

# OIR Use of Force Review

*UOF Review 09-20-22 JH Unit H*



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

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

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## Summary of Facts

On September 20, 2022, at approximately 3:47 p.m., Deputy Juvenile Correctional Officer (DJCO) 1, DJCO 2, and DJCO 3 were supervising a group of sixteen youths during large muscle exercise on the unit patio.<sup>1</sup> A group of seven youths, including Y3 and Y4, were playing handball at one end of the patio. At the other end of the patio, another group of seven youths, including Y1 and Y2, were near the basketball hoop. A fight broke out between Y1 and Y2. DJCO 1 and DJCO 2 approached Y1 and Y2 and attempted to separate them.

As staff responded to the fight involving Y1 and Y2, Y3 and Y4 simultaneously began to attack Y5 on the handball court. Y5 countered with a closed-fist strike towards Y3. Y3 and Y4 continued to punch Y5 in the head multiple times with closed fists. Y5 grabbed Y3 by wrapping his arm around his neck, but was quickly dragged to the ground by Y3 and Y4. As Y5 went to the ground, both Y3 and Y4 continued to punch him and Y4 kicked him. DJCO 3 responded and started running across the patio towards the youths and yelled “stop, get down” multiple times. Y3 and Y4 continued their assault on Y5. DJCO 3 continued to direct Y3 and Y4 to “stop” as he attempted to pull them off Y5.

DJCO 2 also responded to the fight on the handball court to assist DJCO 3. DJCO 2 directed Y3 and Y4 to stop fighting and to get down, but they continued to assault Y5. DJCO 2 then shouted, “OC clear” and deployed a ½ second burst of OC directed at the foreheads of Y3, Y4 and Y5.

For approximately five seconds, both DJCOs as well as the youths went out of camera view. As the DJCOs and Y4 came back into view of the camera, DJCO 2 can be seen pulling Y4 away from the location of the other two youths by pulling on his right arm and the back of his shirt. At the same time, DJCO 3 can be seen pulling Y4 from behind with his right forearm across the front of Y4’s neck and his left hand grasping his right hand and wrist. As DJCO 3 continued to pull Y4, with his right arm still around Y4’s neck, DJCO 3 turned to his left and pulled Y4 to the ground. DJCO 2, who had a hold on Y4, also turned and fell to the ground.

DJCO 5 arrived and assisted DJCO 3 in securing Y4 and placing him in handcuffs. DJCO 4 arrived and assisted DJCO 2 in removing Y3 from Y5. DJCO 2 took control of Y5 and secured him in handcuffs. DJCO 4 secured Y3 and placed him in handcuffs. Additional staff responded to assist DJCO 1 in securing Y1 and Y2.

Supervising Juvenile Correctional Officer (SJCO) 1 arrived and directed the escorts of Y3, Y4, and Y5 into the units for decontamination. Y3 decontaminated in the Unit J showers, Y4 decontaminated in the Unit K showers, and Y5 decontaminated in the Unit G showers. All three youths began decontamination within 12 minutes of the OC deployment and were provided with clean clothing. The contaminated clothing was bagged and labeled accordingly.

## 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

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<sup>1</sup> All information regarding the incident is taken from DJCO reports and videos provided to the Office of Independent Review (OIR). All information regarding statements made or comments given were taken from reports because the videos provided contain no audio.

*Graham v. Connor*.<sup>2</sup> 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."<sup>3</sup>

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."<sup>4</sup>

There are three steps in conducting the balancing required by *Graham*. The first step is to assess the "the quantum of force used."<sup>5</sup> The second step is to measure "the governmental interests at stake by evaluating a range of factors."<sup>6</sup> 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."<sup>7</sup>

### 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.<sup>8</sup>

### 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."<sup>9</sup> "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.'"<sup>10</sup> 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."<sup>11</sup>

### Recommendation

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

### Amount of Force Used

The amount of "intermediate force" (OC) used in this case was minimal. DJCO 2 deployed "half a second of OC pepper to each fighter..." The reports and video reflect that the deployment of OC occurred while Y3 and Y4 were assaulting Y5. The ½ second duration of OC spray to each youth falls within the

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

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

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

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

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

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

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

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

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

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

Department's procedure limitation of "1/2 to 1 second bursts." DJCO 2's Use of Force report, however, does not indicate the distance at which the OC spray was deployed towards the youths.

