



Oakland Police Commission – Community Police Review Agency (CPRA)

Oakland Police Commission Police Policy Reforms

Processes and Key Policy Developments



Overview of Presentation

1. Oakland Police Commission Policy Authority and Process
2. Probation & Parole Policy
3. Armed & Unresponsive Persons Policy



1. Oakland Police Commission Authority

Created by Measure LL in 2016; Expanded by Measure S1 in 2020

Commission can propose new policies.

Commission must approve OPD changes to Use of Force, Profiling, First Amendment issues, and any policy subject to the federal Negotiated Settlement Agreement.

120 Day Deadline for Commission action when OPD proposes a change.

Policies submitted to City Council, which can modify.

Staff for Amending Policies

Historically, Commission had no direct staff for policy work, but did have limited staff in CPRA (the investigative arm, akin to DPA) for this purpose. Instead, OPD provided substantial staffing for policy reform.

Starting July 1, Police Commission will have:

- A Chief of Staff to manage policies and other projects;
- An Inspector General (separate from CPRA) that researches policy and audits policy compliance at OPD

Processes for Amending Policies

Policies are referred to Ad Hoc Working Groups

- Public, Commission, and OPD participants
- Different approaches over time to public access

Ad Hoc proposal goes to Police Commission for public hearing

Proposed policy changes are vetted by legal counsel, federal monitor, and other internal stakeholders before routing to Police Commission.

2. Probation and Parole Search Policy

Many in the community, especially in the Black community, felt OPD enforcement was racially biased.

A study by Dr. Jennifer Eberhardt suggested reforms.

<http://www2.oaklandnet.com/government/o/OPD/a/data/stop/OAK059292>

Probation and Parole Searches

OPD officers often asked people they encountered whether they were on probation or parole, and whether they had a search clause. If so, officers would then conduct a search. But:

- Extremely unpopular with the public.
- Undermined OPD's relationship with community.
- Seldom yielded any evidence of crimes.



Policy Changes & Outcomes

- *Officers prohibited from asking for probation or parole status
- *Officers prohibited from conducting probation or parole searches unless they had specific intelligence leading them to suspect that person in a new crime

Results:

- Number of searches went down
- Frequency of searches yielding evidence of a crime went up

3. Armed & Unresponsive Persons

Two cases in Oakland of people who were found armed but were unresponsive. Both shot and killed.

Joshua Pawlik – 2018 ; Demouria Hogg – 2015

Both incidents involved sudden waking, the person being startled, officer(s) believing the person reached for a gun, followed by shots fired.

Ad Hoc Formed

<https://www.oaklandca.gov/topics/armed-and-unresponsive-persons-and-arrest-teams-hoc-committee>

Members included community advocates, OPD, Police Commissioners. Both shootings examined for lessons learned.

Policy Changes

- *Officers required to create time & distance; communicate with neighbors in the vicinity.
- *Specialized Teams to minimize officer exposure.
- * Specific techniques for waking the subject while all officers are using full cover.
- * Specific instructions to supervisors on scene management.

Outcomes

<https://www.sfchronicle.com/local/article/Oakland-officers-found-a-man-unconscious-in-a-car-16178686.php>

Only one such case since policy completed January 2021.

Slow, distanced approach allowed for time to find community members who could help.

Mother located; talked son out of the car safely.

Future Projects

- Revisions to Canine Policy
- Bystander Policy
- Use of Force Boards
- Racial Profiling

TRAINING



BULLETIN

Effective Date:
XX XX 21

Index Number: III-P.01
Alpha Index: High Risk Incidents
Barricaded Person Incidents
Critical Incidents

Evaluation Coordinator: Training Division
Automatic Revision Cycle: 3 Years

“Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy.”

ARMED UNRESPONSIVE PERSONS

Mission, Intent, and Policy Overview

Mission and Intent

The protection of human life is the overarching mission of the Oakland Police Department and must be the primary consideration when responding to incidents of armed, unresponsive persons.

This policy provides guidance and direction to personnel on situations involving persons who are armed with weapons but are unresponsive. The highest priority is the safety of the unresponsive person, the officers, and the public. Continuous assessment and planning by personnel will often lead to the best possible outcome given the circumstances. Further, it is the intent of the Department that the principles of de-escalation, as encapsulated in DGO K-03, *Use of Force*, be utilized to ensure safe resolution of these incidents.

The primary goals of all personnel responding to armed unresponsive persons include:

- Keeping the public safe
- Keeping the unresponsive person safe
- Keeping oneself and other officers safe
- Using appropriate de-escalation tactics and techniques
- Assessing and re-assessing the situation constantly
- Communicating important information with other officers, supervisors, commanders, and communications personnel.

While the vast majority of this policy is intended to refer to incidents involving persons armed with firearms, the concepts within this bulletin can be applied to situations where an unresponsive person is armed with a weapon other than a firearm. **In situations where the weapon involved is not a firearm, the principles and goals typically stay the same but the level and intensity of response may be reduced, sometimes dramatically.** Specific considerations surrounding police response to unresponsive persons armed with weapons other than firearms are placed throughout the document to guide personnel in their responses to these situations.

Overview

Officers may encounter unresponsive persons in possession of firearms or other weapons both as dispatched calls for service and as on-viewed incidents.¹ While one of the most common ways officers encounter armed unresponsive persons is when the person is in a vehicle, the unresponsive

¹ “Officers” includes all sworn members of all ranks and is used for brevity. Individuals can be unresponsive for a variety of reasons as covered later in this policy. The term “unresponsive” is used throughout this policy for brevity.



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person may also be in some other area that presents a risk to the safety of the public, officers, and the person.

The unique challenge of these situations is that as the person becomes responsive, they might be disoriented, startled, erratic, or unable or unwilling to cooperate with initial attempts at de-escalation.

During assessment and planning, officers should consider if the situation involves people who are members of vulnerable populations. Vulnerable populations include children, elderly persons, pregnant women, people with physical, mental, and developmental disabilities, and people who have difficulty communicating including because of limited English proficiency or hearing and communication impairment. Challenges faced by those who are members of vulnerable populations may impact communication, their ability to comply, their understanding of the situation, and may cause the person to experience additional harm.

