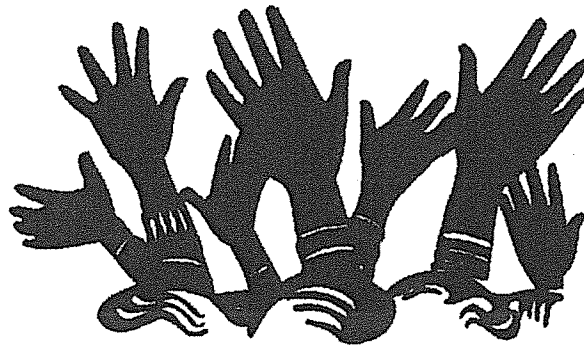


# **Anchorage Police Department Use of Force Policy Review Brief and Recommendations**

**December 2013**



Anchorage Community Police  
Relations Task Force

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## **Introduction**

This brief delves into the Anchorage Community Police Relations Task Force's (ACPRTF) history and mission, the Anchorage Police Department's (APD) recent use of deadly force against citizens within the Municipality of Anchorage, the Task Force's and APD's effort to address the community's reactions to APD's recent uses of force, ACPRTF's Use of Force Subcommittee (UOFSC) review of APD's Use of Force policy and its findings and recommendations on promoting the community's confidence in the APD. The Task Force, the APD and the community desire an effective police force which adheres to the law, follows nationally recognized best practices for law enforcement, and ensures both public and officer safety while promoting the community's confidence in its police force.

### **A. Task Force's History and Mission**

1. The Task Force came into existence in 1981 as a result of a deadly use of force incident involving APD and a young black male. Due to considerable concern from the Anchorage community that other alternatives to deadly force were not considered, an agreement was reached to establish the Minority Community Police Relations Task Force (MCPRTF). In 2007, the Task Force voted to change its name to the Anchorage CPRTF in recognition of its role as a liaison between all of Anchorage's citizens and APD.

2. Since 1981, with each successive Mayoral term, the agreement between the Task Force, the Municipality Of Anchorage, and APD has been renewed. The agreement states that the purpose or mission of the Task Force is to serve as a liaison between the Anchorage Community and APD. As a party to this agreement, APD agrees to work with the Task Force to ensure that the mutual objectives of the parties are achieved, and to review with the Task Force the results of its investigations and actions taken with respect to incidents involving members of the Anchorage community and APD.

3. Specific areas of concern were highlighted in this agreement. Those areas include: Community Oriented Policing, Use of Force and Use of Deadly Force, Training in the Use of Force and the Use of Deadly Force, Task Force member participation in APD training activities, Recruiting and Promotion. In all of these areas, APD has agreed to allow the Task Force to review and make recommendations as incidents or concerns arise involving these areas and the Anchorage community.

### **B. Current Events involving APD's Use of Deadly Force**

1. In June of 2012, an APD officer fatally shot a Samoan male citizen.

2. This incident raised a lot of concern within the Anchorage community, especially the Samoan community. For several days local newspapers and TV stations ran stories and updated articles regarding this incident. The common theme from the community was, "Why was the male shot?" and "Why wasn't some other form of less lethal force used like a TASER or pepper spray?" Citizens who saw the shooting on video feed asked questions like, "Why didn't the officer shoot the male's hands or legs?",

“Why did the officer have to shoot him in the chest?”, “Why was a man holding a stick a threat to an APD officer?”, “Why didn’t the APD officer retreat or put distance between himself and the male with the stick?”, “Why didn’t the APD officer wait for back-up?” and, “If some officers have TASERS why didn’t this officer?”

3. In early July 2012, APD officers arrived on scene and shot and killed a mentally distraught male citizen. Similar questions arose from this incident as those voiced regarding the use of deadly force by APD in June of 2012.

#### **C. Task Force’s and APD’s Response to the Community’s Concerns**

1. In response to these incidents, the Task Force, APD, and the Mayor and his staff held a Community Town Hall Meeting on July 19, 2012, where members of the public came to voice their concerns and ask questions or make recommendations. In addition to the questions and concerns that had already been reported in the papers and television news, it became apparent that the community did not understand what APD’s Use of Force policy was or how it was implemented or practiced. Many citizen concerns and/or questions indicated that there was a “Hollywood” understanding of how law enforcement officers respond to calls for assistance or react to individuals who are non-compliant and/or violent.

2. A second community forum was scheduled for September 13, 2012. This forum was sponsored by the Task Force, the Anchorage Equal Rights Commission (AERC) and the U.S. Department of Justice (DOJ) Community Relations Service (CRS). At the second forum APD officers presented on three topics: “What to do when you’re contacted by APD”; “Police 101”; and “APD’s ‘Response to Resistance’ policy.” After each presentation segment members of the audience asked questions of the panel. The forum was facilitated by U.S. DOJ CRS’s Northwest Regional Director.

3. This second forum was APD’s initial effort after the June and July 2012 incidents to put on a general educational program for the community to explain how APD interacts with the citizens it comes in contact with, what its use of force policy consists of and how officers determine what level of force should be used. APD received several requests from minority citizens to come present this program to their communities.

#### **D. Task Force and APD’s Continued Role in Addressing the Community’s Concerns**

1. After the two public sessions, the police department offered to share its use of force policies with the Task Force. Based upon the questions and concerns taken from both community forums, insight from the U.S. DOJ CRS’s Northwest Regional Director, and in keeping with the Task Force’s mission and APD’s partnership with the Task Force, the Task Force agreed to form a subcommittee to conduct a review of APD’s Use of Force Policy.

