

City of Portland
Police Citizen Review Subcommittee

AGENDA
December 9, 2020
6:00 p.m.

1. ZOOM Information

On Wednesday, December 9, 2020 at 6:00 p.m., the Police Citizen Review Subcommittee will conduct a virtual meeting via Zoom, as allowed by I M.R.S. Sec. 403-A. Please allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend the meeting live, the City will be posing a recording of the meeting after it has concluded. Please click the link below to join the webinar:

<https://us02web.zoom.us/j/81258788010?pwd=ZTlwcmZQVmo3TFRRVWVjQTJXZm5pdz09>

Passcode: 343853 Or iPhone one-tap : US:

+13017158592,,81258788010#,,,,,0#,,343853# or

+13126266799,,81258788010#,,,,,0#,,343853# Or Telephone: Dial(for higher quality, dial a number based on your current location): US: +1 301 715 8592 or +1 312 626 6799 or

+1 929 205 6099 or +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 Webinar

ID: 812 5878 8010 Passcode: 343853

a. Please click the link below to join the webinar:

<https://us02web.zoom.us/j/81258788010?pwd=ZTlwcmZQVmo3TFRRVWVjQTJXZm5pdz09>

Passcode: 343853

Or iPhone one-tap :

US: +13017158592,,81258788010#,,,,,0#,,343853# or

+13126266799,,81258788010#,,,,,0#,,343853#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099 or +1 253 215 8782 or
+1 346 248 7799 or +1 669 900 6833

Webinar ID: 812 5878 8010

Passcode: 343853

2. Call to Order

3. Approval of November 11, 2020 minutes.

a. November 11, 2020 minutes, attached.

4. Review update from City Manager

- a. See attachment.
- 5. General Public Comment
- 6. Subcommittee Business
 - a. Continued discussion of PCRS recommendations for potential changes to PCRS structure. See attachment.
 - b. Discussion of options for increasing public participation in PCRS matters.
- 7. Adjourn

POLICE CITIZEN REVIEW SUBCOMMITTEE

November 11, 2020

Meeting Held Remotely Via Zoom

Members present: Emily West, Chair; Maria Testa; Luke Beland; Kaylin Kerina; Reggie Parson; Rev. Lewis

Staff present: Anne Torregrossa

6:02 Call to order via Zoom.

Chair West offered congratulations to Ms. Fournier on her election to the City Council.

Motion to accept minutes of October 14, 2020. Seconded. Roll call vote 7-0.

Ms. West stated that Chief Clark had reached out to her to get her feedback on the IA investigation that the PCRS did not find timely, fair, thorough, and objective. Ms. Testa asked what the questions were, and Ms. West stated that the PD wanted to learn from the findings and learn what the PCRS had found lacking in the investigation.

No public comment was offered.

The Committee began discussing the list of 10 recommendations for a police oversight body. The Committee then had a conversation about what was the end goal of reviewing the recommendations, and how to best complete that review. There was much conversation about where and how to go about evaluating recommendations. There was also a conversation about how the public has been minimally engaged in the PCRS, and maybe the PCRS could improve engagement.

The PCRS returned to the conversation about the various recommendations and crafted various recommendations and options with the plan to obtain public input on these options before finalizing recommendations.

(Ms. Fournier left the meeting)

(Ms. Testa left the meeting)

The PCRS discussed the agenda for next meeting, including continuing its work on recommendations for a review board and discussing ways to increase the accessibility of their meetings.

7:40 Motion to adjourn. Seconded. Roll call vote 5-0.



CITY OF PORTLAND
Executive Department
Jon P. Jennings, City Manager

December 8, 2020

Via email

Emily West, Chair
Police Citizen Review Subcommittee

RE: PCRS Recommendations

Dear Emily,

As promised in my letter to you back in September, Chief Clark and I have worked on implementing some of the recommendations that the PCRS provided to me earlier in the year.

The citizen complaint and commendation form has been simplified and has been translated into Arabic, Somali, French, Portuguese, and Spanish. That form and its translations are available on the Police Department's website and will be maintained at various locations in the City, including the Portland Public Library and the Community Policing substations, once those locations have reopened to the public. The Police Department has also begun the process of ordering the additional business cards and expects to distribute them to department members shortly. The department has also begun the process of posting its policies and standard operating procedures on its website, and is also currently ensuring compliance with newly issued Department of Justice certification standards on "safe policing for safe communities."

As indicated, I have worked with Chief Clark and others to bring a citizen perspective to the Police Department's internal Use of Force Review Committee. A citizen that I choose, in consultation with Chief Clark, will be appointed to the Committee and will serve as a full member on equal footing with all other members of that Committee. I have attached the revised SOP, which explains the role of the citizen member. Both police unions, as well a couple members of the public were involved in the development of these changes, and I will be moving forward to choose a citizen to sit on that committee.

I understand that the PCRS's recommendation was to have citizens appointed by the City Council sit on the Use of Force Review Committee. However, given that the Committee is an internal group working to improve operational matters, I believe this falls more appropriately under my administrative authority. The citizen member will still be able to provide the critical outside perspective that the PCRS identified as valuable, and this allows me to move forward with implementing your recommendation on a much shorter timeline.

Again, I very much appreciate your suggestions and your patience as we continually work to enhance our police department's transparency and trust within our community.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon P. Jennings". The signature is stylized with a large, bold "J" and "P".

Jon P. Jennings
City Manager

cc: Chief Frank Clark
Sgt. Eric Nevins, SOA
Ofc. Les Smith, PBA

PORTLAND POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

	Subject:	Response to Resistance / Aid / Reporting	Policy #:	1-1A
	Distribution:	All Personnel	Effective Date:	10/22/2017
	Standards:	BOT / CALEA / National Consensus Policy	Revision Date:	12/4/2020
	By Order Of:	Chief of Police	Review:	Annually

I. PURPOSE:

To establish guidelines governing response to resistance by Portland Police officers, and to describe requirements for medical aid and reporting.

