

OIR Use of Force Review

UOF Review 12-6-22 JH Unit I



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Summary of Facts

On December 6, 2022, at approximately 9:08 p.m., Y1 was told to complete his phone call and return to his room.¹ After several warnings, Y1 completed his phone call and returned the phone to the receiver. Y1 continued to sit in a chair and looked over to the carpet area and in the direction of several small desks, a large wooden desk, and a filing cabinet approximately six feet in height. The wooden desk was positioned against the wall, and the filing cabinet was positioned on the same wall next to the wooden desk. In the carpet area, there was also a medium-sized television mounted to the wall above the large wooden desk, and a large television on top of a wheeled stand located in front of the filing cabinet.

Y1 abruptly got up from his chair and ran over to the carpet area and jumped onto one of the small desks, and then onto the large wooden desk. Y1 moved to the edge of the large wooden desk closest to the filing cabinet. While standing on the edge of the wooden desk, Y1 placed his hands onto the edge of the filing cabinet. As a result of Y1's actions, a Code 3 was called over the radio.² Deputy Juvenile Correctional Officer (DJCO) 1 was standing near the entrance to an adjoining unit and quickly entered the unit and approached the filing cabinet. As several DJCOs approached Y1, he used his arms to lift himself onto the top of the filing cabinet. Once on top of the filing cabinet, Y1 moved to the center and stood with his back against the wall and faced the carpet area and staff.

Y1 then began to grab the lighting fixture attached to the ceiling. Several staff members told Y1 to get down from the cabinet. DJCO 2 and DJCO 4 also responded to assist. The staff members continued to tell Y1 to "'get down' from the cabinet to no avail." Y1 turned to face the wall and placed his left foot onto the electrical conduit on the wall and lifted onto his right toes. Y1 then turned back around to face the carpet area and staff. Y1 then began to pull down on the lighting fixture in front of him as if to test its load capacity. Several staff members yelled out "get down, its not going to hold your weight," however, Y1 disregarded their directives.

DJCO 2 also directed Y1 to stop pulling on the light fixture. DJCO 2 then made the decision to pepper spray Y1 due to the possibility that Y1 could be seriously injured due to a fall or possible electrocution if he hung from the light fixture. DJCO 2 unholstered his Oleoresin Capsicum (OC) canister, and as he began to shake it, Supervising Juvenile Correctional Officer (SJCO) 1 arrived. DJCO 2 looked back at SJCO 1, who appeared to give DJCO 2 approval to deploy the OC. DJCO 2 deployed a one-second burst targeted at Y1's face from approximately 12 feet. Y1 turned to face the corner of the wall after encountering the OC spray. After being sprayed, Y1 remained standing on the filing cabinet and took two steps to his right. DJCO 2 walked over to the right side of the cabinet and deployed another one-second burst at Y1's facial area. Y1 then moved back to his left while standing on the file cabinet. DJCO 2 followed Y1 back to the left side of the file cabinet and, approximately four seconds after the second deployment, deployed a third one-second burst of OC towards the left side of Y1's face. Y1 then walked back to the right side of the cabinet, towards the corner of the wall, and began to climb down from the cabinet. DJCO 3 and DJCO 4 assisted him off the filing cabinet and placed him on the ground.

¹ All information regarding the incident is taken from DJCO reports and video provided to the OIR. All information regarding statements made or commands given were taken from reports because the video contains no audio.

² A Code 3 indicates that staff needs assistance.

DJCO 1 secured Y1 in handcuffs. SJCO 1 directed DJCO 1 and DJCO 3 to escort Y1 to the Unit I shower to decontaminate. Y1 began decontamination within six minutes of the OC deployment. He was provided with clean clothing, and his contaminated clothing was bagged and labeled accordingly.