2. This subcommittee was made up of the following members of the Task Force; Chief Mark Mew – APD, Deputy Chief Steve Hebbe – APD, ACPRTF Vice Chair, Pastor Victor Marbury - Ministerial Alliance, Nelson Goodoy – Chairman, Faces of Hope Community Services, Lucy Hansen – Polynesian Association of Alaska, Rachel Aumavae – Polynesian Community Center and Eric McGhee – Anchorage Equal Rights

Commission. The subcommittee also invited Dr. Troy Payne – Professor, UAA Justice Center and Jeffrey Mittman – Executive Director of the ACLU of Alaska to assist the subcommittee in its review (Mr. Mittman was involved in the policy review and discussions but left the state for another assignment before this report was drafted.) The subcommittee was charged with reviewing APD's use of force policy, answering the questions posed by the community, reporting its findings and providing recommendations to APD.

**E. Scope of APD's Use of Force Policy review**

1. This review of APD's Use of Force policy will not include a review of the specific June and July 2012 use of deadly force incidents. The review of APD's Use of Force policy by the UOFSC will focus on the broad but repeated questions which the Anchorage community has about APD's Use of Force policy, APD officer training, APD officer tactics, APD's internal and external force incident investigations and APD's use of force statistics, with an added emphasis on reporting its findings and recommendations to APD, the Municipality Of Anchorage Mayor's office and the community.

**F. Laws Governing Police, Police Concepts and Police Tactics/Training**

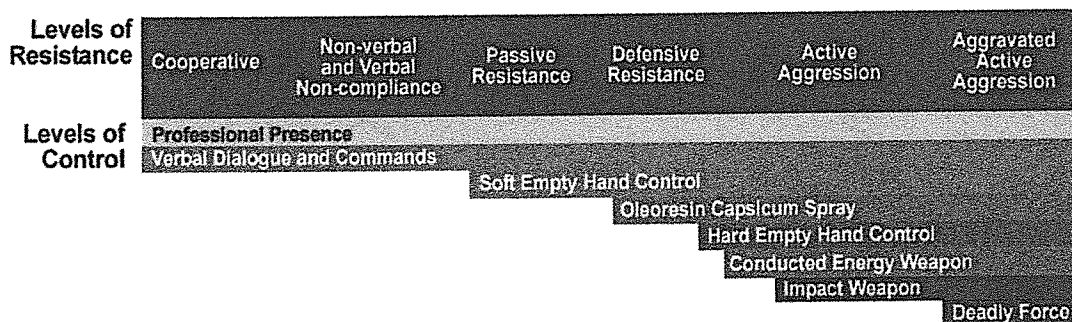
1. As mentioned above in section C, it became apparent after listening to questions, comments, and concerns from the Anchorage community that the community did not have an understanding of why police officer policies, training, and tactics are designed the way they are. For the UOFSC to conduct a review of APD's Use of Force policy it was important for the Task Force as well as the sub-committee to have an understanding of a few of the basic principles or foundations of policing from which many of APD's policies, training, and tactics are built upon. In addition, this foundational information would be helpful to the reader of this report.

2. Dr. Troy Payne from the University of Alaska, Anchorage, Justice Research Center, on November 9, 2012, presented to the Task Force legal, research and statistical information regarding policing.

3. Dr. Payne stated that there are few laws that speak to a police department's actions or policies regarding force. Federal law requires that all force be "objectively reasonable." In *Graham v. Conner*, the United States Supreme Court stated, "the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, however, its proper application requires careful attention to the facts and circumstances of each particular case including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others and whether he is actively resisting arrest or attempting to evade arrest by flight." The other notable law that governs police actions with regard to force is *Tennessee v. Garner*, where the United States Supreme Court decided that it was permissible for an officer to use deadly force only to prevent escape if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

4. Whereas other governmental organizations must follow certain laws or regulations, there is no law (federal, state, or local) which requires a police department to have a “use of force policy.” Most use of force policies across the nation are in place as a result of civil liability lawsuits. Meaning that it is a nationally recognized best practice for a police department to have a written use of force policy that sets out standards of conduct for its officers, which are based off of US Supreme Court rulings, so that a police department can avoid or mitigate liability in response to a civil lawsuit.

5. Dr. Payne informed the Task Force that the foundation of a police department’s use of force policy is its “force continuum” and that most use of force policies across the nation have levels of control (Officer) and levels of resistance (Subject). The levels of control usually start with Officer Presence being the lowest level of control and continue up to Deadly Force. The levels of resistance usually start with No Resistance and continue up to Aggravated Active Aggression. The idea of a continuum is that each level of control is used in response to an equal or greater level of resistance from the individual(s) that the officer is coming into contact with. The below image is a visual representation of a force continuum taken from the internet.



What is most notable about the above continuum is that all levels of control are available as an option for the officer to use even if faced with the max level of resistance. However, using the above model, an officer would not be automatically authorized to use an impact weapon as a means of control if the subject was displaying Passive Resistance or Defensive Resistance. Dr. Payne stated that it is important to understand that a force continuum is not a step by step progression and that the escalation and de-escalation of control may not and does not need to be sequential. Take a look at the above continuum, notice that each level of control and each level of resistance blends into the next higher level. Meaning, Passive Resistance does not always equal Soft Empty Hand Control and Aggravated Active Aggression does not always equal Deadly Force. When deciding which level of control an officer should use, the officer should reasonably believe that a lower level of control is not sufficient and a higher level of control is not reasonably necessary. An example of the last sentence is that if an officer believes (training and abilities of officer and perceived or known training and abilities of subject) that Soft Empty Hand Control is not sufficient to gain control but that an Impact Weapon is not reasonably necessary to gain control then the officer should, in this scenario, choose a level of force that is between the two extremes (not enough force, too much force).

6. Dr. Payne presented statistical information from a national study which showed that, across the nation, relative to citizens who offer no provocation, citizens that try to argue with officers are 17 times more likely to have force used against them and relative to citizens who offer no provocation, citizens that physically resist officers are 181 times more likely to have force used against them.<sup>1</sup> This same study showed that blacks were 3.8 times more likely to have force used on them versus whites and Hispanics were 2.2 times more likely to have force used on them than whites.<sup>2</sup> Dr. Payne stressed that from a statistical perspective, arguing with an officer or physically resisting an officer increased a citizen's chances of having force used against them even more than the citizen's race.