II. POLICY:

The Portland Police Department seeks to treat all people with dignity and respect and recognizes the value and sanctity of every human life. Investing officers with the trust and lawful authority to respond to use force in response to resistance and to protect the public welfare, a careful balancing of all human interests is required. Since there are too many variables that go into an officer's split-second decision to use force in what are oftentimes tense, uncertain and rapidly evolving situations, this procedure, although intended to provide clear direction, is unable to be all inclusive and does not attempt to describe in absolute terms and in every circumstance when an officer should or should not use a particular response option. It is the policy of this agency for officers to consider safety priorities and attempt to control an incident by the use of de-escalation whenever safe and reasonable to do so, and to use only the degree of force that the officer *reasonably and actually* believes is necessary to effectively bring an incident under control while protecting the officer or another. When necessary to respond to resistance, the degree of force employed must be proportional and in direct relationship to the amount of resistance exerted, or the immediate threat to the officers or others. Officers must respond in a way that does not violate the Constitution or applicable law. Officers shall report their use of physical force, and shall take reasonable steps to obtain appropriate medical attention. Supervisors and command staff shall review all uses of force and control to ensure compliance with legal requirements and this policy. Given this is a statutorily mandated policy, officers must abide by this SOP as it applies to all standards of the MCJA Board of Trustees.

III. DEFINITIONS:

- A. **Actual Belief:** A subjective state of mind in which the officer holds a genuine or honest conviction.
- B. **Bodily Injury:** Physical pain, physical illness or any impairment of physical condition.
- C. **Canine (K-9):** A department authorized dog, the training and certification of which has included handler protection and suspect apprehension. This is considered the use of non-deadly force.
- D. **Chemical Agents:** A response option intended to disable a person with the use of chemicals, inflammatory agents, or similar substances (e.g., OC or CS) that has an irritating or disabling effect upon human beings. Incapacitating agents are designed to produce temporary physiological or mental effects, or both, which will render individuals incapable of concerted effort. This is considered the use of non-deadly force.
- E. **Command / Officer Presence:** The presence of a law enforcement officer who is willing and able to handle a situation, and the ability to speak clearly authoritatively, issuing concise commands using a tone that reflects control and professionalism.

- F. **Compliance Techniques:** Methods of arrest, restraint and control that include the manipulation of joints, pressure point applications, and take down techniques to control a resistant or aggressive offender.
- G. **Conducted Electrical Weapon (CEW):** An incapacitating weapon that uses electricity against a person, causing involuntary muscle contraction, and overriding the person's voluntary motor responses. This is considered an intermediate level use of non-deadly force.
- H. **Deadly Force:** Physical force which a person uses with the intent of causing, or which the person knows to create a substantial risk of causing, death or serious bodily injury, including but not limited to the intentional, knowing or reckless discharge of a firearm in the direction of another person or at a moving vehicle.
- I. **De-escalation:** Coupled with the consideration of safety priorities, the use of verbal or non-verbal actions and tactics, whenever feasible and possible, preceding a potential force encounter. This may include, but is not limited to the use of distance, cover, tactical re-positioning, and communication in order to stabilize the situation, reduce the immediacy of the threat, and allow for more time and options for resolution. The goal of these tactics is to slow down the situation, allowing access to additional resources (e.g., personnel, supervisors, specialized officers or teams) that may mitigate the intensity of the encounter, help gain voluntary compliance, or otherwise allow for control of the situation and the safety of the officer, subject and others without the need to use force, or with the use of a lower level of force.
- J. **Excessive Force:** Physical force that is unreasonable, unnecessary or inappropriate given the facts and circumstances known to the officer at the time the force was used.
- K. **Firearm:** Any weapon whether loaded or unloaded, which is designed to expel a projectile by the action of an explosive and includes a pistol, rifle, revolver, gun, machine gun or shotgun, but not including the *PepperBall* system or a CEW device. Any weapon that can be made into a firearm by the insertion of a firing pin, or other similar thing, or by repair, is a firearm.
- L. **Imminent:** Impending, immediate or appearing as if about to happen or occur.
- M. **Impact Projectiles (Less Lethal Munitions):** Specialty, low-kinetic energy projectiles, approved by the MCJA Board of Trustees, designed to be discharged from a firearm and have a disabling effect upon human beings. Law enforcement use of such munitions is considered the use of non-deadly force.
- N. **Impact Tool / Weapon:** A tool or device designed for use by an officer in close quarter physical defense of the officer or another and / or control of an aggressive offender. The issued baton is a department-approved impact tool.
- O. **Individual Actions:** As a part of the Situational Use of Force assessment process, the categories below can be used to describe an individual subject's behavior:
- **Cooperative:** Compliant and willing to obey, posing minimal threat to the officer(s) or others.
 - **Resistive (Passive):** Non-compliance, defiance or failure to cooperate with lawful verbal direction, but offering no resistive or evasive bodily movement to prevent the officer's attempt at physical control (e.g., a passive demonstrator, a person going limp, prone or refusing to stand up, lie down, enter / exit vehicle, leave the scene, etc.).
 - **Resistive (Active):** Physically resistive or evasive bodily movement, including but not limited to muscle tension, bracing, pushing, pulling, flailing or flight, to avoid or defeat an officer's attempt at physical control, or to prevent being taken into or retained in custody. Verbal statements, defiance and belligerence alone do not constitute active resistance.
 - **Active Aggression:** A threat of an assault, coupled with any pre-attack indicators (e.g., clenched fists, flanking, fighting stance, etc.) and the present ability to carry out the threat or assault, reasonably indicating that an assault or injury to the officer or another person is imminent.