Lawful Requirements for Use of OC

In determining whether a particular use of force was appropriate, courts analyze the use of force “under the Fourth Amendment’s prohibition against unreasonable seizures using the framework articulated in *Graham v. Connor*.”³ The reasonableness of a seizure turns on whether the use of force was “objectively reasonable in light of the facts and circumstances confronting [the user of force], without regard to their underlying intent or motivation.”⁴

Reasonableness is determined by balancing “the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.”⁵

There are three steps in conducting the balancing required by *Graham*. The first step is to assess the “the quantum of force used.”⁶ The second step is to measure “the governmental interests at stake by evaluating a range of factors.”⁷ Finally, the third step is to balance the quantum of force used on the individual against “the government’s need for that intrusion to determine whether it was constitutionally reasonable.”⁸

Quantum of Force

Assessing the quantum of force used requires analyzing the nature and quality of the intrusion on the individual’s Fourth Amendment interests, which, in turn, requires the fact finder to evaluate both the type of force inflicted, and the amount of force used.⁹

Type of Force Used

In this incident, the force used was Oleoresin Capsicum (OC), commonly known as pepper spray. OC is an oily organic resin derived from the fruit of plants in the *Capsicum* genus, such as chili peppers.

The Ninth Circuit has clearly held that pepper spray is a form of “force capable of inflicting significant pain and causing serious injury.”¹⁰ “Pepper spray ‘is *designed* to cause intense pain,’ and inflicts ‘a burning sensation that causes mucus to come out of the nose, an involuntary closing of the eyes, a gagging reflex, and temporary paralysis of the larynx,’ as well as ‘disorientation, anxiety, and panic.’”¹¹ As such, pepper spray is regarded as “intermediate force” that, “while less severe than deadly force, nonetheless present[s] a significant intrusion upon an individual’s liberty interests.”¹²

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

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

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

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

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

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

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

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

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

¹² *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156.

Recommendation

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

Amount of Force Used

The amount of “intermediate force” (OC) used in this case was moderate. There were three one-second bursts of OC deployed in quick succession, within 14 seconds. The reports and video reflect that the deployments of OC occurred while Y1 was standing alone on top of a filing cabinet approximately six feet in height, trying to climb a light fixture and refusing commands to come down.

Some courts have also held that the failure to act by not properly decontaminating a person exposed to OC can rise to the level of a constitutional violation.¹³ Such is not the case here. Staff ensured that the length of time that Y1 felt the effects of the OC was limited. As soon as staff secured Y1, he was escorted to the showers to decontaminate. He began decontamination within six minutes of the first OC deployment.

Governmental Interest

Intermediate force is a “significant level of force that must be justified by the governmental interest involved.”¹⁴ In evaluating the government’s interest in the use of force, courts look to: “(1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the safety of the officers or others, and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight.”¹⁵

Severity of the Crime at Issue

This case involved a youth engaging in unsafe conduct with a significant possibility of self-harm, but not engaging in criminal activity. While Y1 was misusing the furniture in the day area, he was not committing a crime.¹⁶ Additionally, courts have held that where a subject is suspected of committing only nonviolent misdemeanor offenses, or is suspected of being mentally ill, this factor does not support the deployment of an intermediate level of force.¹⁷ Under these circumstances, this factor weighs against the DJCO 2’s use of OC.

Whether the Suspect Posed an Immediate Threat to the Safety of the Officers or Others

Courts have said that the most important element of the *Graham* factors is whether the suspect poses an immediate threat to the safety of the officers or others.¹⁸ In addressing this factor, the Ninth Circuit has also included whether the subject was “an immediate threat to himself.”¹⁹

Here, the immediate threat posed by Y1 was to himself. The threat of self-harm cannot be dismissed as insignificant, particularly given the fact that the Probation Department has an obligation to protect

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

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

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

¹⁶ It may be argued that Y1 was preparing to vandalize county property by hanging from the light fixture, however, there was no evidence of malice and intent to damage, two necessary elements of the crime of vandalism.

¹⁷ *Bryan v. MacPherson* (9th Cir. 2010) 630 F. 3d 805; *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156, 1168.

¹⁸ *Chew v. Gates* (9th Cir. 1994) 27 F.3d 1432.