7. In addition to Dr. Payne's presentation, Chief Mew explained to the subcommittee two policing concepts/rules that apply to all interactions between police and other individuals. The first concept is that of Safety Priorities. Safety Priorities is a concept where a responding officer prioritizes the safety of the individuals who are directly involved and indirectly involved in an incident. This prioritization is so ingrained in police training that it becomes instinctual or second nature for a responding officer. The Safety Priorities are Hostages (e.g. victims), Citizens (e.g. bystanders), Officers, then Subjects (e.g. perpetrators). In any police – subject encounter the officer is responding to the situation with the first safety priority being hostages or individuals who have no choice as to whether they are involved in the incident or not. For example, hostages in a home or passengers in a vehicle. Next on the safety priority list are citizens (bystanders) in the area. Citizens who are not directly involved in the situation are free to leave the area, however, the officer must take into account that his actions or the actions of the subject could endanger or harm any citizens in the area. Next on the safety priority list is the officer's own safety. If the officer is harmed, injured, or killed, then the hostage(s) and/or citizen(s) have no buffer between them and the subject who might choose to do them harm and who now has access to the officer's weapon(s) or vehicle. Lastly, the safety of the subject is considered.

8. The other foundation of police training that was important for the UOFSC and for the reader to understand is the four gun safety rules. Rule #1 - All guns are always loaded, Rule #2 - Keep your finger off the trigger until your sights are on the target (e.g. until you are ready to shoot); Rule #3 - Do not point your weapon at anything you're not willing to destroy; and Rule #4 - Be aware of your target and beyond. These rules and other variations can be found at gun ranges, taught at gun safety classes, taught at carry concealed classes, and are the basic rules for most police departments' gun training, including APD.

9. Keeping Rule #4 in mind, officers are trained to shoot at "center mass" of the target presented. Therefore center mass can be any part of the subject that is presented, as long as there are no Rule #4 considerations. Those considerations being, if the officer misses or if the bullet goes through the subject, where does the bullet go beyond the subject? Officers must in a matter of seconds consider what is beyond the subject and by focusing on the "center mass" of the target which is presented they

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<sup>1</sup> Hickman, M. J., Piquero, A. R., & Garner, J. H. (2008). Toward a national estimate of police use of nonlethal force. *Criminology & Public Policy*, 7(4), 563-604.

<sup>2</sup> *Ibid.*

increase their chances of hitting the subject. On a human body that is standing up that would be the chest area. Chief Mew acknowledged that unfortunately the chest area contains vital organs that if shot can likely lead to death. However, Chief Mew also stated that when trying to hit someone's arm, hand or leg, even though there is less danger of death to the subject, the accuracy level decreases and the risk to someone else like a hostage or citizen bystander getting hit increases. Going back to the safety priorities, the officer is authorized to use a level of force in a manner that gains control of the subject but does not pose any increased risk to hostages, citizens, or officers. Shooting at arms or legs increases the risk of harm to others and therefore officers are not trained to shoot to injure or wound. On a similar note, officers are not trained to "shoot to kill." Officers in a deadly force situation are trained to take into consideration the safety priorities, gun safety rules and shoot center mass of the target presented to stop the resistive behavior which is putting hostage(s), citizen(s), officer(s) or subject in danger of imminent serious physical injury or death.

10. The Anchorage Community in general was also not aware that law enforcement officers are allowed to be afraid of a subject but at the same time do not have a duty to retreat from a confrontational or resistive behavior situation. This topic will be discussed later in this report.

#### **G. Questions and Answers**

**Question: Does APD have a use of force policy? If so, how does that policy compare to similar departments nationwide?**

1. This simple answer is, "Yes" APD does have a use of force policy. APD refers to this policy as its "Response to Resistance" policy. Chief Mew provided the UOFSC with a copy of APD's Response to Resistance policy. Over the course of four months beginning in February 2013 the subcommittee members reviewed their copy of the policy and then met once each month to discuss the policy section by section. Currently APD's Use of Force policy is found in Part 3, Chapter 5 and Chapter 6 of APD's Regulations and Procedures Manual. The Policy was approved by the current Chief, Mark Mew, and became effective October 11, 2011. The Policy has the following sections;

- a. 3.05.000 Use of Force and Weapons
- b. 3.05.005 Electronic Control Devices
- c. 3.05.010 Firearms Training and Qualifications
- d.. 3.05.015 Kinetic Energy Weapons
- e. 3.05.020 Less Lethal Application Reporting and Review Procedures
- f. 3.05.025 Response to Resistance
- g. 3.05.030 Investigation of Officer Involved Use of Deadly Force and In-Custody Deaths.
- h. 3.05.035 Weapons
- i. 3.06.000 Use of Police Vehicles

2. At the first UOFSC review meeting, Chief Mew pointed out that the current policy was probably not laid out in a way that made logical sense and a



recommendation was made to rearrange the different sections of the policy. For example, section 3.05.025 Response to Resistance should be the first section of Chapter 5 as it contains APD's guiding principle for how its officers are required to accomplish their duties. Below is a direct quote from this section:

*Purpose*

*To advise all sworn personnel of the laws and policies governing response to resistance while acting under the color of authority.*

*Purpose*

*For purpose of this procedure it is Department policy that:*

*Officers shall accomplish their duties in a manner that minimizes the need for force and maximizes voluntary compliance.*

*If applied, officers shall use only that level of control which is reasonably necessary and lawful in executing their duties as peace officers.*

*When possible, officers should continue to attempt to gain compliance by means of verbal directives or commands.*

*No employee of the department shall engage in any conduct that could reasonably be expected to unnecessarily escalate a situation's potential for violence.*

*Justification for any level of control is limited to what reasonably appear to be the facts known or perceived by an officer at the time. Facts unknown by the officer at the time, no matter how compelling in retrospect, cannot be used at a later time for justification.*

3 Dr. Troy Payne stated that in his experience APD's Response to Resistance policy looked very similar in structure and purpose as other police departments across the country of similar size.