- **Assaultive (High Risk):** An overt act of an assault, or highly agitated or combative actions or behavior posing an imminent threat of injury to the officer or another. Such actions may include, but are not limited to hostile physical or active resistance, kicking, punching or spitting, whether an assault occurs or not.
 - **Life Threatening:** Actions or behavior that could cause death or serious bodily injury, potentially justifying the use of deadly force.
- P. **Less Lethal Force:** Response options that are not designed or used with the intention of causing (and have less potential for causing) death or serious bodily injury, including but not limited to chemical agents, *PepperBall*, impact projectiles or munitions, or a CEW.
- Q. **Less than Lethal Munitions:** A low-kinetic energy projectile designed to be discharged from a firearm that is approved by the Board of Trustees of the Maine Criminal Justice Academy that has been designed to have a disabling effect upon human beings. The use of a less-than-lethal munitions weapon is considered to be the use of non-deadly force.
- R. **Neck (“choke”) hold:** One of the following types of holds: (1) arm-bar control hold, a hold that inhibits breathing by compression of the airway in the neck; (2) carotid restraint hold, a hold that inhibits blood flow by compression of the blood vessels in the neck; (3) lateral vascular neck constraint; or (4) a hold with a knee or other object to the back of a prone subject's neck, all of which are considered lethal force.
- S. **Non-Deadly Force:** Any physical force that is not deadly force.
- T. **Officer Response Options:** Choices available to an officer concerning the type of force to be used in response to resistance in a given situation, including but not limited to officer / command presence, voice commands, de-escalation, compliance techniques, CEWs, chemical agents, impact weapons, canines, and deadly force.
- U. **PepperBall Projectiles:** Plastic spheres that are filled with pelargonic acid vanillylamide (PAVA) and are delivered by a special launching device. With the exception of specialized (e.g glass-breaking rounds) use of *PepperBall* projectiles is considered the use of non-deadly force.
- V. **Physical Force:** Any physical power or kinetic energy exerted by an officer to coerce, overcome, control or restrain another individual to comply or submit. The actual exercise of some form of Kinetic energy (one person to another) of such a nature as to create an imminent and substantial risk of causing bodily harm.
- W. **Reasonable Belief:** When facts or circumstances provided to or known to the officer are such as to cause an ordinary and prudent officer to act or think in a similar way under similar circumstances.
- X. **Safety Priorities:** A decision-making process which provides the framework for making tactically sound decisions, utilizing objective criteria based on an individual’s current or likely risk of suffering serious bodily injury or death and their ability to remove themselves from that danger. Those exposed to the greatest potential of injury with the least ability to escape the situation are placed at the top of the priorities (e.g., a hostage held against their will who has little ability to control the situation). On the other end of the continuum is the suspect or subject who has little threat of injury by others and is in control over the situation. The safety priorities value all life and its intent is to assist law enforcement in making tactical decisions to assist in saving lives.
- Y. **Serious Bodily Injury:** Bodily injury which creates a substantial risk of death, or which causes serious, permanent disfigurement or loss or substantial impairment of the function of any bodily member or organ, or extended convalescence for recovery of physical health.
- Z. **Situational Use of Force Options:** A dynamic process by which an officer assesses, plans and responds to situations that threaten public and officer safety and require the use of force and control. The process includes an assessment of the situation and circumstances immediately confronting the officer, including

but not limited to the severity of the crime or suspected offense, the level and imminence of any threat to the officers or public, the level of resistance, the risk or apparent attempt to flee or escape; the suspect's behavior and individual actions (cooperative, resistive (passively or actively), assaultive / high risk, or posing a threat of death or serious bodily injury); and to the officer's perceptions and tactical considerations. Based on this assessment, the officer selects from the available officer response options while continuing to evaluate the evolving situation, adapting a plan and actions that are appropriate and effective in bringing the situation under control.

- AA. **Option of Availability:** Flashlights, vehicles, tools, implements, objects or other devices or techniques that are not necessarily issued, intended or normally authorized as response options, but that *may* be used in extraordinary circumstances when their use would be justifiable and no other adequate or suitable defensive option is immediately available.

IV. TRAINING / PROFICIENCY / DUTY TO ACT:

- A. Only sworn and certified personnel, who have been trained on this SOP and demonstrate proficiency in the use of the department's authorized firearms and less lethal force options, as may be established by the department or the Maine Criminal Justice Academy, will be permitted to carry or use them on or off-duty.
- B. Initial weapons proficiency will be achieved through training and qualification during the Field Training program. Training will include instruction on safe handling, storage and maintenance procedures. Continued proficiency with all authorized firearms (both lethal and impact projectiles) and the CEW will be demonstrated by successful completion of annual training and qualification. Annual training should include relevant review of this SOP. All firearms and less lethal force response options training and qualifications will be documented and supervised by trained and / or certified instructors.
- C. Training in other less lethal response options (O.C., *PepperBall*, impact baton and defensive tactics) must be conducted at least biennially.
- D. If an officer fails to qualify with a firearm, or demonstrate proficiency with another less lethal response, the instructor shall notify the Chief of Police, in writing, on the same date, and will develop a remedial training (lesson) plan, subject to approval by the Chief of Police or designee, to include the type of remedial training and the timetable to address the deficiencies. The officer will be placed on an altered or administrative assignment pending successful completion of the training / qualification, and must not carry or use the firearm or less lethal response option until having demonstrated proficiency.
- E. Failure to qualify following remedial training will result in further review or evaluation of fitness for duty, which may result in action up to and including termination.
- F. An officer has a duty to intervene, at the earliest, safe opportunity, to prevent or stop the known or apparent use of excessive force by another officer when it is objectively reasonable to do so. The incident must be immediately reported, verbally and in writing, to a supervisor.

V. RESPONSE TO RESISTANCE JUSTIFICATIONS:

Officers are authorized to use force to overcome a suspect's resistance or to accomplish some other lawful law enforcement objective for which force is lawful, necessary and appropriate. Officers derive their authority to use force from applicable Maine State laws and guidelines. As such, officers should be familiar with the laws and guidelines contained in 17-A M.R.S.A. § 104, 105, 106(6), 107, 108 and 110, as well as the ARREST Chapter of the Maine Law Enforcement Officer's Manual. Officers shall only carry department-authorized weapons, and with the exception of an authorized use of a option of availability, should only use weapons after being trained in their use.