The response shall be organized to increase the time available for officers to assess the situation and bring additional resources as part of an appropriate response which safely resolves the situation and to increase the time available for the person to become compliant with orders.

These situations also require consideration of additional factors. One is that the person may become conscious at any point, even if officers are not yet attempting to rouse them. Another is that officers must assess if the person is suffering from an injury or other medical condition requiring an immediate response. Ideally, a thorough and detailed plan with contingencies on how to respond will allow officers to dictate the outcome of the incident.

The successful resolution of these situations relies heavily on de-escalation, including the following principles:

- **Time:** Slowing down the response to a situation gives additional opportunity to make plans; assess risks to officers, other residents, and the person; identify and bring additional resources; and communicate with the person.
- **Distance:** Increasing distance from a threat can diminish the risk and provide additional reaction time.
- **Physical cover:** Increasing the safety of officers by using a barrier or obstruction that protects them from a potential threat allows them to choose de-escalation tactics to achieve a successful resolution of the situation.
- **Position:** Officers should position themselves such that they can decrease the threat while maximizing their ability to complete their mission. This may include actions such as ensuring they are not in the direct line of fire of the potential threat, or that there are clear lines of sight to maximize their ability to assess the unresponsive person.

Assessment and Reassessment

Principles of Assessment

As with any critical incident, it is imperative that officers continually assess the situation to determine if their understanding of the circumstances is still accurate and if their chosen course of action is still likely to succeed. This concept is frequently referred to as the OODA loop (Observe–Orient–Decide–Act). Part of the assessment includes considering what “success” is – depending on the circumstances, success may be mitigation of public safety threats, containment, isolation, resolution, or disengagement.



Reassessment should be continual throughout any situation as you seek and receive additional information. There is no substitute for your own judgment as the situation unfolds.

For incidents involving armed unresponsive persons, assessments generally fall into the following categories:

- **Safety Risks to the Public, Officers, and the Unresponsive Person(s)**

Officers must weigh the safety risks to the public, the officers, and the unresponsive person when deciding whether to take immediate action. Officers must weigh the safety risks of taking action against the safety risks of not taking action. For example, if there is a serious danger to the public, officers may decide that despite the risks, they need to act immediately. Assessments of risk to the public, officers, or unresponsive person(s) include, but are not limited to:

- Obtaining details about the weapon, including its capabilities and limitations and its location.
- Assessing the threat posed by the armed person, and proportional force options to respond to immediate contingencies if necessary. Depending on the ability of officers to mitigate the immediate threat posed by an armed person to officers and the public, officers may not need to necessarily use force pre-emptively even if the person moves or awakens and does not immediately disarm themselves.
- Determining whether the unresponsive person is suffering from a medical condition.
- Determining if there are other life-threatening conditions which officers need to mitigate or otherwise respond to.
- Obtaining details about any vehicle and its condition.
- Obtaining details about the area (terrain, residences, businesses, etc.).
- Determining whether the unresponsive person can be isolated and/or contained.
- Determining the availability of physical cover or concealment that provides optimal positioning while mitigating safety risks for officers and others
- Determining what threat the person might present if they wake up.
- Determining whether bystanders can be safely evacuated from the area

Remember to reassess the situation continually, including the realistic possibilities of risk to the officers and public and whether the response is proportional. Both the situation and the available information can change. You might need revise the planned course of action based on these changes.

- **Assessments of the Unresponsive Person(s)**

Assessments of the unresponsive person(s) include attempting to gather as much information about the person, their capabilities, the weapon(s) they are armed with, and other information about that person, their situation, and their motivations that can inform the judgments of officers. These assessments include, but are not limited to:

- Maintaining or establishing contact with the original reporting person (RP) and other persons who may have additional information
 - Have an officer make direct contact with the RP or other persons with information to reduce confusion and lag time
 - Contact the RP even if they were refused or requested no contact



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- Determine if RP is in a place where they can safely remain and talk
- Ask if the RP or anyone else knows the person's name, date of birth, address, phone number or other information about the person which can be helpful to resolving the situation
- Ask if the RP or anyone else has insight about why the person may be unresponsive, including information about their medical history and any history of drug use
- Obtain details about the weapon, ammunition, and its location
- Obtain details about any vehicle and its condition
- Obtain details about the area (terrain, residences, businesses, etc.)
- Identify other people to contact who may have additional information and may help with the resolution of the situation
- Determining why the person is unresponsive. Note any evidence such as injuries, alcohol bottles/cans, medications, and/or paraphernalia that would support one possibility more than another. Possibilities include, but are not limited to, the person being:
 - Asleep
 - Injured
 - Under the influence (alcohol/drugs/medicine)
 - Physically or mentally disabled
 - Experiencing a mental health disorder (5150 Welfare & Institutions Code)
 - Feigning unresponsiveness
- Determining whether reasonable suspicion exists to detain the person and/or vehicle for a crime other than being in possession of a firearm in public. If so, determining whether the crime is one of violence and/or likely to continue.
- If a crime has been committed, officers may determine the impact on an investigation if the person wakes up and leaves before officers are on scene, or whether anyone might be endangered if the person is allowed to escape.
- Checking the person's criminal and medical records

Remember to reassess the situation continually, including the realistic possibilities of risk to the officers and public and whether the response is proportional. Both the situation and the available information can change. Officers may need to revise the planned course of action based on these changes.