4. APD's Response to Resistance policy relies on the "objectively reasonable" standard to determine whether force is authorized. A "force continuum" is used in training for illustrative purposes. Levels of resistance and control are discussed in the policy, but ultimately it is the "objectively reasonable" standard that is applied to the use of force decision process or subsequent analysis. As noted in the purpose section above, APD officers are required to use the least amount of control to stop whatever level of resistance is being exhibited.

5. Given the incidents in June and July of 2012, the first section of the policy that the UOFSC wanted to review was the Response to Resistance policy. A review of APD's Response to Resistance section of its policy showed that APD's "force continuum" is referred to as a "Resistance Control Continuum." This continuum is divided into two categories: (1) Levels of Resistance, describing resistive behavior by a subject, and (2) Levels of Control, detailing an officer's methods of subject control.

6. The Levels of Resistance that APD recognizes are: a) Psychological Intimidation, b) Verbal Non-Compliance, c) Passive Resistance, d) Defensive Resistance,

e) Active Aggression and f) Deadly Force Assault. The policy provides a general description of each level of resistance.

7. The Levels of Control that APD recognizes are: a) Officer Presence, b) Verbal Direction, c) Soft Empty Hand Control, d) Hard Empty Hand Control, e) Intermediate Weapons and f) Deadly Force.

8. The policy provides a brief description of each level of control and in particular notes which levels have the potential for injury. This section of APD's policy also takes additional steps to inform the officer of how they can apply these levels of control in any given situation. This section of the policy instructs APD officers that they do not have to increase their level of control in a step-by-step progression because a subject's resistance can begin anywhere on the Levels of Resistance continuum. Therefore, the officer's response to the resistance can begin at any point on the Levels of Control continuum. APD also articulates in this section that it recognizes that individual officers may have a different response to the same situation based on the officer's relative size and stature compared to the subject, the subject's actions, and the relative capabilities of the subject and officer.

9. For example, an officer arrives on scene and a subject is displaying Active Aggression. i.e., physical actions/assaults against the officer or another person with less than deadly force. The officer does not have to start with Officer Presence, then move to Verbal Commands, then move to Soft Empty Hand Control, and then when all of those levels of control fail to gain compliance, move to Hard Empty Hand Control. Hard Empty Hand Control is the level of control which this section of the policy describes as being designed to control Active Aggression. If the officer believes that lower levels of control will not be effective, then the officer can immediately use the level of control that is "objectively reasonable." In this example, the policy also does not require the officer to start at Hard Empty Hand Control. If, given the totality of the circumstances, (size/stature of subject compared to officer, capabilities of the subject and officer, officer's belief that lower levels of force will or will not be effective) the officer could choose to use an Intermediate Weapon. The UOFSC noted that the Levels of Resistance do not numerically correspond with the Levels of Control. Gaining compliance of a subject is not a situation where one level of resistance always equates to one particular level of control like a math formula. The UOFSC noted that the foundation and goal of APD's Response to Resistance policy was for its officers to gain compliance using the lowest level of force necessary while also allowing the officer to increase or decrease their level of control depending on the level of the subject's resistance and the other factors mentioned above.

10. The next three subjects covered in the Response to Resistance policy are: a) Weapons, b) Vascular Restraints, and c) Total Restraint. APD's policy notes that the Response to Resistance section governs general responses to resistance and that the "Weapons" policy provide specific guidance; however, both sections apply to any response to resistance/level of control involving weapons. Vascular Restraints (VR) are the only approved neck holds and are to be used in the manner and under the circumstances taught in APD's Academy and in-service training. VR's are classified by APD as Hard Empty Hand Control. Total Restraint deals with further restraint of a subject who continues to be combative and indicates that additional restraints should be used in the manner and under the circumstances taught in APD's Academy and that if a

subject is in total restraints they are to be monitored closely at all times and a second officer will ride in the vehicle to monitor the subject.

11. APD's Response to Resistance policy does include a "Reports and Notifications" section. APD's policy requires any employee's use of any level of control above Verbal Direction to be described in an official, numbered police report. In addition, APD requires any employee who uses Hard Empty Hand Control or a higher level of control, or any level of control that results in injury to any person, to report the Response to Resistance to the employee's supervisor.

12. The UOFSC noted that the above section did not indicate what happened to the reports after they were filed and/or submitted to the employee's supervisor. The UOFSC recommended that the policy briefly outline what actions the supervisor should take once a level of control report is filed. The UOFSC asked Chief Mew if these reports regarding levels of control were cataloged in any way which could later be used in a statistical analysis to determine if certain shifts had more or less reports of force, if individual officers had more or less reports of force, if certain neighborhoods were identified as having more reports of force, or if certain types of calls for assistance from the community resulted in more or less reports of force. Chief Mew's response was that the department had some ability to track trends of this type, but had not done much in this area historically. The department was just now beginning to expand its capacity to perform such analyses. The Chief further explained that other areas of the policy give supervisors guidance on what they can and should do when performance deficiencies are noted—whether those are identified through police reports or other sources—but the instruction is not confined to the Use of Force sections of the manual.

13. APD's Response to Resistance policy also includes a "Supervisor Mandatory Report" section. This section details what is required for any incident involving the application of deadly force, damage to municipal property, any injury, or "officer needs emergency assistance" calls. The policy requires the on-scene commander or supervisor to submit a memorandum to the division captain and chain of command outlining the circumstances of the incident. Additionally, in cases involving injury or property damage caused by an employee supervisors are required under this section to notify the Municipal Risk Management office. Lastly, this section instructs supervisors that in incidents involving the use of intermediate weapons, vascular restraints, the application of deadly force, damage to municipal property and force resulting in injury, a "response to resistance" form must be filled out and forwarded to APD's Internal Affairs.