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.<sup>12</sup> 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, Y3, Y4, and Y5 were escorted to the showers to decontaminate. Y3 was escorted to the Unit J showers, Y4 was escorted to the Unit K showers, and Y5 was escorted to the Unit G showers. All three youths began decontamination within 12 minutes of the OC deployment.

### Governmental Interest

Intermediate force is a "significant level of force that must be justified by the governmental interest involved."<sup>13</sup> 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."<sup>14</sup>

### 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.<sup>15</sup> 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.<sup>16</sup> 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."<sup>17</sup> "It is enough that the force used is likely to cause serious bodily injury. No injury is necessary."<sup>18</sup> Courts have said that punching is "capable of inflicting significant pain and causing serious injury."<sup>19</sup>

Here, DJCO 2 and DJCO 3's reports indicate that DJCO 2 deployed the OC while Y3 and Y4 were continuing to punch Y5 with closed fists to the upper face and body. Following the deployment, DJCO 2's report indicated that, "DJCO [3] managed to remove Y4 from the other" youths and then "DJCO [4] and [DJCO 2] separated Y5 and Y3 by pulling them apart." Staff were then able to secure the youths in handcuffs. Considering that Y3 and Y4 were throwing continuous punches and kicking Y5, which could result in serious injury, the assaults by Y3 and Y4 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.<sup>20</sup> Here, the reports make clear that Y3 and

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

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

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

<sup>15</sup> Pen. Code, §§ 240, 242, 243(a).

<sup>16</sup> Pen. Code, §§ 242, 243(d), 245(a).

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

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

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

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

Y4 posed an immediate threat to Y5. Before DJCO 3 could reach the youths to intervene they began a coordinated attack on Y5, striking and kicking him. DJCO 3 responded and yelled “stop, get down” multiple times but Y3 and Y4 continued their assault on Y5. DJCO 3 attempted to pull Y3 and Y4 off Y5 as he continued to direct them to both to “stop.”

DJCO 2 arrived to assist and directed Y3 and Y4 to “stop fighting and to get down,” but they continued to assault Y5. Y3 and Y4 clearly posed an immediate threat to Y5 as they struck him in the head and body with closed-fist punches. These facts establish that, at the time of the OC deployment, the youths posed an immediate and ongoing threat to Y5.

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

While Y3 and Y4 were not attempting to evade the DJCOs, both youths actively resisted DJCO 3’s physical attempts to detain them and stop them from assaulting Y5. Even after the deployment of OC spray, DJCO 3 had to physically pull Y4 away from the fight and take him to the ground to place him into handcuffs. In short, to place the combative youths into custody, the DJCOs 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.”<sup>21</sup> 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.”<sup>22</sup> 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 DJCO 3’s orders 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 deployment of OC, Y3 and Y4 posed an immediate threat to Y5. Additionally, the severe harm that could have occurred to Y5 from continued closed fist strikes, as well as being kicked, justified the deployment of OC, particularly when the youths continued to assault Y5 even after being directed multiple times to stop and get down. Thus, a ½ second deployment of OC to each youth was justified when considering each of the above factors.

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<sup>21</sup> *Espinosa v. City & County of San Francisco* (9th Cir. 2010) 598 F.3d 528.

<sup>22</sup> *Silva v. Chung* (9th Cir. 2018) 740 F.App’x 883.

## 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.<sup>23</sup> 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;<sup>24</sup> 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;<sup>25</sup> 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;<sup>26</sup> 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.<sup>27</sup>

### 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.<sup>28</sup> 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.”<sup>29</sup> This verbiage is consistent with state law.

The reports regarding this incident make clear that Y3 and Y4 posed an imminent threat to Y5 as they continued to punch and kick him. DJCO 3 attempted to verbally de-escalate the situation by directing the youths to “stop, get down.” His attempts to de-escalate were unsuccessful, and the youths continued their assault on Y5 despite these commands. DJCO 3 then tried to physically intervene in the fight by grabbing both Y3 and Y4 to get them to stop assaulting Y5. This also proved unsuccessful as Y3 and Y4 continued their assault on Y5.