¹⁹ *Silva v. Chung* (9th Cir. 2018) 740 F.Appx 883, 886.

youths in their care from harm, including self-harm. In this case, the reports and the video footage make clear that Y1 was engaged in a dangerous activity that, if allowed to continue, had the potential to result in serious injuries to himself. Y1 climbed onto a filing cabinet that was over six feet high and was starting to climb onto a light fixture. DJCO 2 feared that Y1 could, if his conduct was not stopped immediately, possibly harm himself by falling off the file cabinet, falling from the light fixture that could not support his weight, or electrocute himself.

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

While Y1 was not attempting to evade staff, he was clearly refusing to comply with their commands. Y1 was directed to end his phone call and return to his room. After he finished his phone call, Y1 did not return to his room, but instead jumped onto a desk, and then eventually onto the filing cabinet. According to DJCO 1, at least four staff members gave commands to Y1 to “‘get down’ from the cabinet.” Additionally, when Y1 began to touch the light fixture, several staff members warned him that it would not hold his weight, and directed Y1 to get down from the filing cabinet. Y1 did not comply with any of the directives and instead, attempted to climb the wall along the electrical conduit. Y1 remained on top of the filing cabinet and began to pull down on the lighting fixture as if to test its ability to hold his weight. It is clear from a review of the reports and video footage that Y1 had no intention of complying with staff commands.

According to the Ninth Circuit, resistance “should not be understood as a binary state, with resistance being either completely passive or active. Rather, it runs the gamut from the purely passive protestor who simply refuses to stand, to the individual who is physically assaulting the officer.”²⁰ The Court went on to state that “even purely passive resistance can support the use of some force, but the level of force an individual's resistance will support is dependent on the factual circumstances underlying that resistance.”²¹

Here, Y1’s refusal to follow commands and continue with his dangerous activities would likely be closer to active resistance than passive. Y1 was not merely refusing to obey a command. He was continuing to actively engage in conduct that had a significant likelihood of resulting in harm to himself. This factor, therefore, weighs in favor of some use of force.

Balancing the Force Used Against the Need for Such Force

Finally, in order to determine if force used was excessive, courts “balance the gravity of the intrusion on the individual against the government’s need for that intrusion.”²² Put another way, does the government’s need for the force used, based on the severity of the crime, the threat to safety, and the resistance of the subject, outweigh the type and amount of force used?

The Ninth Circuit has held that “the force which is applied must be balanced against the need for that force.”²³

Here, Y1 was under the custody and care of the Probation Department. As such, the Probation Department had an obligation to protect him from harm, including intentional or unintentional self-

²⁰ *Bryan v. MacPherson* (9th Cir. 2010) 630 F. 3d 805, 830.

²¹ *Bryan v. MacPherson* (9th Cir. 2010) 630 F. 3d 805, 830.

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

²³ *Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272.

harm. Prior to the first deployment of OC, Y1 posed an immediate threat to himself. The harm that could have occurred from electrocution or a fall from the filing cabinet, or light fixture, was significant.

However, while staff clearly had a legitimate and compelling need to get Y1 down from the filing cabinet, it is not clear whether the deployment of three bursts of OC within 14 seconds was justified. DJCO 2's report indicates his concern that Y1 "could be seriously hurt if the lighting detached from the ceiling, falling to the ground and resulting in serious injury or possible electrocution," but it does not make clear why "less intrusive alternatives" would not have sufficed to bring Y1 under control.

The DJCO reports do indicate that staff attempted to de-escalate through counseling, however, the attempts were clearly limited given that OC was deployed less than 60 seconds after Y1 left his chair and started heading towards the file cabinet. Additionally, none of the reports addressed why one or more of the DJCOs could not simply have moved a table next to the filing cabinet, climbed on the table, and physically taken Y1 down from the cabinet. A hands-on option may have resolved the situation without necessitating an intermediate level of force, especially because Y1 was not physically aggressive towards staff at any time prior to the deployment of OC.