- A. **USE OF NON-DEADLY FORCE:** An officer is justified in responding to resistance using a reasonable degree of non-deadly force upon another person:
1. when and to the extent the officer reasonably believes it is necessary to effect an arrest or prevent the escape from custody of an arrested person, unless the officer knows the arrest or detention is illegal; **OR** in self-defense or to defend a third person from what the officer reasonably believes to be the imminent use of unlawful, non-deadly force encountered while attempting to effect such an arrest or while seeking to prevent such an escape; **OR**
 2. in self-defense or to defend a third person from what the officer actually and reasonably believes to be the imminent use of unlawful, non-deadly force, and the officer actually and reasonably believes that the officer's use of non-deadly force is necessary; **OR**
 3. to prevent or thwart the commission of a person's suicide, or a person's self-infliction of serious bodily injury; and / or to exercise protective custody of a person, consistent with 34-B M.R.S.A. § 3862.
- B. **USE OF DEADLY FORCE:** An officer is justified in responding to resistance using deadly force only when the officer reasonably believes such force is necessary:
1. for self-defense or to defend a third person from what the officer reasonably believes is the imminent use of unlawful deadly force; **OR**
 2. to effect an arrest or prevent the escape of a person when the officer reasonably believes the person has committed a crime involving the use or threatened use of deadly force, is using a dangerous weapon in attempting to escape, or otherwise indicates that the person is likely to seriously endanger human life or inflict serious bodily injury, unless apprehended without delay, **AND** the officer has made reasonable efforts to advise the person that the officer is a law enforcement officer attempting to effect an arrest or prevent the escape from arrest and the officer has reasonable grounds to believe the person is aware of the advice, or the officer reasonably believes that the person otherwise knows that the officer is a law enforcement officer attempting to effect an arrest or prevent an escape. *The mere fact that a person is a "fleeing felon" does NOT, in and of itself, justify the use of deadly force (Tennessee v. Garner). Deadly force may not be used against an unarmed, non-violent, property crime offender;* **OR**
 3. to destroy any animal that is obviously vicious or aggressive and presents a direct or potential threat of killing or seriously injuring any person. Supervisory approval should be obtained, whenever possible. Dispatching or euthanizing an animal is not considered a use of force.

Where reasonably practical and permitted by the circumstances, officers should identify as a law enforcement officer and warn of their intent to use deadly force.

VI. RESPONSE OPTION GUIDELINES:

- A. Consistent with Maine state standards, the department has adopted the Situational Use of Force response model, the underlying principle of which is threat assessment. During any incident in which force is justified to respond to resistance, officers are expected to use good judgment in assessing a situation and determining which response option would best defuse a situation and bring it under control. The key to using the proper type of force is recognizing a threat.
- B. Consistent with the *Graham v. Connor* decision, officers must, on an ongoing basis, assess the totality of the circumstances, including but not limited to:
1. The severity or seriousness of the crime or suspected offense;
 2. The level of threat or resistance presented by the subject;
 3. The risk or apparent attempt by the subject to flee or escape; and

4. Whether the subject was posing an imminent threat to the officer(s) or others.
- C. An officer may assess or perceive a situation based, in part, on the suspect's individual actions and behaviors (i.e., *cooperative, resistant (passively or actively), assaultive or posing a threat of death or serious bodily injury*); the officer's objective perceptions and tactical considerations; the environment; the number of individuals; the perceived abilities and knowledge of the individuals; the number of officers (or availability of backup); each officer's unique skill levels and competencies; time and distance; and any objective indicators signaling an attack.
- D. Use of physical force should terminate when resistance ceases or when it is objectively reasonable that a subject is fully in the control of law enforcement.
- E. Based upon that assessment, safety priorities, and the officer's training, education and experience, an officer must decide upon a proper and reasonable response option, either deadly or non-deadly force, as depicted and further described below:

Situational Use of Force Response Options

<u>Individual's Actions</u> Cooperative	<u>Individual's Actions</u> Passive Resistive	<u>Individual's Actions</u> Active Resistive
<u>Officer Options</u>	<u>Officer Options – Non-Deadly Force</u>	<u>Officer Options – Non-Deadly Force</u>
• Professional Presence • Verbal & Nonverbal • Control / Compliance / Rest	• Professional Presence • Verbal & Nonverbal • Control / Compliance / Restraint	• Professional Presence • Verbal & Nonverbal • Control / Compliance / Restraint • Strikes • Less Lethal Force Response Options • Police Canines • Weapons of Availability
<u>Individual's Actions</u> Assaultive / High Risk		<u>Individual's Actions</u> Life Threatening/Serious Bodily Injury
<u>Officer's Options – Non-Deadly Force</u>		<u>Officer Options – Deadly Force</u>
• Professional Presence • Verbal & Nonverbal • Control / Compliance / Restraint • Impact • Less Lethal Force Response Options • Police Canines • Weapons of Availability		• Professional Presence • Verbal & Nonverbal • Control / Compliance / Restraint • Impact • Less Lethal Force Response Options • Police Canines • Firearms • Impacting Vital Areas • Other Incapacitating Force Methods • Weapons of Availability

- F. Consistent with State and Federal laws, the response options available within the situational use of force matrix, and notwithstanding the justified use of any Option of Availability, in response to a given situation, officers justified to respond to resistance may consider the reasonableness, appropriateness and necessity to use one or more of the following authorized non-deadly or less lethal force response options:

- Officer Presence (Non-Verbal):** The appearance of an officer who is willing and able to handle a situation. Officers should use tactical de-escalation techniques, such as distance, cover, and tactical re-positioning to gain time, as appropriate, and other alternatives to higher levels of force, consistent with SOP and training. Remember the tactical resolution equation of *Distance + Cover = Time*.
- Professional / Command Presence (Verbal):** Whenever such delay will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, officers should make every attempt to achieve control through the use of tactical de-escalation techniques, coupled with advisements, warnings, persuasion, appeals, and the use of

clear, concise and direct advice or commands while using a tone that reflects control and professionalism, without the undue use of profanity or argument. Whenever feasible, an officer will allow the subject an opportunity to comply with the officer's verbal commands prior to resorting to a use of force.

