made for the two youths exposed to overspray. In fact, the timeline included with the main SIR states, "CEGU referrals placed on behalf of the fighters." The fields related to CEGU referral on the Use of Force forms are blank for the two youths exposed to overspray.

Recommendation

Provide additional training to remind supervisors and staff that mental health 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.

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).⁴² 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.⁴³

DJCO 5 completed the main SIR for this incident and seven other DJCOs prepared supplemental incident reports. The main SIR identified the youths involved as well as some of the actions taken by DJCO 1 and DJCO 2 to attempt to de-escalate prior to the deployment of OC spray. The report also clearly lays out

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.

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

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

the activities that occurred after the deployment of OC spray except for whether parental notifications and CEGU referrals were made for Y3 and Y4, the two uninvolved youths.

DJCO 3 and DJCO 4 both prepared a Use of Force report for each youth to document the intentional deployment of OC directed at Y1 and Y2, as well as the two uninvolved youths' exposure to overspray.

During a review of this incident, the OIR observed some areas of concern related to documentation.

First, DJCO 3 completed an SIR narrative and use of force report indicating that she deployed OC spray, however her narrative fails to make any mention as to the fact that DJCO 4 also deployed OC spray. More specifically, DJCO 3's narrative fails to indicate whether her deployment of OC was simultaneous with DJCO 4's deployment, or whether it occurred before or after DJCO 4's deployment. Similarly, DJCO 4's SIR narrative and use of force report fails to make any mention of DJCO 3's deployment of OC spray, and more specifically, whether his deployment came before, after, or during DJCO 3's deployment. Additionally, no other report, including the main SIR, even mentions the fact that DJCO 3 deployed OC, except for DJCO 3's own report. The omission, as to when each DJCO deployed their OC in relation to each other, makes it impossible to determine whether DJCO 3 and DJCO 4's individual and combined deployments were appropriate.

As it relates to documentation of decontamination, DJCO 9 and DJCO 11 both supervised the decontamination of Y2 along with DJCO 4 and SJCO 2 but did not prepare a narrative report to document their participation. Additionally, the main SIR states that DJCO 10 supervised the decontamination of the two uninvolved youths, Y3 and Y4, however, DJCO 10 did not prepare a narrative report to document his participation, how the decontamination process was carried out, and whether CEGU was notified. Additionally, none of the reports for this incident indicate whether Y3 and Y4's parents were notified that these youths received overspray.

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.

Use of Force Review Board

On September 20, 2022, the Department's Use of Force Review Board convened and reviewed this use of force incident.

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

The Board further recommended that the person notifying the parent/guardian be listed.

The Board also discussed the main body of the report being a narrative overview of the entire incident.

The Board noted that the "timeline" contained in one of the reports did not provide all the necessary details and information of the required steps following a UOF, such as details pertaining to 5-minute interval safety checks.

The Board also recommended that staff who witness the decontamination process write a narrative to document the process was completed.

With respect to the five-second spray duration by DJCO 4, even though the burst duration exceeded the duration allowed under the OC procedure, the Board believed that DJCO 4 articulated that physically engaging the fighters was not an appropriate force option at the time as there were several youths in the immediate area that were in the duck and cover position.⁴⁴

Conclusion

A review of the SIRs and Use of Force reports established that the use of force by DJCO 3 may have been lawful and within policy. The use of force by DJCO 4 may also have begun as lawful and within policy while Y1 and Y2 were engaged in a mutual assault. However, the documentation regarding the OC spray deployments fails to provide enough information to determine whether DJCO 3 and DJCO 4's deployments were necessary in relation to each other's deployment. Specifically, the documentation fails to indicate whether the OC sprays occurred at the same time or separately.

Similarly, while DJCO 4's deployment of OC may have been initially justified, it is unclear from the documentation whether the extended burst of OC spray was justified, or unreasonably and unlawfully prolonged. It is clear, however, that DJCO 4's use of OC spray in a 5 second spray did not comply with the department's procedure regarding spray duration.

Recommendations

1. Update PMI 3-1-056 to specifically state that OC spray is classified as an intermediate level of force.
2. Provide additional training reminding staff that pursuant to the OC procedure, OC bursts may be no more than ½ to 1 second in duration.
3. 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.
4. Provide additional training to remind supervisors and staff that mental health 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.
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.

⁴⁴ This Office disagrees with the implied conclusion by the Board that the statements articulated by DJCO 4 in his report made the five-second burst within the Department's OC procedure. First, as noted previously, the statement referenced by the Board in DJCO 4's report was, in context, a justification of the use of OC spray, not a justification for a five-second burst. Second, the OC procedure does not authorize extended burst durations in the event that three half-second to one-second bursts prove ineffective. The procedure specifically directs staff to move to the "next appropriate force option." If the Board believes that DJCOs should have the option to deploy extended bursts of OC spray in certain circumstances, it should recommend a procedure revision that allows so.