DJCO 2 also gave no indication in his report as to why the two additional bursts were necessary. The lack of any statements in any of the four DJCO reports as to why the second and third bursts were necessary prevent a determination as to whether they were justified. Only five seconds elapsed between the first and second burst of OC, and 9 seconds elapsed between the second and third deployments of OC. Given the short duration between deployments, it is possible that had DJCO 2 allowed an opportunity for the first burst of OC spray to work, that Y1 would have complied with commands and come down from the file cabinet without the need for additional deployments.

Considering each of the above factors and the potential harm that Y1 could have done to himself, it appears that some force was likely necessary to get Y1 down from the file cabinet. However, without more information related to the second and third deployments, it cannot be determined whether those additional bursts were justified.

Compliance with Department Procedure

State Law

The State of California has set forth requirements that a facility, which authorizes the use of chemical agents as a force option, must have in their policies and procedures.²⁴ Those requirements include that the policies mandate that chemical agents only be used when there is an imminent threat to the youth's safety or the safety of others and only when de-escalation efforts have been unsuccessful or are not reasonably possible;²⁵ that the policy outline the facility's approved methods and timelines for decontamination from chemical agents including that youth who have been exposed to chemical agents shall not be left unattended until that youth is fully decontaminated or is no longer suffering the effects of the chemical agent;²⁶ that the policy define the role, notification, and follow-up procedures required after a use of force incident involving chemical agents for medical, mental health staff and parents or

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

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

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

legal guardians;²⁷ and that the policy provide for the documentation of each incident of use of chemical agents, including the reasons for which it was used, efforts to de-escalate prior to use, youth and staff involved, the date, time and location of use, decontamination procedures applied and identification of any injuries sustained as a result of such use.²⁸

Department Procedure

Imminent Threat and De-escalation

The Probation Department has two procedures that address the use of OC by DJCOs in the course and scope of their duties.²⁹ The OC procedure provides that OC spray may “only be used when there is an imminent threat to the youth’s safety and/or the safety of the officer or others and only when de-escalation efforts have been unsuccessful or are not reasonably possible.”³⁰ This verbiage is consistent with state law.

The reports regarding this incident, as well as the video footage, support DJCO 2’s belief that Y1 was engaged in a dangerous activity that posed an imminent threat to his own safety. In addition to being atop a six-foot file cabinet, Y1 was positioning himself to climb onto the light fixture. This was observed by the DJCOs, and is supported by the video footage, which shows Y1 lifting his right leg high and positioning it against the wall to climb up the electrical conduit that runs up the wall.

DJCO 1’s report also indicated that staff explained to Y1 that the light fixture would not hold his weight, and that numerous staff also tried to convince Y1 to get down from the filing cabinet on his own. At the time DJCO 2 deployed the OC spray, Y1 was engaging in potentially dangerous activities by standing atop the filing cabinet and actively attempting to climb higher.

The facts make clear that at the time DJCO 2 deployed the first burst of OC spray, Y1’s conduct posed an imminent threat to his safety. Y1 could have easily fallen off the filing cabinet or fallen while placing some of his weight on the light fixture. While the risk of serious injury to Y1 was lessened due to the presence of the ten staff members surrounding the file cabinet (who may have been able to catch Y1 or break his fall if he had fallen), it does not negate the fact that Y1 was engaged in activity that was dangerous and had the potential to cause himself serious harm.

Resistive, But Not Physically Aggressive

The OC procedure states that staff may not use OC spray on youths who are “resistive, but not physically aggressive.”³¹ The procedure also states more broadly that OC may be deployed “when there is an imminent threat to the youth’s safety or the safety of others and only when de-escalation efforts have been unsuccessful or are not reasonably possible.”³² These two provisions of the OC procedure must be read in harmony with each other such that one section of the procedure does not negate or contradict

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

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

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

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

³¹ Procedure Manual Item 3-1-056 II(C)(4) Procedure.

³² Procedure Manual Item 3-1-056 I(C) General Information.

the other. Read together, the “resistive, but not physically aggressive” language appears to be intended to apply in scenarios where a youth is resisting staff commands, but the resistance is such that there is no potential for imminent harm to anyone. This is consistent with Ninth Circuit case law finding that a law enforcement officer’s use of OC spray on a traffic detainee who was passively resisting commands, was excessive and unjustified because the detainee posed no threat to the safety of himself or any of the officers.³³

For this reason, the first deployment of OC spray by DJCO 2 may have been within procedure. However, for the reasons stated previously, it cannot be determined whether the second and third bursts were also within procedure.