DJCO 2 also attempted to verbally de-escalate the situation when she arrived to assist DJCO 3, directing Y3 and Y4 to “stop fighting” and to “get down.” Further, DJCO 2 warned the youths that she would deploy OC spray by stating “OC Clear!” Y3 and Y4 continued assaulting Y5.

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<sup>23</sup> Cal. Code Regs., tit. 15, § 1357 – Use of Force.

<sup>24</sup> Cal. Code Regs., tit. 15, § 1357(b)(2).

<sup>25</sup> Cal. Code Regs., tit. 15, § 1357(b)(3).

<sup>26</sup> Cal. Code Regs., tit. 15, § 1357(b)(4).

<sup>27</sup> Cal. Code Regs., tit. 15, § 1357(b)(5).

<sup>28</sup> Procedure Manual Item 3-1-056 Oleoresin Capsicum (OC) Spray – Facilities;  
Procedure Manual Item 3-1-015 Use of Force – Facilities.

<sup>29</sup> Procedure Manual Item 3-1-056 I(C) General Information.

As set forth above, OC spray may be deployed “when de-escalation efforts have been unsuccessful or are not reasonably possible.”<sup>30</sup> Despite both DJCOs’ attempts to de-escalate, the youths continued to strike Y5. Based upon the facts, as described in the reports, Y3 and Y4 were actively assaulting Y5 when DJCO 2 deployed the OC.

### 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.”<sup>31</sup> 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.”<sup>32</sup>

Y3, Y4, and Y5 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, all three youths began decontamination within 10 minutes of the OC deployment. Y3 began decontamination at the Unit J showers approximately 8 minutes after the OC deployment. Y4 began decontamination at the Unit K showers approximately 10 minutes after the OC deployment. Y5 began to decontaminate in the Unit G showers approximately 8 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.<sup>33</sup> The main SIR states that all three youths were issued fresh clothing and that all soiled clothing was properly bagged and labeled accordingly.

DJCO 7 indicated in his narrative that he gave Y3 “all clean clothing due to the pepper spray exposition.” DJCO 5 indicated in his narrative that “Y4 was given clean clothing, and his decontaminated clothing was placed in a water-soluble bag labeled ‘pepper spray.’” DJCO 6 reported in his narrative that “Y5 was given clean clothes.” DJCO 2’s primary use of force report for Y3, Y4, and Y5 also indicated “yes” to the statements “contaminants placed in water soluble bag,” and “bag labeled.”

Staff are also required to be with “the youth throughout the entire decontamination process.”<sup>34</sup> None of the reports specifically state that staff remained with the youths during the entire decontamination process. DJCO 7’s narrative indicates that he “assisted[Y3] to his feet and escorted him to unit Juliet for decontamination. Once we arrived at the shower stall, I removed the handcuffs from [Y3] and he started his decontamination at 3:55 PM. [Y3] ended his decontamination by his own choice at 4:03 PM.” This verbiage implies, without expressly stating, that DJCO 7 was with Y3 throughout the decontamination process.

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<sup>30</sup> Procedure Manual Item 3-1-056 I(C) General Information

<sup>31</sup> 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.)

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

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

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

For Y4, DJCO 8 indicates in his narrative that “DJCO [5] and I supervised [Y4] in the shower. I continually asked [Y4] if he needed more time. At approximately 4:14 PM [Y4] requested to stop the decontamination.”

For Y5, DJCO 6’s narrative indicates that DJCO 9 removed the handcuffs from Y5 as he “entered the shower and began decontamination at 3:55 PM. At 4:06 PM, [Y5] stated he was done and turned off the water.” However, it remains unclear whether a staff member was continuously present with the Y5 throughout the entire decontamination process.

#### *Recommendation*

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

#### *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.<sup>35</sup> 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.”<sup>36</sup> The responsibility for contacting the youth’s parent or legal guardian is assigned to the SJCO/Duty Officer or designee.<sup>37</sup> 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.<sup>38</sup>

The main SIR, as well as several supplemental reports indicate that three SJCOs were on scene and supervised the securing of the youths and escorts for decontamination.