14. Similar to the section 9 of this report, the UOFSC thought this section of the policy was not clear in articulating what happened with these reports after they were filed. How are they being used to make the department better? The UOFSC also recommended that APD consider unifying its force report forms. The UOFSC recognizes that a police report is a description of the events, observations and actions of the individuals involved, which will include the levels of resistance and levels of control. However, in the opinion of the UOFSC, "force reports" should be a completely separate report which focuses on the levels of resistance encountered and the levels of control used. The recommendation to move to one force report would enable APD to quickly and accurately catalog its force reports by shift, day, week, month, officer, neighborhood, etc. and would enable it to track the individual report to ensure the appropriate level of review was conducted by the appropriate level of command. In addition, APD would be

able to pull from a single source data which would more easily reveal which officers need more training or discipline, shifts that might need more officers, neighborhoods that need more policing, and other trends regarding levels of resistance and control.

15. The "Force Review" section of this policy states that at the discretion of the Chief of Police, Internal Affairs shall review all evidence pertaining to response to resistance issues.

16. The last three sections of the Response to Resistance policy have to do safeguarding suspects and prisoners while in custody and states that prisoners shall be treated in a fair and humane manner at all times and that officers shall take all necessary precautions to prevent escape, injury, or damage to property and to ensure that prisoners are not in possession of weapons or dangerous instruments. One of the last sections requires a psychological evaluation or counseling, at APD expense, of an employee of APD who uses Deadly Force when that force results in any serious physical injury or death, and the last section deals with the use of force during crowd management and crowd control.

17. The second section of APD's Use of Force policy that the UOFSC reviewed was Section 3.05.030 Investigation of Officer Involved Use of Deadly Force and In Custody Deaths. During the two public meetings that the Task Force sponsored and attended in July 2012 and September 2012, community members asked questions about the "investigations" that were being conducted to determine whether or not APD officers acted within policy or committed any crimes. Chief Mew during the UOFSC meetings admitted that the investigations which occur after an officer is involved in a Use of Deadly Force incident can be confusing and can appear to the public to be Law Enforcement investigating Law Enforcement and could lead to the question of, "who is the impartial agency doing the review?"

18. This section of the policy stated that APD officers may use deadly force under the following circumstances: in defense of the officer or another when the officer has reason to believe there is imminent danger of death or serious physical injury; to make an arrest or terminate the escape or attempted escape from custody of a subject who the officer reasonably believes has committed or attempted to commit a felony which involved the use of force against a person and who may otherwise endanger life or inflict serious physical injury unless arrested without delay; or to make an arrest or terminate the escape or attempted escape from custody of a subject the officer reasonably believes is in possession of a firearm and/or may otherwise endanger life or inflict serious physical injury unless arrested without delay.

19. The Discussion section stated that APD would investigate all instances of the use of deadly force in a timely manner. Criminal investigations will be conducted of all officer uses of deadly force by the state Office of Special Prosecutions and Appeals (OSPA), supported by APD Detectives and Crime Scene Investigators. Additionally, Internal Affairs will conduct an investigation to ensure that APD's policies were followed. The criminal investigation and the internal investigation will be completely independent of each other except that information gathered in the criminal investigation can and generally will be used by Internal Affairs in its determination of whether or not the use of deadly force was within department policy. During the criminal investigation, APD Detectives will take direction from OSPA attorneys who are to determine if the officer(s) involved violated any laws of the State of Alaska. OSPA will eventually notify

APD of its intent or lack thereof to bring charges against the involved officer(s). This process requires the OSPA to provide APD a letter explaining its findings and whether it intends on filing or is declining to file charges. The IA "policy" investigation typically gets started once OSPA has ruled on the "legality" issue. Different rules of evidence apply in the internal investigation, particularly with respect to the collection of officer statements.

Lastly, this section explains what the rights of an officer(s) who is involved in a use of deadly force incident are and are not with regards to officer statements.

20. There is a Definitions section which pertains to terms used in the following Procedures section. The Procedures section sets out how the investigation of an Officer-Involved Use of Deadly Force and In-Custody Death would proceed and assigns responsibilities to the parties that might be involved in the incident. This section goes into great detail regarding what the "Involved Officer," "Witness Officer," "First Arriving Supervisor," "Command," "Chief of Police," "Detective Division Unit," "Homicide Unit Sergeant" and "Detective" responsibilities are, who they report to, what their rights are, and when or how they can be cleared to leave the scene.

21. The UOFSC after reviewing this section had many questions regarding the relationship between APD's Detective Unit and Crime Scene Investigators (who could be conducting activities at the behest of both OSPA and the DA's Office), OSPA (which would be investigating whether criminal charges should or should not be brought against the officer(s)), the DA's Office (which would be investigating whether criminal charges should or should not be brought against the person APD used force against—should he survive), and Internal Affairs (who would be conducting an internal investigation looking at policy). Chief Mew explained that an incident which involves an officer's use of deadly force could be a crime scene where evidence exists which shows that the subject and/or the officer committed a crime. This same scene could also have evidence which shows that the officer(s) violated APD's policy, and lastly the same scene could have evidence which showed that the officer(s) violated APD policy but did not violate any State or local laws. The UOFSC recognized that this is probably the hardest part of these types of incidents for the public to understand. Some of the comments that the Task Force heard during the two public forums had to do with community member's perception that APD was investigating itself so how was that fair? Also, there was a lack of understanding as to how an officer might be found to have violated APD's policy, yet OSPA find that the officer did not commit a crime. The scope of this review is not to provide a legal analysis for the reader nor is the UOFSC recommending that APD provide this information, real-time, during press briefings. The UOFSC did recommend to Chief Mew that APD provide to the public a flow chart, diagram, or some kind of visual representation of how the three independent investigations of an officer involved use of deadly force incident are handled, which agencies handle which investigation, and a brief explanation as to what type of analysis each agency is using to make its determination.

22. The next section which was of interest to the UOFSC based upon questions and concerns from the Anchorage Community is section 3.05.005 - Electronic Control Devices (TASER is the brand of device APD uses). Many in the community questioned why these two citizens were shot and killed when the police could have used "TASERS." At the time, Chief Mew's response was that not all officers had TASERS

and that his department was working with the Anchorage Assembly to get more funding so that APD could purchase more TASERS in the hope that in the future more officers, if not all of them, would be trained, certified, and issued TASERS.