Decontamination

The Probation Department’s OC Procedure requires that “[f]or youth exposed to OC spray, through a direct spray or over spray, decontamination measures must be undertaken as soon as practical after a youth is subdued and restrained.”³⁴ The OC Procedure further states that youth shall be placed, “fully clothed, into a shower, at a sink, or on the patio with the garden hose, allowing cold water to freely fall onto the youth until the youth no longer feels the effects of the OC spray.”³⁵

The reports indicate that Y1 came into direct contact with, and was affected by, the OC spray. As soon as Y1 was secured, he was escorted to the Unit India showers to decontaminate. According to reports, Y1 began decontamination at 9:15 p.m. (within six minutes of being sprayed) and ended decontamination at 9:30 p.m.

The OC Procedure also states that the youth will then remove contaminated clothing and be issued clean clothing. The contaminated clothing shall be placed in a marked plastic bag.³⁶ The main SIR, written by DJCO 1, indicates that Y1 was “given clean boxers, shorts, and t-shirt. All his soiled clothing was placed in a water-soluble bag and properly labeled.” DJCO 3’s narrative also indicated that Y1 “was given fresh clothing and his soiled clothing was placed in a water-soluble bag and properly labeled.”

Staff are also required to be with “the youth throughout the entire decontamination process.”³⁷ None of the reports specifically state that staff members remained with Y1 during the entire decontamination process. However, DJCO 3’s supplemental report does indicate that Y1 ended his decontamination “by choice.” While it is possible that this verbiage is meant to imply that DJCO 3 was present throughout the entire decontamination process, a straightforward statement would be more helpful to the reader of their reports.

³³ *Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156, 1161.

³⁴ Procedure Manual Item 3-1-056 II(F)(3) Decontamination/Aftercare Procedures. (The Department’s Use of Force Policy, Procedure Manual Item 3-1-015 VIII(E) Medical and Mental Health Considerations, has been renumbered and amended to include language that decontamination measures must be undertaken as soon as practical after a youth is subdued and restrained.)

³⁵ Procedure Manual Item 3-1-056 II(F)(4) Decontamination/Aftercare Procedures.

³⁶ Procedure Manual Item 3-1-056 II(F)(7) Decontamination/Aftercare Procedures.

³⁷ Procedure Manual Item 3-1-056 II(F)(10) Decontamination/Aftercare Procedures.

Recommendation

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

Notification and Procedures Required After Use of Force Incidents

The OC Procedure requires that a DJCO who discharges an OC canister notify his or her supervisor as soon as possible.³⁸ The OC Procedure also makes clear that “[t]he staff member who sprayed the individual is responsible for advising medical personnel or others of the decontamination procedures.”³⁹ The responsibility for contacting the youth’s parent or legal guardian is assigned to the SJCO/Duty Officer or designee.⁴⁰ Lastly, while the OC Procedure requires that the youth must be referred to Mental Health staff immediately following decontamination, it does not specifically identify whose responsibility it is to ensure that this section of the procedure is followed.⁴¹

DJCO 1 and DJCO 3’s reports indicate that SJCO 1 was on scene and supervised the securing of Y1 and his escort for decontamination. The main SIR and DJCO 2’s Use of Force report also indicate that the medical unit was notified of the incident and that Y1 was seen by medical staff within 24 minutes of the start of the incident. Y1 was cleared of any injuries. Both reports indicate that staff notified Y1’s mother of the use of force.

Finally, the main SIR and DJCO 2’s Use of Force report indicate that the Clinical Evaluation Guidance Unit (CEGU) was notified of the incident.