- **Availability of Resources, Tactics, or Strategies to Resolve the Incident**

The function of resources, tactics, and strategies is to continually ensure that officers are in the best position to accomplish the mission: the preservation of life and the safe resolution of the incident. Every person on scene, from the Incident Commander down to the lowest ranking person, must continually assess the situation, including resources, tactics, and strategies, with a constant eye towards improving the position of the individual and the team. These assessments include, but are not limited to:



- Observation of the scene if possible (visually or through other means such as helicopter, Unmanned Aerial Vehicle (UAV), closed-circuit surveillance, etc.)
 - Confirm as many details provided by the RP, or anyone else, as possible
 - Verify the weapon(s) present, their exact location, the direction in which they are pointed, and how accessible they are to the unresponsive person or other persons in the area
 - Assess whether the weapon can be removed
 - Observe the scene from a position of physical cover and/or concealment.
 - Observe the scene from a distance that is unlikely to alert the person to their presence.
 - Observe the scene utilizing technology such as a building's security cameras.
 - Utilize sight-enhancement devices, such as binoculars or telescopes.
- Determining whether specialized resources (such as the Mobile Crisis Team, CIT-trained officers, MET or Crisis Response Teams, Patrol Rifle, officers who speak specific languages, or Tactical Team members) are needed
- Determining whether specialized equipment (such as armored vehicles, remote observation devices, helicopters, outside agency resources, etc.) is needed

Note: In most cases, even cases involving a gun, such equipment should be used to protect officers, not serve as platform for shooting the unresponsive person
- Whether sufficient resources are available to form a DAT or other response team
- Imagining possible contingencies which may occur, and how to mitigate them
- Balancing resources being utilized against other public safety priorities (e.g., incidents in other areas of the City where life is at risk)

Remember to reassess the situation continually, including the realistic possibilities of risk to the officers and public and whether the response is proportional. Both the situation and the available information can change. You might need to revise the planned course of action based on these changes.

Response to Unresponsive Persons with Access to Weapons other than Firearms

The principles of the assessments and tactics used to accomplish the mission stay constant regardless of the type of weapon that is near an unresponsive person. However, the response to that person may differ substantially – mainly due to the greatly diminished risk posed by weapons other than firearms, especially at distance, and the increased ability of officers to mitigate the risks posed by non-firearm weapons.

Mitigating Risks Posed by Non-Firearm Weapons

A situation involving a person with a weapon that is not a firearm typically presents more opportunities to use de-escalation tactics that will keep officers, the public, and the person safe. Additionally, officers may be able to limit the opportunities of the person to utilize a non-firearm weapon, in ways that are not feasible in the face of firearms.



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Limiting the opportunities of a person with a non-firearm weapon will lean heavily on tactical concepts present throughout this training bulletin. However, in addition officers will likely have increased ability to use physical cover, distance, tactical repositioning, and other de-escalation resources and tactics that may not be present when a firearm is involved. For instance, if a person becomes responsive and non-compliant while armed with a non-firearm weapon (such as a knife or machete), officers may still be able to limit that person's opportunity to present an increased threat to the officers by increasing distance, re-positioning themselves, placing obstacles between themselves and the person, containing the person separate from the officers and others, and otherwise altering the physical equation – options that may not be feasible with a person armed with a firearm.

Effectively Assessing Risk Posed by Non-Firearm Weapons

Assessment and clear-eyed understanding of the realities of risk dictate the tactics and response of officers. This is even more important when assessing the risks, or lack thereof, posed by non-firearm weapons that are near or accessible to unresponsive persons. For situations involving persons armed with non-firearm weapons, the maintenance of complete control of the person by officers is not always necessary. Instead, officers may be able to use tactics such as positioning, time, distance, physical cover, and communication to ensure that a situation does not escalate further. For instance, an unresponsive person armed with a knife may awaken and initially be non-cooperative or may even advance towards officers. Good tactics such as physical cover and distance may provide the ability to limit the person's ability to create risk to the officers or the public.

Resolution of Non-Firearm Weapon Incidents

As noted later in this bulletin, disengagement – deciding that, based on an analysis of risks versus benefits it is better for officers to leave the situation and disengage – is a resolution option that can be considered. However, for incidents involving a person who has access to a non-firearm weapon, the examination should be expanded; there are many more legitimate reasons for a person to be carrying a non-firearm weapon or impromptu weapon (e.g. machete, utility knife) within the city than to be carrying a firearm. In cases such as these, officers should consider assessments of whether a resolution is even necessary. These assessments should include, but are not limited to, the following questions:

- Is there probable cause to arrest the person for a violent crime, a crime which poses a safety risk to the public, or a crime that is an OPD priority?
- Is there reasonable suspicion to detain for a crime?
- Is there a reasonable need to detain in order to determine if the person poses an immediate safety risk to themselves or the public?
- Is there an original reporting party (RP)? Can they provide any information which will help officers determine whether there is a need to resolve this situation?

Depending on the specifics of a situation, officers may decide that there is no immediate safety risk or need to continue, and may decide to disengage from a person who is in possession of a non-firearm weapon. This decision may be made even if the person wakes up and does not cooperate with officers. For unresponsive persons who have access to non-firearm weapons, the patrol sergeant shall be advised and should be consulted prior to making a decision on disengagement, absent exigent circumstances.



Officers are not required to resolve every concern made by a reporting party, especially when there is no articulable crime or immediate safety risk to the public.

Initial Response

Field Personnel Initial Response

Incidents involving an unresponsive person armed with a weapon might begin with a person calling OPD Communications, a person communicating information to officers in the field, or officers on-viewing the incident. Regardless of how the incident begins, officers shall assess risks to public, officer, or engaged person safety and whether those risks necessitate an immediate overt response. Officers shall weigh these risks and immediate responses against the Department's overall intent for these incidents: that these situations be handled with preservation of life as the highest priority of all personnel, and that the assessment and planning by personnel lead to the best possible outcome given the circumstances.

Immediate Overt Responses During Initial Responses

Some circumstances might require an immediate response to the scene by officers (e.g. an unresponsive person with a firearm on a bench in a park with children; an unresponsive person with a firearm in a vehicle at a busy intersection.) If the threat posed by the unresponsive armed person necessitates an immediate overt response, officers should respond as dictated by other policies and training. For example, if the person is in a vehicle, then techniques for a high-risk vehicle stop should be utilized. If the person is on the ground or on a bench, then techniques for a high-risk walking stop might be more appropriate. As these techniques are constantly being refined and evolving, readers should refer to the applicable policies for those techniques (e.g., Training Bulletin III-B.2 - High Risk Vehicle Stops or Procedure 302, *Handcuffing and Restraints*).

Even if an immediate overt response is required, officer need not necessarily follow the procedures for that response all the way to their conclusion – there may be opportunity to de-escalate, create time and distance, and re-align the response towards a more deliberate response. For example, when safe to do so, officers can respond Code 3 without sirens and avoid shining headlights or other lights directly at the person. Officers can position their vehicles for a high-risk vehicle stop and form a DAT to address an exigency. However, they might then refrain from starting announcements if the person is still unresponsive until a plan for resolution is formed (See Resolutions section below).