3. **Control / Compliance Techniques & Restraints:** Includes the use of empty hands, impact tools and / or mechanical restraints (e.g., handcuffs and / or leg cuffs, and may include the application of strength, leverage, takedowns, control holds, and / or come-alongs, using hands, feet, fists, knees or baton. The purpose of these options is to gain control, forcing the suspect's compliance while minimizing the risk of injury to the officer, bystanders, or the person being taken into custody. Neck holds are prohibited, unless deadly force is justified.
4. **Chemical Agents (OC Spray):** Although not universal, chemical agents have displayed a high level of effectiveness and low potential for lasting injury and may be used to supplement other means of controlling a subject:
 - a. **AUTHORIZED USE:** OC spray may be a response option:
 - 1) When physical force is justified to control or subdue a person *actively resisting* arrest; a person exhibiting *active aggression*; or whose individual actions are *assaultive* (high risk) or *life threatening*, leading to a reasonable belief that the person poses an immediate threat to the officer or another person and it would be unsafe, ineffective or impractical for officers to approach within contact range, or attempt to subdue the person by other conventional tactics.
 - 2) When physical force is justified to control or subdue a person who overtly poses an *imminent* and *substantial* threat of harm to him/herself.
 - 3) To defend oneself or another from a vicious or aggressive animal.
 - b. **RESTRICTIONS:** Consideration should be given as to whether the use of chemical agents will help or hinder the operation because of the physical limitations and / or the need for decontamination. The use of chemical agents should be avoided where it would affect children or innocent bystanders, unless the exigency of the situation dictates otherwise. Chemical agents shall not be used on a cooperative or passively resistant person; on a person solely due to belligerence or verbal defiance; on anyone under effective restraint; to punish, intimidate or coerce a subject; for purposes of demonstration, experimentation or horseplay against any person, even a volunteer, unless as part of department sanctioned training; to rouse an unconscious, impaired, disabled or intoxicated person; or to elicit information or to threaten or intimidate, without legal justification.
 - c. **POST APPLICATION:** As soon as practical after a chemical agent application, officers should assist with decontamination by providing fresh air and water. Officers should monitor the exposed person's health and should counsel and provide information about OC effects to an exposed person.
5. **Canine (K-9):**
 - a. **AUTHORIZED USE:** A certified police canine may be a response option for instances in which non-deadly force is justified to control or subdue a person *actively resisting* arrest, to include any person suspected of fleeing after having committed a violent or other serious crime; a person displaying *active aggression*; or a person whose individual actions are *assaultive* (high risk) or *life threatening* towards the officer or another person present, leading to a reasonable belief that the person poses an immediate threat to the officer or another person and it would be unsafe, ineffective or impractical for officers to approach within contact range, or attempt to subdue the person by other conventional tactics; OR when physical force is justified to control or subdue a person who poses an *imminent* and *substantial* threat of physical harm to that person, the officer, or another.
 - b. **RESTRICTIONS:** Unless otherwise justified, reasonable and necessary, a police canine shall not be deployed to apprehend a *cooperative* or *passively resistant* person; a person solely due to

belligerence or verbal defiance; a person fleeing from a property or other non-violent crime; a person the officer knows or reasonably believes to be pregnant; elderly and / or visibly frail, to include persons known or believed to be over the age of sixty-five (65), a juvenile believed to be under the age of eighteen (18); or a person who is handcuffed and under effective restraint.

- c. **DEPLOYMENT:** A warning should be given prior to the deployment of a canine, unless it would be tactically unsafe to do so. The handler shall cause the canine to disengage immediately when it becomes reasonably apparent that the suspect has surrendered, readily complies with the officers' directions, is no longer a threat, and / or when sufficient law enforcement personnel are available to safely take the suspect into custody.

6. Conducted Electrical Weapon (CEW):

- a. **READINESS:** Officers are responsible for immediately reporting any issues (e.g., missing or damaged equipment) to the Shift Commander, who will be responsible for the overall accountability of the department's CEW units.
- b. **AUTHORIZED USE:** A CEW may be a response option:
 - 1) To control or subdue a person *actively resisting* arrest, exhibiting *active aggression*, or whose individual actions are *assaultive* (high risk) or *life threatening*, leading to a reasonable belief that the person poses an immediate threat to the officer or another person and it would be unsafe, ineffective or impractical for officers to approach within contact range, or attempt to subdue the person by other conventional tactics.
 - 2) To control or subdue a person who overtly poses an *imminent* and *substantial* threat of harm to him / herself, and it would be unsafe, ineffective or impractical for officers to approach within contact range, or attempt to subdue the person by other conventional tactics.
 - 3) To defend oneself or another from a vicious or aggressive animal.
- c. **RESTRICTIONS:** Unless otherwise justified, reasonable, necessary and appropriate, officers SHALL NOT use a CEW:
 - 1) On a *cooperative* or *passively resistant* person, or a person who is solely belligerent or verbally defiant;
 - 2) On a person merely because that person is fleeing or attempting to escape;
 - 3) On a person the officer knows or reasonably believes to be pregnant, elderly and / or visibly frail, to include persons known or believed to be over the age of sixty-five (65), or young children, to include persons known or believed to be under the age of fourteen (14); or on a person who is handcuffed and under effective restraint;
 - 4) On a person in a position where a fall would likely cause serious bodily injury or death (e.g., edge of a bridge, or body of water, in a body of water, or on top of a staircase, roof, tree, or other elevated structure), unless deadly force is otherwise justified;
 - 5) On a person in control of a mode of transportation (e.g., automobiles, motorcycles, bicycles, etc.) if the CEW use could reasonably result in the uncontrolled movement of the transport vehicle;
 - 6) To punish, intimidate or coerce a subject, or to rouse an unconscious, impaired, disabled or intoxicated person;
 - 7) In the presence of potentially flammable, volatile or explosive materials, including alcohol-based OC Spray, gasoline, natural, and / or propane gas;
 - 8) For purposes of demonstration, experimentation or horseplay against any person, even a volunteer. Officers shall not be voluntarily or involuntarily "exposed" to a CEW discharge.
- d. **DEPLOYMENT:**