The SIR and supplemental narratives indicate that the medical unit was notified within approximately eight minutes of the incident. The main SIR narrative reports that “medical was contacted for all youth at 15:55 by DJCO [10].” Y3 was seen by medical at 4:33 p.m., Y4 was seen at 4:30 p.m., and Y5 was seen at 4:23 p.m., all within 50 minutes of the incident. All three youths were cleared of any injuries.

In addition, the main SIR, supplemental reports, and Use of Force forms indicate that staff notified the guardians of Y3, Y4, and Y5. The main SIR, DJCO 4’s and DJCO 7’s narratives indicate that Y3’s guardian was contacted or notified of the incident, physical restraint, and exposure to OC at 4:10 p.m. The main SIR, DJCO 3’s, DJCO 5’s and DJCO 8’s narratives and Use of Force reports indicate that staff notified Y4’s guardian at 4:11 p.m. However, DJCO 8’s narrative and Use of Force report adds that Y4’s guardian was left a message. For Y5, the main SIR, DJCO 6 and DJCO 9’s narratives indicate Y5’s parents were notified at 4:15 p.m.

Finally, the main SIR, and many of the DJCO SIRs indicate that the Clinical Evaluation Guidance Unit (CEGU) was notified of the incident for all involved youths at 3:56 p.m.

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

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

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

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

## 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).<sup>39</sup> 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, and identification of any injuries and medical treatment.<sup>40</sup>

DJCO 2 completed the main SIR for this incident and eleven other DJCOs prepared supplemental incident reports. The main SIR identified the youths involved as well as the actions taken by DJCO 2 and DJCO 3 to attempt to de-escalate prior to the use of force. The report also clearly lays out the activities that occurred after the uses of force except for whether staff members remained with the youths throughout the decontamination process.

The main SIR and one of the DJCO reports indicate that Y4 was seen by CEGU at approximately 6:51 p.m.

During a review of this incident, the OIR observed that in DJCO 2's main SIR and use of force report for all three youths, there is no indication of how far DJCO 2 was when she deployed OC spray at Y3, Y4, and Y5.

The OIR also has concerns with how the takedown of Y4 by DJCO 3 was documented in the various reports. DJCO 2's main narrative described it only as "[a]fter OC pepper was deployed, DJCO [3] managed to removed [Y4] from the other fighters." DJCO 3 stated in his SIR narrative that "[o]nce pepper was deployed, [Y4's] momentum guided us to the ground." This narrative was essentially adopted by the Use of Force Review Board when it stated in its summary that Y4 "went to the ground and with his momentum also took DJCO [3] to the ground." However, a thorough review of the video of the incident clearly shows DJCO 3's right forearm was enveloping Y4's neck, under his chin. DJCO 3's left hand was clasping his right hand to form a hold around Y4's neck. DJCO 3 then used the hold to pull Y4 away from Y3 and Y5 and onto a position on the ground so that he could be handcuffed.

## Recommendation

Provide additional training reminding DJCOs of the importance of making sure that their reports are accurate and complete.

## Use of Force Review Board

On November 15, 2022, the Department's Use of Force Review Board convened and reviewed this use of force incident.

The Board noted that DJCO 1 did not complete a Use of Force/Pepper Spray report for each youth who was subject to OC spray but praised her main report as organized and easy to follow. The Board also recommended that the main body SIR should contain more details about the force used, such as the

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<sup>39</sup> Procedure Manual Item 3-1-015 VIII(F) DJCO Responsibilities.

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

distance and effect of OC spray, and that these details should also be reflected in the forms. The Board further recommended greater detail in documenting safety checks.

## Conclusion

A review of the SIRs, Use of Force reports, and video footage establishes that the use of force by DJCO 2 was within law and policy. The reports indicate that DJCO 2 and DJCO 3 began by providing simple verbal commands. When the youths refused to comply with the verbal commands, DJCO 3 minimally increased the level of force by physically grabbing Y3 and Y4 and attempted to pull them away from Y5. DJCO 2 deployed her OC spray only after these attempts to gain compliance failed. It is clear from the reporting that had DJCO 2 not deployed force, Y3 and Y4 would have continued their assault on Y5, 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 DJCOs of the importance of making sure that their reports are accurate and complete.