Continued Initial Response by Field Personnel

Once initial assessments of immediate hazards to safety and mitigations (if necessary) are complete, officers shall be positioned as soon as possible where they are able to assess the scene and continue assessing and re-assessing safety risks and the engaged person. In the absence of a supervisor (e.g. an on-viewed incident or delayed supervisor response), the senior officer, or any officer who has gained sufficient situational awareness, shall establish themselves as the incident commander.

Officers responding to an incident of this nature will normally be directed to fill a role by the incident commander. However, this will not always be feasible, especially in the initial stages of the incident when information is limited and the situation is rapidly evolving. Officers might be required to take initiative to fill vacant roles and place themselves in tactically advantageous



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positions at the scene. This is not to be confused with taking self-initiated actions not in support of or in opposition to the incident commander's intent.

Officers shall consider whether it is safe and feasible to deploy officers where they are able to assess the scene without alerting the person to the officers' presence. During this continued response by initial field personnel, officers should maintain the same tactical and de-escalation concepts which will be applicable to later, more formalized structures such as the DAT. These include:

- Time
- Distance
- Physical Cover
- Position
- Avoiding actions which may cause a startle reaction prior to a planned resolution.

If this can be accomplished, other officers can assemble at a command post (CP) nearby to form a DAT, gather necessary resources, and plan for exigencies and resolution of the incident prior to contacting the person. If officers cannot observe the scene, it still might be feasible to assess the scene through other means as detailed in the section above.

Officers responding Code 3 shall deactivate their sirens and adjust their emergency driving when near the scene to reduce the possibility that the person will become responsive before officers are prepared to respond to the person.

Techniques for officers to assess the scene covertly depend on the specific circumstances of the incident. When feasible, officers shall be deployed in pairs to ensure that one can be the observer and the other the armed cover officer.

The location of the initial CP should be in a position close enough to the scene to ensure that officers can respond immediately and rapidly to an exigency. Additionally, it should meet as many of the following criteria as feasible:

- Out of the line of sight of and with physical cover from the armed person.
- Not in the likely path of flight should the person flee.
- In a secure area, between the inner and outer perimeter once they are established.
- In a location with space for expansion and establishment of a staging area as additional resources arrive.
- Positioned such that the IC can effectively manage and communicate with the resources and personnel on scene
- Out of the sight of the public and media.

Initial Response of Supervisory and Command Personnel

The Patrol sergeant for the involved area shall be dispatched to reports of unresponsive persons with firearms. If this sergeant is unavailable, another field sergeant shall be assigned to the incident. For dispatched incidents involving unresponsive persons with non-firearm weapons (e.g., knives), the Patrol sergeant for the involved area shall be advised and evaluate if a supervisor should respond. For on-viewed incidents, officers shall advise their supervisor or another on-duty supervisor as soon as feasible.



Supervision begins immediately with assessment of the available information and initial directions to officers as to how and where to respond, even if the supervisor is not yet on scene. However, supervisors and commanders not yet on the scene should encourage a senior or situationally-aware officer at the scene to provide this information to responding officers.

Communications shall notify the watch commander of reports of unresponsive persons with firearms and, as soon as practical, the watch commander shall respond to the incident and assume the role of incident commander after being briefed by the current incident commander (e.g., Patrol sergeant).

Ongoing Planning, Contingencies, and Continued Assessments

Evolving responses to armed unresponsive persons require adherence to the same concepts as those followed during the initial response: assessment, unified command structure, and mission-driven actions. As additional resources become available, however, additional resources and tactical avenues open up which allow for a more fulsome response. These include:

Overwatch

An officer on overwatch provides primary armed cover from a distance that reduces the risk from the threat. A Patrol Rifle Officer (PRO) or Tactical Operations Team officer with a rifle is preferred as they can operate from a greater distance. An officer might be assigned as overwatch to provide primary armed cover while a Dedicated Arrest Team (DAT) is formed or prior to the DAT's deployment to the scene. Once a DAT is on scene, an overwatch officer might still be assigned as primary or secondary armed cover depending on the circumstances. The overwatch officer can provide triangulation and observations from a viewpoint different than the DAT.

Dedicated Arrest Teams²

The team leader of the DAT is responsible for formulating plans to respond to exigencies, as well as plans to resolve the incident, and presenting the plans to the IC (and TC if one is assigned) for approval in a timely manner. This includes plans for accepting the person's surrender, preventing the person's escape (on foot or by vehicle), and dealing with exigencies such as an immediate threat.

A DAT typically is established close to where the team can accomplish its mission: responding to the actions of the unresponsive person. Minimally, this requires that the DAT be in a place where it can assist with isolation and containment of the unresponsive person, and can safely execute the team leader's plans to 1) accept surrender; 2) prevent escape; and 3) react to exigencies which may arise.

While the DAT is typically established close to the scene, there may be reasons to initially form the DAT at the command post (CP), remote from the scene and away from the ultimate position that the DAT is expected to occupy. Reasons for forming a DAT may include scenes where there is limited mobility, where the need for explicit face-to-face instruction from the incident commander is desired, or where the risks of setting the DAT closer before execution of a plan outweigh the benefits. If the DAT is initially set at the CP, the following shall be considered prior to moving the DAT to the scene and communicating decisions to the appropriate personnel:

² Dedicated Arrest Teams are defined in other Departmental policies. This section emphasizes policies specific to these incidents as well as modifications to the policy exclusive to dealing with armed unresponsive subjects.



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- Order of movement / Stacking order of vehicles
- Proper placement of DAT and overwatch to ensure isolation, containment, and the ability to respond to exigencies
- Actions to disable and/or contain a vehicle if applicable
- Whether perimeter officers will move into position prior to, in conjunction with, or after the DAT moves to the scene.

For incidents involving unresponsive persons in possession of firearms, officers must plan for the possibility that the persons becomes responsive while still having access to the firearm. Tactics shall be considered that increase the time available for the person to become compliant with orders and increase the time available for officers to assess the threat presented by the person. However, the team leader shall consider the effect of such tactics on the ability of officers to preserve life and, if applicable, apprehend the person, preserve the scene, and conduct an investigation.