- 1) Officers responding to or at an incident where a CEW is used - or is anticipated - shall notify dispatch, the on-duty supervisor and EMS.
 - 2) Officers may consider using the CEW, consistent with this SOP and their training, in any of the following modes:
 - a) **Laser Only** – with verbal warning (non-contact)
 - b) **Spark Check** – with verbal warning (non-contact)
 - c) **Probe Deployment** – temporary incapacitation (primary / preferred) option.
 - d) **Drive (Touch) Stun** – less effective (secondary / non-preferred) option.
 - 3) Unless it would be unsafe to do so, prior to deploying the CEW, officers should verbally announce, “Taser-Taser” so that other officers are aware that a CEW is about to be deployed. This will also provide the suspect an additional opportunity to cease the conduct that has given rise to the intended CEW deployment.
 - 4) The primary aiming point is a person’s back. Since it is not always possible to get behind a person, secondary targeting areas may include lower, front center mass / torso or legs. Officers shall not target the face, neck, groin or upper chest areas, where possible.
 - 5) Only one officer should activate a CEW on a person at any one time, deploying the CEW for one standard cycle (5 seconds) and then re-assessing. Officers must use the minimum number of cycles necessary to accomplish the legitimate operational goal. If a CEW remains ineffective after three (3) cycles, or after a continuous cycle of more than 15 seconds, officers should avoid continued cycling and consider alternative response options.
 - 6) Verbal commands should be provided throughout the contact. Back-up officers should begin to take control of the subject while temporarily incapacitated.
 - 7) Any accidental CEW deployments, or other unusual occurrences, should be documented in an unusual incident report. That report must be forwarded through the Chain of Command to the Lead CEW Instructor for consideration of future training needs.
- e. **POST-DEPLOYMENT:** After appropriate medical aid and clearance, whenever a person has been exposed to a CEW:
- 1) If that person is transported to a detention facility, the transporting officer shall advise that facility’s staff of the CEW exposure.
 - 2) The CEW cartridge, lead wires and probes shall be collected and submitted as evidence. The probes should be treated as a biohazard.
 - 3) The supervisor shall coordinate access to the CEW’s download discharge data that will be forwarded as part of the report for the administrative review.
7. **Pepperball Projectiles:** In addition to the above Chemical Agent guidelines:
- a. The department has authorized *PepperBall* launchers as a less lethal force system, combining chemical irritants (PAVA) and kinetic energy (impact force), which may be a response option:
 - 1) To control or subdue any person being taken into custody who is exhibiting active aggression, or whose individual actions are *assaultive* (high risk) and / or *life threatening*, leading to a reasonable belief that the person poses an imminent threat to the officer or another person and it would be unsafe, ineffective or impractical for officers to approach within contact range, or attempt to subdue the person by other conventional tactics.
 - 2) To control or subdue a person who overtly poses an *imminent* and *substantial* threat of harm to him / herself, and it would be unsafe, ineffective or impractical for officers to approach within contact range, or attempt to subdue the person by other conventional tactics.
 - 3) To defend oneself or another from a vicious or aggressive animal.

- b. Pepperball projectiles are considered target accurate at up to 60 feet and can create a cloud of O.C. powder at up to 150 feet. There is no minimum deployment stand-off distance. Officers should target center mass and the extremities and shall not target the face, neck, groin or spine.
 - c. The *PepperBall* launcher may also be used to deploy specialty rounds, as authorized. Such rounds shall not be deployed at a human being, unless deadly force is otherwise justified.
 - d. *PepperBall* deployment should be part of a coordinated response. Officers should advise other officers prior to deployment in order to prevent sympathetic reactionary fire.
8. **Impact Force:** Impact force, including the use of hands, feet, fists, knees and the department approved baton, provides officers with defensive options to defend themselves or others from injury:
- a. **AUTHORIZED USE:** *Active resistance, active aggression, assaultive (high risk) and / or life threatening* circumstances may warrant impact-type force.
 - b. **APPLICATION:** Baton strikes may be delivered to the person's Weapon Delivery System, which is the center mass of the arm, leg or body of the presented threat. The arms and the legs are vehicles which transport force against the officer and are the preferred targets at a downward 45-degree angle. A center mass straight strike can also be used to create distance, or the baton can be held at both ends and used with the length of the baton.
 - c. **RESTRICTIONS:** The baton shall not be used to strike any cooperative or passively resistant person; on a person solely due to belligerence or verbal defiance or any person who is under effective restraint; nor to rouse an unconscious, impaired, disabled or intoxicated person, or to punish, intimidate or coerce a subject, elicit information or to threaten or intimidate, without legal justification. Blows to the head, neck, spine, groin, solar plexus or rib cage may cause death or serious injury and should not be used, unless deadly force is otherwise justified.
9. **Impact Projectiles:** To the extent that the law enforcement use of impact projectiles deployed from a firearm is considered non-deadly force under Maine law,¹ it will also be considered non-deadly force under this SOP:
- a. **READINESS:**
 - 1) Authorized and dedicated firearms must be maintained for deployment.
 - 2) Deploying officers are responsible for verifying the weapon is loaded only with less lethal impact projectiles. Any officer who discovers lethal rounds in a designated less lethal firearm shall immediately take corrective action and report the discrepancy to a supervisor.
 - b. **AUTHORIZED USE:** Impact projectiles are intended to provide officers with another less lethal response option. Impact projectiles may be appropriate:
 - 1) To defend against what the officer actually and reasonably believes is the imminent use of deadly force; and / or a person who is armed or appears / alleges to be armed and / or is attempting to arm themselves with a potentially deadly weapon, and refuses to comply with or submit to the officer's lawful authority.
 - 2) On a person who overtly poses an *imminent* and *substantial* threat of harm to him / herself, and it would be unsafe, ineffective or impractical for officers to approach within contact range, or attempt to subdue the person by other conventional tactics.
 - 3) As a "door knocker" or window opener during high-risk tactical incidents.
 - c. **RESTRICTIONS:** Impact projectiles should generally be used after other conventional tactics have been, or likely will be, ineffective or impractical under the circumstances. Without legal authority, justification and / or exigent circumstances, officers SHALL NOT use impact projectiles:

¹ 17-A MRSA, § 101(5)