23. This section of the policy identifies which “electronic control devices” are authorized for use and requires that officers must be certified by an APD TASER Certified Instructor before they can carry a TASER. The training consists of a minimum of six hours of instruction and the officer must successfully pass a written and a proficiency exam.

24. The UOFSC noted that APD’s policy states that the TASER, “...may be deployed as an additional police tool and is not intended to replace firearms or self-defense techniques.” The policy provides some guidance as to what types of resistance the TASER could be used in, for example, Active Aggression, Suicide Intervention, and other Special Circumstances.

25. A “Procedures” section outlines the authorized use of the TASER and essentially provides direction to the officer starting with requiring that the officer give verbal commands to the subject, indicate what action the officer wants the subject to do and that non-compliance with the command will result in the use of the TASER. The procedure indicates that verbal commands are not necessary if the reaction time to the suspect’s actions pose a threat to officer or others safety.

26. A TASER can be used in Drive Stun mode (touching the probes of the TASER to a subject) or by firing the probes at a suspect. The procedure outlines how each method of deploying the TASER should be conducted to result in immediate compliance. Officers are directed to energize the subject the least number of times possible and no longer than reasonably necessary to accomplish the legitimate operational objective, in other words, the APD’s policy directs officers to energize a subject only the number of times necessary to gain compliance and end the resistance. The procedure states that the TASER shall not be used as a means of punishment.

27. The policy clearly states that the TASER is not a replacement for a handgun and that in situations where there is a substantial threat a TASER should not be used without a lethal force backup and that the TASER is only to be worn on the officer’s support side.

28. The procedure part of this policy also states some limitations to the use of the TASER, the duties of the officer after discharging the TASER, evidence collection requirements, and reporting requirements.

29. The members of the UOFSC generally did not have any issues with section 3.05.005 - Electronic Control Devices, however, the biggest concern was the question, “Why aren’t all APD officers trained, certified, and issued TASERS?” Chief Mew’s response was that it was partly—but not entirely--a matter of cost and that he was working to add more TASERS to APD’s inventory each and every year until the right number of officers are trained and certified to carry them.

30. The rest of APD’s Operational Procedures, Chapter 5, 3.05.000 Use of Force and Weapons, as noted on page 8 of this report deals with Firearms training and Qualifications, Kinetic Energy Weapons, Less Lethal Application Reporting and Review Procedures, Weapons, and Use of Police Vehicles.

**Question: How are APD officers initially informed of the department's Use of Force policy? How are APD officers trained regarding the levels of control and levels of resistance? And, what kind of remedial or ongoing Use of Force training to officers receive throughout their career with APD?**

1. Chief Mew stated that all officers get their initial training on these matters in the police academy. There is further annual in-service training on these and other topics. Furthermore, the department from time to time sponsors training sessions wherein subject matter experts come to Anchorage to provide training for those who can attend, and the department also approves training requests as often as possible when employees wish to attend—or even travel to obtain—training on their own. This can be department funded or officer funded training. Finally, supervisors generate roll-call discussions aimed at keeping their employees well versed in these and other high risk policies.

**Question: Why are APD officers allowed to use a level of force that is higher than the level of resistance?**

1. With the Safety Priorities mentioned earlier in mind, an APD officer must execute a level of control that stops the subject's resistance and at the same time offers the most safety to Hostages, Civilians, Officer(s) and then the Subject.

2. Keeping the Purpose of APD's Response to Resistance policy and the Safety Priorities in mind, Chief Mew explained that APD Officers are trained to take into consideration other variables like the size, weight, and ability of the subject as well as the size, weight, and abilities of the officer. APD officers are trained to gain control as quickly as possible, therefore, if a level of control is failing to stop the resistance, APD officers are trained to increase their level of control until the resistance stops but once the resistance stops to decrease the level of control. Increasing levels of control in response to a subject's level of resistance can also be dangerous because an officer in that situation is constantly playing catch-up with the subject. APD officers are trained to consider all of the above variables and use individual discretion based upon their training and abilities to gain immediate control using the lowest level of control that is reasonably necessary. Therefore, in some cases an APD officer may determine that a higher level of control is necessary to stop the resistance than another officer in a similar situation. Notwithstanding, in all cases the force must meet the "objectively reasonable" standard in order to be within policy.

**Question: "Why can't officers choose to retreat from a situation?"**

1. Chief Mew explained that once an APD officer is involved in a situation their duty is to control the situation so that Hostages, Civilians, Officers and Subjects are safe. Across the nation, a police officer's job is to engage in dangerous situations and retreat would only be an option if doing so would not place Hostages, Citizens, or the Officer at a greater risk of injury or death. The word "retreat" also doesn't really apply in any police situation but rather an officer may choose to not engage in any levels of control other than officer presence or verbal commands as long as hostages, citizens, officer(s), and the subject are safe.

**Question: “Why can’t APD officers shoot to warn or shoot to wound a subject.”**

1. Keeping in mind the four gun safety rules and particularly Rule #4 – Be aware of your target and beyond, Chief Mew and Dr. Troy Payne both acknowledged that police officers across the nation are trained to shoot “center mass” of the target that is presented. Unfortunately, this means that in any situation where an officer uses a pistol, shotgun or rifle, the officer is usually aiming at an individual’s chest area which contains vitals organs. Chief Mew was emphatic in explaining that APD officers do not “shoot to kill.” APD officers as well as officers nationally are not trained to shoot warning shots or to shoot at hands, arms, or legs. In a dynamic situation, the accuracy level required to shoot a target like a subject’s hand, legs, or arms is near impossible and could result in bullets missing their intended target and hitting hostages, citizens, or other officers (Rule #4 considerations). Therefore, when using pistols, shotguns or rifles officers are trained to shoot “center mass” of the target presented thereby increasing the likelihood that the bullets will hit their intended target.