Potential tactics include, but are not limited to:

- **Distance:** The DAT should be positioned as far away from the unresponsive person as feasible while taking into consideration factors such as the ability to communicate with the person, the capabilities of primary and secondary armed cover officers, the effective distance of the weapons of armed cover officers (handgun, shotgun, or rifle), the weapon(s) of the threat, other risks posed by the potential threat, the terrain, and the environment. However, the DAT should not be so far away that they are unable to respond to an exigency such as an immediate threat to a hostage.
- **Physical cover:** Officers providing primary armed cover shall consider positions to minimize their exposure. Officers providing lethal coverage are effective due to their stable position and readiness; these advantages are lost if officers are kept completely behind physical cover and then required to move into a position where they are exposed while acquiring a target and evaluating if there is an immediate threat. However, situations might arise where the expertise and capabilities of the person necessitate remaining completely behind physical cover (e.g. a person similar to a sniper).
- **Designated primary and secondary armed cover officers:** An appropriate number of officers shall be assigned as primary and secondary armed cover to ensure adequate coverage of the unresponsive person and observation of their actions. Typically, two officers will be the appropriate number of officers as they will be able to triangulate on a single person or area and provide sufficient coverage. More officers might be required depending on the circumstances (e.g. multiple suspects, large area, multiple doors). Staffing fewer officers as lethal armed cover while maintaining adequate coverage reduces the number of officers exposed to risk, reduces the likelihood of miscommunication or confusion, and increases the ability of the team leader to maintain supervisory control. In the event of an officer-involved shooting, the reasonable management of lethal armed cover will help lessen both the number of officers who discharge their firearms and the number of rounds fired. Consequently, danger to the community is also reduced by minimizing the number of rounds fired.
- **Position:** The position of the person, the firearm, a vehicle, or terrain in relation to the public and the DAT might increase risks. When feasible, officers shall be positioned so that they are not in the direct line of fire of the potential threat. This might give officers additional time to evaluate a potential threat and decide on an appropriate response.



- Avoiding actions that will cause a startle reaction prior to a planned resolution: There are no scientifically proven methods for waking up people without startling them. However, there are actions such as breaking a window that appear to startle most people whether they are awake or asleep. Such actions should be avoided unless there is an exigency or until a plan has been prepared which takes into consideration the startle reaction.
- Issuing announcements remotely or from full physical cover: Upon awakening, the person may focus their attention on or threaten the area from which announcements are made. If announcements can be made from a location different from that of any officers exposed to the threat, it may allow additional time for de-escalation. This can be accomplished through use of a portable public address system or by having the person giving announcements completely inside or behind one armored vehicle while the primary and armed cover officers are positioned behind a different armored vehicle or other physical cover.

Vehicle-Specific Considerations

Incidents where an armed unresponsive person is in a vehicle present additional difficulty. The vehicle will obstruct the view of officers and impede their ability to reach the person and the weapon. The vehicle might be used as a weapon or the person might use it to flee, furthering endangering the public and officers. Blocking in and/or disabling the vehicle reduces the threat presented by the vehicle and is the preferred method for isolation and containment of the person.³ However, the timing of the blocking in and/or disabling of the vehicle will depend on the circumstances of the incident and the availability of appropriate resources and personnel. Blocking in and/or disabling a vehicle frequently involves the direct contact of an officer's vehicle with the unresponsive person's vehicle. Since this might awaken the person, officers shall have a plan for this contingency prior to blocking in and/or disabling a vehicle.

Officers addressing these incidents continue to be bound by the rules for the use of lethal force against persons in moving vehicles or using vehicles as weapons (reference DGO K-03, section H-5).

Continuing Assessment Considerations

Ongoing assessments fall into the same basic categories as initial assessments; assessing the **risk to the public, officers, and the engaged person**, assessing the **person themselves** and how their disposition fits into the totality of the circumstances, and assessing the **availability of resources, tactics, and strategies** available to safely resolve the incident. However, as plans crystalize and personnel fill roles and plan strategies, assessments from personnel will typically become more focused on finding a viable solution to resolve the situation. Personnel must remember, however, that circumstances may change and fluidity of thinking is key to assessing and overcoming foreseeable contingencies.

Resolutions

Planned Resolutions

Once officers have secured and deployed all the necessary resources to isolate, contain, and evacuate the scene, plans should be made for resolution of the incident. It will not always be

³ Techniques for blocking in and disabling vehicles are consistently evolving and readers should refer to the most current Departmental policy and training. Officers are reminded that the controlled intentional contact of vehicles while blocking in a vehicle is neither a vehicle collision nor an assault.



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possible to simply wait for the person to become responsive. The person might be suffering from an unknown condition that will prevent this. Additionally, the alertness and effectiveness of officers decreases with time due to fatigue which increases the risk to the public and officers. Arrangements should be made to relieve officers during extended incidents. Resources cannot be deployed indefinitely, but incidents should not be resolved solely as a matter of expedience.

Every incident is unique, and planned resolutions must take into consideration the specific facts known to officers. Methods to fulfill one objective may affect the ability of officers to complete another objective either positively or negatively. The sequence of events will depend on the circumstances, but planned resolutions shall take into consideration the following objectives:

- **Announcing of the presence of police officers**

Announcements shall be considered when formulating plans to resolve an incident. It is important for officers to establish their presence and their expectations of the person. Officers should give commands that are as easy to understand as possible. An example is:

“This is the Oakland Police Department to the person [if possible, add more specificity to clearly identify the person being addressed] in the blue Honda Civic. You are surrounded and being detained. With nothing in your hands, slowly put your hands above your head. Residents remain in your homes and away from the windows.”

Announcements and communications to the person should ideally be conducted by one designated officer for continuity and to reduce the chance for contradictory or overlapping commands.

Officers should recognize that that a person may be disoriented or confused, and it might be necessary to repeat commands or rephrase them. Officers should attempt to determine if the person understands the commands and ask questions as necessary (e.g., Did you understand? Do you need me to repeat what I said?) Consideration should be given to having an officer available who speaks the possible native language of the person. Officers should ensure that they can be heard and consider using a public address (PA) system if necessary.