- 1) On a cooperative or resistant person; a person solely due to belligerence or verbal defiance; or on any person whose actions are not life threatening to that person or another person; or on any person the officer knows or reasonably believes to be pregnant, elderly and / or visibly frail, to include persons known or believed to be over the age of sixty-five (65), or persons known or believed to be juveniles under the age of eighteen (18).
 - 2) In a crowd or crowd control situation, including against subjects who are physically engaged with other officers or not isolated from bystanders.
 - 3) On a person in a position where a fall would likely cause serious bodily injury or death (e.g., edge of a bridge or body of water or top of a staircase, roof, tree, or elevated structure), unless deadly force is otherwise justified.
 - 4) On a person in control of a mode of transportation (e.g., automobiles, motorcycles, bicycles, etc.), if the deployment could reasonably result in the uncontrolled movement of the vehicle.
 - 5) If there are any impediments (e.g., windows, trees, fencing) in the line of fire that may rupture any flexible sock material of the impact projectile.
 - 6) To punish, intimidate or coerce a subject.
 - 7) Against any person, even a volunteer, for purposes of training, demonstration or horseplay.
- d. **DEPLOYMENT:** With supervisory approval, impact projectiles may be used as part of a coordinated and planned effort and response to a critical incident:
- 1) The intended deployment of impact projectiles should be communicated to other officers within the area of the incident in order to avoid sympathetic reactionary fire.
 - 2) Unless deadly force is justified, impact projectiles should be deployed within their optimal range, generally between 15 feet and 75 feet.
 - 3) When deploying impact projectiles, officers should target the extremities, specifically including the thigh, lower leg, buttock or lower arm. If impacts to these areas are ineffective, inappropriate or too dangerous, and the circumstances justify a potentially higher risk of injury, officers may target the lower abdomen. Officers shall not target the head, neck, center mass, spine or groin.
 - 4) In order to reduce the likelihood of injury, only one officer should deploy impact projectiles on a person at any one time. Deploying officers should attempt verbal dialogue, sight a proper target location, fire a single round and then assess the results. This sequence should be repeated, as deemed reasonably necessary and appropriate under the circumstances, with consideration being given to alternative tactics when it appears that the technique is not working, and the injury risk of multi volleys outweighs the value of continuing the deployment.
10. **Deadly Force:** Consistent with State and Federal laws and the situational use of force concept depicted above, and notwithstanding the justified use of any incapacitating force method, to include any option of availability, officers' response to resistance may require the need to resort to the use of deadly force. Officers may use departmental firearms, as trained, and consistent with state and federal laws, this SOP, and SOP #1-1B. In recognition of the sanctity of human life, although officers should make every attempt to exhaust all other means prior to the application of deadly force, any officer otherwise justified in using deadly force should but is not required to attempt the use of any alternative, less lethal or non-deadly force response options prior to the appropriate and reasonable application of deadly force.

VII. EMS RESPONSE / MEDICAL AID:

- A. Whenever an officer uses force, either deadly or non-deadly, that results in injury, or otherwise requires an EMS response or hospital transport, as outlined below, the officer shall ensure that appropriate medical aid is rendered as soon as practical. Appropriate medical aid may include increased observation, decontamination of chemical agents, applying first aid, EMS evaluation or transport and / or, for more serious or life-threatening incidents, immediate aid by emergency room medical staff.

- B. Officers shall request that EMS respond and evaluate any subject after the following uses of force:
1. Any application of deadly force, or deployment of a firearm or impact projectile;
 2. Any police K-9 bite;
 3. Any baton strike resulting in injury or complaint of injury, or as otherwise deemed appropriate by the officer or supervisor.
 4. Any chemical agent application, including O.C. and *Pepperball*, as the supervisor deems appropriate for decontamination and / or medical assessment;
 5. Any CEW deployment or contact:
 - a. In general, the on-scene supervisor, another officer not involved in the use of force, or MedCU staff is authorized to remove CEW probes from a person's body. If the person was struck in the eyes, head, genitals, female breasts, or another sensitive area, the person should be transported to the hospital, as only medical personnel will be authorized to remove such probes.
 - b. The Shift Commander or on-scene supervisor shall ensure that any person who falls into one of the restricted / vulnerable classes (e.g., pregnant woman, elderly or visibly frail person, or young child), OR who is believed to have been exposed to a consecutive or cumulative CEW application of fifteen (15) seconds or more, OR who is believed to have been exposed to simultaneous applications by more than one CEW, is transported to the hospital for a medical evaluation.
 6. Any other time an officer or supervisor deems it to be appropriate and / or prudent under the circumstances, to include if requested by the subject, if the subject is exhibiting signs of excited delirium, or if the subject does not appear to fully recover – or maintains symptoms of physical distress – shortly after any use of force / control application.
- C. Whenever an officer arrests or detains an individual and that person, loses consciousness, is injured or claims to be injured during the course of the arrest or detention in a manner that is unrelated to a use of force, the officer shall immediately render aid, call for Medcu, and notify a supervisor, who shall immediately respond to the scene. If an incident or force report is not required to be completed, the officer shall complete a casualty report, documenting the injury. The supervisor shall complete a supplement documenting their actions and review. Any incident involving a death while in police custody shall be handled in accordance with SOP 90A.
- D. In situations that require a casualty report, the subject must be photographed in order to document the injury. Any and all visible injuries to a subject and the scene must be photographed. An officer or supervisor other than the officer who placed the subject in custody will be assigned to take the photographs and should document any relevant statements made by the subject during the photographing. The photos should be noted in the casualty report. If a person alleges an injury, but it is not visible to the officer, photograph the area that the person claims is injured and document the allegation and the fact of no visible injury.
- E. All serious in-custody injuries require command staff notification; as outlined in SOP 48.

VIII. REPORTING:

- A. Whenever an officer acting in an official capacity response options that include deadly, less-lethal or non-deadly force against another person, including physical force greater than un-resisted handcuffing, the officer shall immediately call a superior officer to the scene or, if that is not practical, contact a superior officer as soon as possible following the incident. If a superior officer is unable to respond to the scene, that fact shall be noted in the Use of Force report.

- B. All reportable uses of force must be documented in a Use of Force report. The following are reportable uses of force:
 - 1. application of deadly force;
 - 2. physical force that involves physical force techniques to overcome resistance;
 - 3. the application of force by a firearm, Taser, baton, O.C. Spray, impact projectile, canine, pepperball, striking an individual with hands, feet, knees or elbow or any other weapon or implement;
 - 4. any time the Shift Commander, after consultation with the supervisor and officer using force, deems it reportable.
- C. In all situations that require a Use of Force report, the subject must be photographed in order to document injury or lack of injury. Any and all visible injuries to a suspect or an officer, whether or not the injuries are caused by the use of force, must be photographed. An officer or supervisor, other than the officer who applied the force, shall be assigned to take photographs and document any relevant statements made by the subject during the photographing. If a person alleges an injury, but it is not visible to the officer, photograph the area that the person claims is injured, documenting the allegation and the fact that no injury was visible.
- D. All blank spaces on the Use of Force report shall be completed by the officer who has used force. The officer shall make a diligent attempt to obtain all information necessary to complete the report. If information remains unknown after a diligent attempt, he/she shall mark such space "unknown." An officer who is a witness to a use of force may be required to complete a supplement and attach it to the Use of Force report. Upon completion of the report, it shall be forwarded to the immediate supervisor of the officer writing the report. The Use of Force report must be completed and forwarded to the officer's immediate superior officer by the end of the shift in which the force is used.
- E. In the case of an SRT or other specialty type call-out, the Major, SRT supervisor, or his/her designee shall file an after-action report on behalf of the entire team documenting the activities of the team in detail and addressing any areas of concern related to department policy, training, equipment or tactics. Any team member that engaged in a reportable use of force during the call-out shall complete a Use of Force report or supplement at the direction of the Major or supervisor. The after action report shall be reviewed by the command staff and use of force committee, as applicable.