Documentation

Department procedure related to use of force provides that any DJCO involved in, or a witness to, a use of force, which includes the use of Chemical - Oleoresin capsicum (OC) spray, shall write and submit a Special Incident Report (SIR).⁴² Further, the procedure requires that a SIR and Restraint Report must include a clear and factual justification for the use of OC, efforts to de-escalate prior to use or reasons why de-escalation was not reasonably possible, youths and staff involved, the date, time and location of use, a complete description of decontamination procedures, and identification of any injuries and medical treatment.⁴³

DJCO 1 completed the main SIR for this incident and three other DJCOs prepared supplemental incident reports. The main SIR identified the youth involved as well as the actions taken by DJCOs to attempt to de-escalate prior to the use of force. As it relates to the deployment of OC, DJCO 1’s report only mentions that “[c]oncerned for the safety of [Y1], DJCO 2 decided to deploy OC Oleoresin Capsicum to [Y1’s] face while standing on the cabinet.” DJCO 1’s report never mentions how many times DJCO 2 deployed the OC. Additionally, while DJCO 1’s report lays out the activities that occurred after the uses

³⁸ Procedure Manual Item 3-1-056 II(E)(1) Notification and Documentation.

³⁹ Procedure Manual Item 3-1-056 II(F)(13) Decontamination/Aftercare Procedures.

⁴⁰ Procedure Manual Item 3-1-056 II(F)(18) Decontamination/Aftercare Procedures.

⁴¹ Procedure Manual Item 3-1-056 II(F)(17) Decontamination/Aftercare Procedures.

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

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

of force, it also fails to mention whether staff members remained with Y1 throughout the decontamination process.

DJCO 2 prepared a Use of Force report to document the deployments of OC directed at Y1. DJCO 2's report, however, was lacking sufficient detail in explaining why three bursts of OC were necessary and why they were deployed in quick succession totaling a span of 14 seconds. DJCO 2's report states that three one-second bursts of OC spray were deployed, but does not offer a justification for each deployment, instead offering a singular justification for three bursts.⁴⁴ In short, DJCO 2 failed to explain why the additional bursts were necessary. The justification for each use of force should have been included in the reports.

Recommendation

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

DJCO 3 and DJCO 4 also prepared reports related to this incident. DJCO 4's report also only briefly mentioned that DJCO 2 "deployed his OC pepper spray and sprayed youth [1] which stopped the further moves he planned on taking onto the electrical lighting fixtures." DJCO 4's report failed to mention how many times he observed DJCO 2 deploy the OC spray.

Finally, a review of the video footage of this incident revealed that there were ten staff members present, in addition to DJCO 2, when OC was deployed. However, only three staff members prepared reports to document their witnessing of the deployment of OC, as required by the Department's use of force procedure.

Recommendation

Provide additional training reminding DJCOs of the importance of making sure that they complete an SIR including a narrative in compliance with the Department's use of force procedure.

Use of Force Review Board

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

Like the OIR, the Use of Force Review Board identified the fact that there was "no documentation articulating what the effects were following the first spray of OC that struck the youth's face (e.g., youth continued to resist, continued to fail to follow directives, impact on youth's response/physical response), to show cause for the second or the third one-second burst of OC spray."

⁴⁴ The video footage makes clear that after each of the first two bursts of OC spray, Y1 failed to come down from the filing cabinet.

Conclusion

A review of the SIRs, Use of Force report, and video footage establish that the first deployment of OC spray by DJCO 2 may have been within the law, and department policy, as Y1 had placed himself in a position where he posed an immediate threat to his own safety and was clearly refusing to follow commands. It is unclear, however, whether the second and third bursts were within law and policy because the report prepared by DJCO 2 provides no justification for the second and third bursts.

Recommendations

1. Update PMI 3-1-056 to specifically state that OC spray is classified as an intermediate level of force.
2. Update the portion of the Use of Force/Restraint SIR form relating to Pepper Spray and Decontamination to add an entry field that requires the report writer to specifically indicate which DJCO(s) stayed with each youth during the entire decontamination process.
3. Provide additional training reminding DJCOs of the importance of making sure that their reports are accurate and complete.
4. Provide additional training reminding DJCOs of the importance of making sure that they complete an SIR including a narrative in compliance with the Department's use of force procedure.