- **Awakening the person while minimizing the risk to the public, officers, and the unresponsive person**

Prior to attempting to awaken the person, officers should minimize risks by ensuring officers are behind physical cover and members of the public have been evacuated from the area to the extent feasible with available resources.

Announcements via a PA system, possibly combined with the use of horns and sirens, should be considered as the first method to awaken the person as it fulfills this objective as well as the objective of announcing the presence of police officers.

If the person is in a vehicle or building, the use of drag stabilized rounds against the vehicle or building has been effective in awakening persons. Announcements shall be made prior to and immediately after deployment of the rounds. Initially, the rounds should be fired against a solid object (e.g. license plate, tire, brick, concrete). If this is ineffective, then breakable objects can be considered (e.g. windows). This requires additional planning to be done safely as the unresponsive person might be near the object (e.g. window).



Additionally, it may cause more of a startle reaction. However, it may also facilitate access to the person or weapons near or in possession of the person.

- **Safely detaining the person**

Plans shall include the method by which the person will be detained. Generally, this will be similar to a high risk stop and will involve officers giving the person verbal commands to exit any vehicle or building the person is in and then directing them back to the DAT to be handcuffed (See Training Bulletin High Risk Vehicle Stops and Training Bulletin Handcuffing and Restraints).

If the person appears unable to move due to a physical condition (e.g. injury or impairment) or an obstruction (e.g. locked door, fence), then plans shall be made to overcome this. It may be necessary for officers to approach a person who cannot move or to overcome a barrier (e.g. cut a lock). In this situation, resources such as a shield should be utilized.

- **Preventing the person's flight**

Plans shall include the method by which the person will be contained. An inner perimeter will generally be part of this plan, but additional steps may be necessary. If resources are available, secondary DAT's or a blocking force (e.g. two officers) can be established along potential escape routes. However, additional actions may be necessary if the person is in or has access to a vehicle. In these situations, possible actions include blocking in the vehicle, disabling the vehicle, or the use of other applicable devices (e.g. stop sticks).

Planning on the prevention of escape shall include assessment on the risks posed by the person's possible escape, and the level of risk incurred by officers to prevent the escape of the engaged person.

- **Addressing any immediate threats**

Plans shall include the method by which an immediate threat will be addressed. The role of primary and secondary armed cover officers may have to be transferred as the person moves or a DAT approaches the person.

- **Preventing the person from using or gaining possession of a weapon**

Plans shall include methods by which officers may prevent the person from using or gaining possession of a weapon. Options including the use of less-lethal weapons shall be considered.

- **Disengagement from the situation**

Disengagement is the act of leaving, ending an interaction, delaying contact, delaying custody, or planning to make contact at a different time or different circumstances. This de-escalation tactic may be used when the risks to the engaged person, the officer, or the public outweigh the need to continue with the police response (reference DGO K-3, Section C-4). While disengagement will typically not be appropriate for unresponsive persons who are armed with firearms, it may be a viable option for unresponsive persons who are armed with other weapons, especially if there is no information suggesting that the person is a danger to others.

Immediate and Exigent Circumstance Resolutions



 Armed Unresponsive Subjects, Index Number III-P.01

Although officers strive to control the situation to the point where they can use time, distance, and negotiation to safely resolve the situation, officers might encounter exigencies where they need to immediately resolve an incident with apprehension of an unresponsive person armed with a firearm or other deadly weapon in order to preserve life. Under these circumstances, the objective is to incapacitate the person and/or separate them from the weapon so they no longer have the means to be an immediate threat. Absent an exigency that threatens the preservation of life, these tactics shall only be used by the Tactical Operations Team when dealing with an unresponsive person armed with a firearm. They can be used in conjunction with each other and include, but are not limited to:

- Snipers as the only lethal coverage. Members of the Sniper element of the Tactical Operations Team have training and equipment that exceeds the capabilities of PRO's. They can obtain positions of distance and concealment that further reduce, but not eliminate, the risk to their safety. This allows for the entire DAT to utilize full physical cover.
- Chemical agents other than OC. The Tactical Operations Team can deploy chemical agents that are more effective than those issued to Patrol officers and they can deploy them at a greater distance.
- Removal of the weapon.
 - The Electronic Services Unit of the Tactical Operations Team can utilize robots to attempt to remove the weapon from the person without exposing officers to risk.
 - Other alternatives might exist depending on the circumstances, but tactics that expose officers to unnecessary risk should be avoided.
- Dynamic action. While maintaining a position of physical cover, the Tactical Operations Team can apply potentially overwhelming actions at a distance through speed, surprise, and the application of appropriate force. The Tactical Operations Team have training and equipment such as light sound diversionary devices that exceed those available to Patrol officers. This dynamic action should wake the person, but potentially incapacitate them during the initial period when they are most likely to act erratically. At this point, it might be possible the person will comply with orders or engage in negotiations.

Supervision and Command of Armed Unresponsive Person Incidents

Field Supervisor Roles and Responsibilities

Field supervisors who arrive on scene for an incident of an armed unresponsive person shall assume incident command until relieved by another supervisor with more training or experience or by a command officer. Field supervisors arriving on scene should, if feasible, review the decisions and dispositions made by initial responding officers, confirm assessments and contingency plans, and continue with the initial and continuing planning phases as detailed above.

Additionally, as feasible, supervisors shall begin implementing the duties of the incident commander as detailed below until relieved by another supervisor or command officer.

Incident Commander Roles and Responsibilities⁴

⁴ The responsibilities of an incident commander during a critical incident are defined in other Departmental policies and covered through training on the Incident Command System (ICS). This section emphasizes considerations for an IC handling incidents with armed unresponsive subjects.



The incident commander (IC) is responsible for taking positive command of the incident and clearly communicating to all involved officers how they intend to safely resolve the incident. Initially, this will include advising whether the initial response by officers should be to observe the scene covertly from a distance or to make an immediate overt response to the scene. If the person is in a vehicle, it would also include specifying whether a pursuit is authorized if the person starts to drive away.