IX. REVIEW:

- A. The immediate supervisor of the involved officer(s) will interview the officer(s), any other officer(s) present at the use of force, the subject upon whom force was used, and any witnesses.
- B. The interviews will be recorded and geared towards determining the facts and the subject's understanding of the situation. The interviews must be recorded and then summarized by the supervisor in the review portion of the Use of Force report or related supplement.
- C. The responding supervisor should additionally ensure that any injured individuals receive immediate medical attention. If treatment at a medical facility is necessary, the supervisor should ensure that the involved officer does not transport or maintain custody of the injured individual during the medical treatment process.
- D. If the use of force results in serious bodily injury, the Shift Commander will initiate a command notification. The Assistant Chief will notify the Internal Affairs Lieutenant who will assign an investigator to begin an immediate investigation. All uses of deadly force shall be investigated as outlined in SOP 52A.

- E. The use of a firearm, the delivery of a hit or strike to a subject's head with a baton or other Heavy object or the use of a neck hold will be reviewed by the department as the use of deadly force. In cases involving these types of force that do not result in serious bodily injury, the on-duty Shift Commander will arrange for command staff notification; as outlined in SOP 48.
- F. After the investigation is completed; the Shift Commander shall review the completed Use of Force report and any supplemental reports to ensure that the Use of Force report and investigation is thorough and complete. If in the Shift Commander's judgment, the officer or supervisor has not provided sufficient details regarding the incident, he/she shall return the report for further clarification. Once the Use of Force report is complete, it shall be forwarded through the command review process. The Use of Force report shall not accompany nor be filed with any arrest or incident report. After a report is reviewed administratively, if it is determined that a violation may have occurred warranting investigation, the matter will be referred to Internal Affairs. If it is believed that the officer engaged in criminal conduct, the Police Chief is mandated to forward the report to the Office of the District Attorney or the Office of the Attorney General and the Director of the Maine Criminal Justice Academy. Any such matters will be handled through the Internal Affairs in lieu of the below described committee process.
- G. The Professional Standards lieutenant will maintain all Use of Force reports. This will allow for the tracking and analyzing of all such incidents.
- H. The Use of Force Review Committee, chaired by the Professional Standards lieutenant, will meet monthly to review use of force incidents in detail. In addition, the committee will consist of the Command staff, the Internal Affairs Sergeant(s), a PBA representative, a SOA representative, the Police Attorney, any subject matter experts as deemed appropriate by the Chair or Command staff, and a neutral member of the public, who is a resident of the City of Portland, appointed by the City Manager in consultation with the Police Chief. The appointee may be removed by the City Manager for any reason that is not arbitrary, to include non-participation in meetings or requisite training and violating confidentiality. Prior to participating in the committee, the civilian member will be required to attend training, provided by the city and the department, related to confidentiality requirements, legal principles in use of force review, as well as this and other relevant police department policies, training and procedures. The civilian must also participate in at least one "ride-along" within the first six months of appointment, and will annually participate in at least one ride-along and observe and participate in police department use of force and response to resistance training. The civilian member is expected to participate equally in the committee discussions, providing an additional perspective.
- I. The Chair shall schedule the committee meetings and provide the committee with all pertinent information covering the incident and officer(s) in question.
- J. The Command staff and the Use of Force Review Committee shall use the following criteria in reviewing use of force incidents:
 - 1. Did the officer utilize an appropriate level of force for the situation;
 - 2. Were the officer's actions reasonable;
 - 3. Did the officer use department-authorized weapon systems and tools in an appropriate manner;
 - 4. Was the force promptly reported and correctly documented;
 - 5. Was the use of force consistent with the officer's training and experience;
 - 6. Did the officer attempt to de-escalate the situation prior to the use of force (if feasible);
 - 7. Did the officer place other members of the public at risk by his/her actions;
 - 8. Did the officer's actions contribute to the necessity to use force;
 - 9. Did the use of force policy effectively address the situation;
 - 10. Was department training adequate;
 - 11. Were the use of force options available to the officer adequate to control the situation;

12. Is there a pattern of misuse of this type of force, either by a particular officer or department-wide;

13. Was the use of force within Department policy?

- K. After reviewing each incident, the committee will seek to identify actions that may indicate a policy or procedure violation, a training need, a policy or procedure modification or an equipment deficiency.
- L. If the Committee does identify a problematic event, it shall recommend such steps to be taken as are necessary to correct the problem. This shall include, but not be limited to: ordering a written clarification of the incident; the filing of an internal complaint; ordering remedial training or counseling; recommending a change in standard operating procedure or recommending modifications to issued equipment. The Police Chief and Command staff retain full authority for all operational decisions, including training and discipline.
- M. By April 1 of the following year, the Professional Standards lieutenant, shall review and compile statistics and complete an annual analysis and report to the command staff of all response to resistance reporting incidents and complaints for the preceding year. The purpose of the annual review is to identify long-term patterns or trends, which may be of concern to the Department.
- N. All use of force incidents for the past calendar year will be analyzed by the Professional Standards Lieutenant. A trending analysis of force incidents for the whole organization and units within the organization will also be completed.
- O. Consistent with Maine State law and with the unions' approval, all Use of Force reports may be maintained electronically. Reports will be maintained for seven years.

Civilian Oversight of Law Enforcement in Portland: Proposed Basic Characteristics

- 1). True independence — the absence of real or perceived influence from law enforcement and city hall
- 2). A real budget — current guidelines suggest no less than 2% of PD budget — and staff
- 3). A hybrid committee structure — incorporating elements of investigative and review mechanisms
- 4). Receive complaints directly from the public
- 5). Interview complainants, witnesses, and LEOs; establish subpoena authority
- 6). Make recommendations with regard to outcome and discipline; establish decision-making authority
- 7). Regular community outreach and engagement
- 8). A formal appeals process
- 9). An independent mediation mechanism
- 10). The capacity to provide oversight of the jail (perhaps a subset or separate branch of the organization)