**Question: “Why don’t all APD officers have TASERS?”**

1. Regarding the use of TASERS, Chief Mew acknowledged that in some situations the TASER was a very effective tool and that not all of APD’s officers were trained or certified to use the TASER. Chief Mew stated that all of the TASERS in APD’s inventory were issued and that he was currently working with the Anchorage Assembly to get more funds specifically for the purchase of more TASERS and the training that is required for an officer to carry a TASER. He also said that, while the department will expand the number of TASERS on the street, it is not yet prepared to issue a TASER to each and every officer. There is a lot of developing case law and medical study with respect to this technology, and a lot of public criticism of it. The day may come when every officer has a TASER, but in the near term the department doesn’t want to get out in front of the courts and the public’s level of acceptance; doing so could backfire and jeopardize the entire program.

**Question: “When is deadly force authorized by department policy instead of less lethal options such as TASERS or pepper spray?”**

1. According to APD’s Response to Resistance policy section 3.05.025, APD officers are authorized to use deadly force in defense of the officer or another person when the officer has reason to believe the following: there is imminent danger of death or serious physical injury to the officer or another person; or to make an arrest or terminate the escape or attempted escape from custody of a subject that the officer reasonably believes has committed or attempted to commit a felony which involved the use of force against a person and may otherwise endanger life or inflict serious physical injury unless arrested without delay; or to make an arrest or terminate the escape or attempted escape from custody of a subject that the officer reasonably believes to be in possession of a firearm and may otherwise endanger life or inflict serious physical injury unless arrested without delay.



2. The above paragraph outlines when deadly force is authorized, but not all instances which meet the above criteria result in APD officers using deadly force many of these instances result in a lesser level of control being used to stop the resistance, effect the arrest or stop the escape. The goal is always to deescalate—to slow down—the situation if the suspect will allow it. When the suspect can be compelled or convinced to back down even a little, it is often possible to exert some level of stabilizing control and use a lower level of force to solve the situation. Any officer can offer anecdotal information about officers managing to avoid deadly force even though it might have been legally justified for a time. The chief maintains that APD sidesteps lethal force more often than it uses lethal force. Unfortunately, police data collection systems don't count things that don't happen, so the APD cannot put a number on how many times officers decided not to shoot someone. Ultimately, according to the chief, the suspect is the party that has the most control of the outcome of the conflict. The suspect can always choose to stop and obey commands; doing so will always remove the need for lethal force.

**Question: “Who determines if the officer’s “reasonable belief” was in fact reasonable?”**

1. The UOFSC found two sections in APD Response to Resistance policy that covered when and who would review an officer's use of force. Chief Mew suggested—and the UOFSC agreed—that the way the policy is organized currently is a bit confusing and could be improved. For purposes of answering the question for the Anchorage community, the UOFSC found that levels of control above verbal commands that do not result in any injury are reported in the officer's case report and reviewed by a Sergeant. Levels of control above verbal command, but less than deadly force or that result in an injury to any person or damage to any property, results in a separate report which is reviewed by APD's Command Staff.

2. When an APD officer uses deadly force it triggers a complex set of investigations that are separate from each other. These investigations may run consecutively or concurrently, depending on many factors. For example, lets assume an APD officer uses deadly force and the subject is killed. APD Detectives are processing the crime scene, which involves the who, what, when, where, and why the officer was even engaging the subject. The detectives answer to OSPA, which is tasked with investigating whether or not the officer's actions were in violation of Alaska Statute(s) (AS) 11.81.330, AS 11.81.335, AS 11.81.340, AS 11.81.350, AS 11.81.370, and AS 11.81.400. Meanwhile, APD Internal Affairs is tasked with investigating whether the officer's actions were within policy (Response to Resistance; Use of Deadly Force).

3. To further complicate the matter, an APD officer can be found through APD's Internal Affairs investigation to have violated APD's Response to Resistance policy, while OSPA can find that the officer did not commit any violations of the Alaska Statutes mentioned above. Lastly, Chief Mew informed the UOFSC that there are times that Internal Affairs “clears” the officer of policy violation, and OSPA “clears” the officer of any criminal wrongdoing but, nonetheless, the department decides administratively to change the way it trains its officers or changes a portion of its policy or changes the procedures that were involved in the incident—and that none of those

changes should indicate to the public that the officer did anything wrong, but rather that APD is continually attempting to minimize the loss of life or injury to any person involved.

4. Such a policy change or policy adjustment occurred after APD had four incidents in the last two years where suspects used vehicles to ram police cars that were either pursuing the suspect or set up in a containment situation. In these instances, APD Officers used deadly force to attempt to stop the vehicles from ramming the police vehicles, breaking through the containment “pin,” or running over officers who were out on foot. In one instance, the suspect driver was killed. In three instances, no one was struck by bullets. As a result—in June of 2013—APD issued a revision to its Use of Force policy, in the hopes that it would reduce the number of incidents where APD Officers are shooting into suspect’s vehicles. On July 12, 2013, at the Task Force’s monthly meeting, Deputy Chief Hebbe, explained that the revision was more of a “tweak” to the current policy and that in content there was no significant change to the policy. At the same time, the department rolled out new tactics for the officers to employ that are intended to help them arrest the driver, stay safe, avoid shooting their firearms, and keep bystanders out of harm’s way.

**Question: “Is there an ‘Early Warning’ system in place that allows APD to determine if particular officers, neighborhoods, or shifts are using more force than others?”**

1. Chief Mew told the UOFSC that it had recently implemented an Early Intervention System (EIS) that was designed to track the information noted above so that APD Command Staff could take a look at behavioral and/or performance trends within its workforce. Chief Mew stated that he hoped the new system would help APD’s Command Staff identify officers that need remedial training or other support. The existing IAPro system can identify trends in use of force by shifts, and a combination of the existing Records Management System and the new Bair Analytics system, can isolate crime and event types by neighborhood. Nationwide police departments are using more real-time analysis of crime activity and officer activity to help better deploy resources.