The IC is responsible for requesting – and/or approving the requests for – resources required to accomplish the mission. For incidents involving an unresponsive armed person, actions ordered and resources requested might include:

- Assigning and notifying personnel of the following assignments:
 - Incident Commander
 - Tactical Commander (TC)
 - DAT Team Leader
 - Intelligence Team Leader
 - Perimeter Supervisor
 - Outside Agency Liaison for affected law enforcement and transit agencies
 - CP supervisor
 - Staging supervisor
 - Media Liaison
- Resources such as:
 - A dedicated radio channel.
 - Crisis Intervention Training (CIT) trained officers and/or on-duty Tactical Negotiations Team (TNT) members for the role of talker/handcuff within DAT's.
 - Emergency Mental Health Resources
 - Officer who speaks the language of the person
 - Armored vehicles (BearCat, armored Suburban) (reference TB III-P.04, *Armored Vehicles*)
 - Air support (Argus, Alameda County Sheriff's Office Unmanned Aerial System (UAS))
 - Medical staged nearby.
 - Tactical Emergency Medical (TEMS) team if available.
 - Patrol Rifle Officers (PROs)
 - Officers with less-lethal options used at a distance (e.g., drag stabilized rounds)
 - Officers with less-lethal options such as electronic control weapons (ECW)
 - Officers with less-lethal options such as oleoresin capsicum (OC)
 - Spike strips or other vehicle disabling devices
 - Remote surveillance devices such as robots and pole cameras
 - Outside law enforcement and transit agencies (California Highway Patrol, Alameda County Sheriff's Office, Bay Area Rapid Transit, Oakland Housing Authority, Alameda County Transit)
 - Pursuit vehicle
 - Canine units (K-9). Canines shall be staged at the CP, as barking might awaken the person, until the DAT is prepared to handle the person becoming responsive.



 Armed Unresponsive Subjects, Index Number III-P.01

As the incident develops, the IC is responsible for approving and/or developing plans for contingencies and resolution of the incident. The IC shall inform personnel assigned to the incident about the overall situation on a regular basis or whenever there is a significant change in conditions that is likely to affect the safety of officers, the public, or the person, or decision-making process of officers on the incident. Broadcasts on the radio channel of situation reports (sit reps) at regular intervals (e.g. every 15 minutes) is the preferred method. However, the pace and/or conditions of an incident might justify other methods or interval periods.

Command Officer Roles and Responsibilities

Command officers (for an incident that begins with a patrol response, this is typically the Patrol Watch Commander) shall respond to all incidents of unresponsive persons armed with a firearm, and shall assume incident command once on scene and properly briefed.

Commanders responding to incidents involving armed unresponsive persons shall ensure any video recording devices issued for such incidents⁵ are utilized once it is feasible to safely deploy them without compromising the overarching mission.

The video recording devices should be positioned in stationary positions towards the person or the location of interest. They shall be utilized in accordance with Departmental policy for the use of portable digital recording devices (e.g. Departmental General Order I-15.1). Once activated, recording devices shall not be deactivated until allowed per policy.

The incident commander shall ensure recordings are uploaded to the appropriate system and video recording devices are returned to their charging stations.

Debrief and After Action

At the conclusion of the incident, the IC shall facilitate a debriefing of the incident. This shall be done to identify areas in need of improvement (e.g., training, tactics, and/or equipment) and lessons learned. The IC should also note actions worthy of recognition for consideration by those who will evaluate the incident (e.g., Use of Force Board).

Incidents involving unresponsive persons in possession of firearms shall be considered major incidents and notifications shall be made in accordance with current Departmental policies for major incidents (DGO Q-01 – Major Incident Notifications).

Additionally, the IC shall complete an after-action report if there are significant tactical or training issues that should be documented for the benefit of the Department. This especially applies when no other administrative report (e.g., use of force) will be completed.

Use of Force Reporting and Scene Integrity

If a use of force occurs during the incident, the IC shall be responsible for ensuring that the provisions of DGO K-04, *Reporting and Investigating the Use of Force*, are followed. Additionally, if a Level 1 use of force occurs, involved personnel shall be sequestered pursuant to DGO K-04 and Homicide Section Policy & Procedure on Level 1 force investigations.

⁵ The Department plans to purchase portable video recording devices to be stored in a manner accessible to the watch commanders, but this might include other technology in the future.



DEPARTMENTAL GENERAL ORDER

R-02: SEARCHES OF INDIVIDUALS ON PROBATION, PAROLE, MANDATORY SUPERVISION AND PRCS (POST- RELEASE COMMUNITY SUPERVISION)

Effective Date: 11 Oct 19

Coordinator: Training Division

Individuals on probation with certain court-imposed search clauses and individuals on probation, parole, mandatory supervision and post-release community supervision (PRCS) may be subject to warrantless searches as a term and/or condition of their supervised release by law enforcement. While these searches are a legitimate law enforcement tool, the Department emphasizes that the mere fact that an individual is on probation, parole, mandatory supervision or PRCS is not in itself a connection to criminal activity.

For the purpose of this Policy, probation, parole, mandatory supervision and PRCS are collectively referred to as "Supervised Release."

COMMAND INTENT

The intent of this Policy is to enhance the effectiveness of Officers¹ when coming into contact with those individuals on Supervised Release and to provide clear guidelines for the use of Supervised Release searches. The Department values the abilities of officers to make sound judgments and decisions when using law enforcement tools available to them – such as Supervised Release searches – to ensure Officer, community and subject safety. At the same time, the Department recognizes that those on Supervised Release, as well as the community at large, consider warrantless searches to be overly intrusive.

Accordingly, the Department seeks to build community trust through transparency of Department operations by requiring Officers to document articulable facts supporting a decision to affect a warrantless search.

A. DEFINITIONS

A - 1. Non-Violent Offenses

"Non-Violent Offenses" are defined as offenses in which violence or use of a weapon is not a factor. Examples include simple possession of controlled substances or property crimes such as petty theft.

A - 2. Violent Offenses

Offenses involving the use of force, the threat of force, the use or possession of a weapon, sexual violations against the person of another, human trafficking, and the use of force or threats to public safety. Battery on a Peace Officer (Penal Code § 243(b)), Reckless Evasion in a Vehicle (Vehicle Code § 2800.2(a)), or a violent felony as defined in Penal Code § 667.5(c.), fall into the categories of violent crimes, weapons offenses, sex crimes and/or

¹ "Officer" or "Officers" refer(s) to sworn members of the Department of any rank.

crimes involving threats to public safety. These categories of crimes are collectively referred to as “Violent Offenses.”

A – 3. Cursory Search

A “Cursory Search”, also known as a pat search or search for weapons, is further defined as a limited search of the outer clothing in a manner designed to determine whether the person being searched is in possession of any weapons or items which may be used as such. Cursory searches typically require reasonable suspicion that the person being searched is armed and/or dangerous, and are governed by applicable case law and Department policy.²

A – 4. Full Search

A “Full Search” of a person is defined as a “relatively extensive exploration”³ of the person being searched, including their clothing, their pockets, and containers in their possession. A Full Search of a person is most typically conducted incident to that person’s arrest.

B. SUPERVISED RELEASE SEARCHES AND THE COMMUNITY

B - 1. Purpose of Supervised Release Searches

Warrantless searches of individuals on Supervised Release shall⁴ further a legitimate law enforcement purpose. Such searches shall not be:

1. Arbitrary;
2. Capricious; or
3. Harassing

B - 2. Procedural Justice Considerations

Officer contact with individuals on Supervised Release provides Officers with an opportunity to practice the tenets of procedural justice: voice, neutrality, respect, and trustworthiness.

B - 3. Inquiring About Supervised Release Status

Inquiring about an individual’s Supervised Release status, at the beginning of an interaction without proper justification is unjust. Such an immediate inquiry is viewed by the community as an improper assumption by the Officer that the individual has a criminal history. To that end, Officers shall not immediately inquire whether an individual is on Supervised Release unless there is an Immediate Threat⁵ to Officer safety or the safety of others. Any subsequent inquiries about probation, parole, mandatory supervision and PRCS status shall be framed in a respectful manner.

² See for example *Terry v. Ohio*, 392 US 1 (1968) and OPD Training Bulletin I-O.02, *Legal Aspects of Searching Persons*.

³ *US v. Robinson*, 414 US 218, 236 (1973)

⁴ Manual of Rules 175.77: SHALL – Indicates that the action is mandatory.

⁵ An “Immediate Threat” is defined in Departmental General Order K-3 (II)(B).

C. REQUIREMENTS FOR SUPERVISED RELEASE SEARCHES

Supervised Release searches shall be conducted in consideration of the totality of the circumstances surrounding the encounter.

C - 1. Knowledge of Searchable Supervised Release Status

Officers shall have knowledge and confirm that knowledge that an individual is currently on Supervised Release, with a clause or condition which allows the Officer to conduct a warrantless search, prior to conducting any such warrantless search. Officers may learn of, and confirm, an individual's Supervised Release status: from a check of law enforcement databases such as AWS, CRIMS⁶, CLETS⁷, and CORPUS; by direct contact with the individual's Supervised Release officer/supervisor; or from direct contact with another Department Officer who fulfilled one of the two above methods of confirmation.

In situations where an Officer has prior knowledge of the individuals' searchable Supervised Release status, the Officer shall confirm the validity of the individual's Supervised Release status via a records check prior to effecting any warrantless search.

For purposes of this Section, confirmation within the prior 72 hours shall be deemed sufficient. Officers shall also document the basis of their knowledge and confirmation, in conformance with Section D-1.

In situations where an individual communicates to an Officer that the individual is on Supervised Release with a warrantless search condition, the Officer shall still confirm the validity of the individual's Supervised Release status via a records check. If the individual is mistaken concerning his or her Supervised Release status, the Officer shall provide the correct information and document the results in the appropriate report.

C - 2. Individuals on Supervised Release for Non-Violent Offenses

When considering conducting a warrantless search condition for an individual on Supervised Release for a Non-Violent Offense, Officers shall consider articulable facts which demonstrate that the individual is connected in some way to criminal activity or that the individual is an Imminent Threat to Officer or citizen safety. Absent a connection to criminal activity or a threat to the Officer or citizen safety, the warrantless search condition **shall not** be invoked.

The mere fact that an individual is on probation, parole, mandatory supervision or PRCS is not in itself a connection to criminal activity.

⁶ CRIMS is the recommended database for confirming probation status.

⁷ CLETS is the recommended database for confirming parole status.

C – 3. Traffic Stops of Individuals on Supervised Release for Non-Violent Offenses

When officers contact an individual on Supervised Release for a Non-Violent Offense during a vehicle stop for any infraction and there are no articulable facts present which demonstrate that the individual is connected in some way to criminal activity, or that the individual is an Imminent Threat to Officer or citizen safety, Officers **shall not** search that individual or his/her vehicle pursuant to any Supervised Release search clauses or conditions.

C – 4. Individuals on Supervised Release for Violent Offenses

Individuals contacted or detained who are found to be on searchable Supervised Release for Violent Offenses may be searched pursuant to the terms of their Supervised Release conditions.

C – 5. Cursory and Full Searches

In those instances where a Cursory Search is justified and the individual to be searched is on Supervised Release and the terms and/or conditions of an individual's Supervised Release allow for a warrantless search, a Full Search may be conducted of the area which would be subject to a Cursory Search.

D. MEMORIALIZING FACTS OF THE SEARCH

D - 1. Required Documentation

Officers conducting a Supervised Release search shall, at a minimum, document the following in the appropriate report:

1. The circumstances of the encounter/detention;
2. How and when it was determined that the individual was Supervised Release and, if the Officer made this determination based on prior knowledge, the basis for that knowledge;
3. How the Supervised Release status and warrantless search condition was verified including, if verified via a Mobile Data Terminal (MDT), a paste of this information from the MDT to the body of the report (if feasible);
4. Any articulable facts which informed the decision to search; and
5. The type(s) of search completed and disposition.

D - 2. Use of Portable Digital Recording Devices During the Encounter

Officers shall follow Department General Order I-15.1 (II)(A) regarding the activation of an Officer's portable digital recording device during encounters with individuals on Supervised Release.

By order of



Anne E. Kirkpatrick
Chief of Police

Date Signed: [Enacted City
Council 9 Jul 19, 87804 CMS]