**Question: “Are there statistical reports regarding APD’s use of force available to the public?”**

1. At the time of this report, information released by the APD has been limited to its responses to specific questions by individual members of the public or by the press, or through proactive news releases, and through the IACP Audit of August 2012. Over the years, that amounts to a significant amount of information; however, it does not amount to a comprehensive, routine presentation of data. At the time of this report, the UAA Justice Center is preparing to publish an analysis of twenty years worth of APD officer involved shootings. The Justice Center agreed to evaluate two decades worth of OIS investigative files (made available by APD), prepare a relational database of shooting “factors”, and conduct an analysis of those factors. This study will be a public document, and it is the intent of the APD and the UAA that it shall be updated and re-released annually. The UOFSC recommended to Chief Mew that the data compiled by

the department be used to generate an annual or semi-annual report to the ACPRTF which would show use of force statistical data separated by the areas of concern mentioned above.

#### H. Findings

1. APD does have a use of force policy that sets out the levels of force and weapons and tactics which are approved for APD officers to use.

2. APD officers do receive initial, continuing, and remedial training regarding its use of force policy.

3. APD's use of force policy and its levels of force, weapons and tactics are comparable to other police departments of similar size that serve communities similar in size and diversity as Anchorage.

4. APD has a reporting procedure governed by existing policy which sets out what types of force incidents require a report, what type of force incidents are investigated or reviewed, and what level of command staff reviews force incidents.

5. Deadly force incidents are reviewed internally (Internal Affairs – Procedural/Policy) and externally (OSPA – violation of Alaska Statute).

6. APD officers are being issued TASERS and trained/certified to carry them as they become available. The police department has increased the number of TASERS on the street since the shootings in the summer of 2012. The department continues to closely monitor the TASER program.

7. Prior to the summer of 2012, the department's tracking of use of force relied heavily on paper, was somewhat slow, and tracked only general trends. Since then, the department has acquired new computer systems and refined others, and has added staff to IA. The department today tracks more data faster than it did in 2012, and it gives the data more attention.

8. As of the conclusion of this review, APD's use of force policy is still not available to the public in any form. The department has created a public version of its entire policy manual. This document is receiving final edits, but the work was not ready for publication at the time of this report.

9. Since 2012, the APD has had its use of force and/or complaint tracking statistics evaluated by the International Association of Chiefs of Police, The UAA Justice Center, and a contracted legal consultant who is an expert often hired by the DOJ to monitor police departments subject to DOJ consent decrees.

#### I. Recommendations for APD

1. Add to the Response to Resistance policy a chart, diagram, or visual representation of APD's force continuum.

***APD response: The DOJ is moving away from force continua in policy, and our legal advisers are telling us to get it out of policy and use it only as a training aid. In policy, the department will be "4<sup>th</sup> Amendment based," with the emphasis on the "objectively reasonable" standard.***

2. Reorganize Part 3 Operational Procedures, Chapter 5, 3.05.000 Use of Force and Weapons. Recommended reorganization by section:
  - a. 3.05.005 Response to Resistance
  - b. 3.05.010 Weapons
  - c. 3.05.015 Electronic Control Devices
  - d. 3.05.020 Kinetic Energy Weapons
  - e. 3.05.025 Less Lethal Application Reporting and Review Procedures
  - f. 3.05.030 Firearms Training
  - g. 3.05.35 Investigation of Officer Involved Use of Deadly Force and In-Custody Deaths

***APD response: The entire organization and numbering of our policies is being reworked by our legal consultant and command staff. The numbers might be different from what this report recommends above, but the topic treatment will be quite similar.***

3. Make available to the public Sections 3.05.005 and 3.05.035 of the Use of Force and Weapons policy, preferably online. Dr. Troy Payne noted that many police departments across the nation are making their use of force policy available to the public. The UOFSC agrees with Chief Mew that the public does not need to know APD's operational tactics with regards to levels of control, arrest procedures, types of approved weapons, deployment of less than lethal weapons, or other tactical/operational procedures used by APD officers.

***APD response: We have already created a public version of our policy manual (not just the force related sections). It is currently getting finishing touches. The document will be made public around the first of the year.***

4. Current Section 3.05.025(V-X) should include a brief outline as to what actions a supervisor should take once a level of control report is filed.

***APD response: This will be covered in depth in the new policy, which is scheduled for release around January 1, 2014.***

5. Standardize and streamline APD's internal reporting practices regarding use of force reports to reduce duplication of effort, ease of internal policy reviews, and enable regular reporting to the public.

***APD response: Regarding data collection and analysis, this is all being done and automated and taught to supervisors, literally as this report is finalized. The new systems are incorporated in the new policy due out in January 2014. With the assistance of UAA, we are making our deadly force data available to the public. We will evaluate the possibility of publishing all force data. We have no philosophical objection. It could be a very big project. We will need to see how well our new data collection systems and policies work, before committing on that one.***

6. Continue to increase the number of TASER-equipped officers by seeking additional funding from state, local and/or federal sources.

*APD response: We plan to continue to upgrade the technology and training, and will expand the fleet as we are comfortable. The size of the fleet is not so much an issue of money as it is an issue of appropriate balance—or emphasis—of force options.*

7. Provide regular reports to the ACPRTF and the public on use of force data.

*APD response: See answer to recommendation #6, above.*

E. Recommendations for the public

1. Attend APD's Citizen Academy to better understand why police behave as they do.
2. Obey an APD officer's verbal commands.
3. Continue to engage APD in meaningful discussions regarding the use of force by its officers.

Approved by:

Subcommittee Chair

Victor Marbury  
Pastor Victor Marbury, Vice Chair ACPRTF

Date: 11-8-13

Subcommittee Members:

Mark Mew  
Chief Mark Mew, Anchorage Police Department

Date: 11/8/13

Steve Hebbe  
Deputy Chief Steve Hebbe, Anchorage Police Department

Date: 12/23/13

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