

Use of Force

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force by members of this Department. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this Department is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Cal. Government Code § 7286).

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable use of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the use of Control Devices and Techniques, Conducted Energy Devices, and Firearms.

Retaliation prohibitions for reporting suspected violations of this policy are located in the Anti-Retaliation Policy.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Active Resistance - intentionally and unlawfully opposing the lawful order of a peace officer in a physical manner. Physically evasive movements to defeat an officer's attempt at control, including but not limited to bracing, tensing, running away, or verbally or physically signaling an intention to avoid or prevent being taken into or retained in custody.

Deadly force - Any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to the discharge of a firearm (Cal. Penal Code § 835a).

Excessive force – A level of force is found to have violated the requirements of Penal Code § 835a, or any other applicable law or statute.

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person (Cal. Government Code § 7286(a)).

Force - The application of physical techniques or tactics, chemical agents, or weapons to another person, except in the following situations:

- (a) When applying physical techniques or tactics to escort, direct movement, handcuff, restrain or search with no visible injury or complaint of injury to a compliant subject.
- (b) When applying a spit mask or spit hood on a subject to prevent spitting.
- (c) When applying of a firm grip control does not result in injury, the appearance of injury, or complaint of injury (e.g., the use of a grip to control a person's hands while searching or handcuffing)
- (d) When applying the use of physical techniques or tactics to assist an intoxicated person or a person with a physical disability that does not result in the appearance of injury, or complaint of injury (e.g., lifting an intoxicated person to a standing position).

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- (e) When applying physical techniques on a subject who is non-compliant exhibiting passive resistance (e.g., includes subjects who remain in a sitting, standing, or limp or prone positions without holding on to fixed objects or other persons in an attempt to delay or resist arrest).

Imminent - Pursuant to Cal. Penal Code § 835a(e)(2), a threat of death or serious bodily injury is imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. Imminent harm, therefore, is not merely a fear of future harm, no matter how great the fear, and no matter how great the likelihood of the harm, but is one that, from a totality of the circumstances known to the officer at any given time, must be instantly confronted and addressed..

Intercede - Includes, but is not limited to, physical and/or verbal intervention to stop the excessive use of force when safe and reasonable to do so, recording the excessive force if equipped with a body-worn camera, notifying dispatch, notifying a supervisor and documenting all efforts to intervene.

Necessary - It is the intent of the Legislature that peace officers use deadly force only when necessary, in defense of human life and based on the totality of the circumstances of a particular situation. Necessity is based on the objectively reasonable standard established by *Graham v. Connor*, 490 U.S. 386 (1989).

Objectively Reasonable - The legal standard used to determine the lawfulness of a use of force is based on the Fourth Amendment to the United States Constitution. See *Graham v. Connor*, 490 U.S. 386 (1989). *Graham* states, in part, "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application." The force must be reasonable under the circumstances known to or reasonably believed by the officer at the time the force was used. Therefore, an agency will examine all uses of force from an objective standard rather than a subjective standard.

Non-Compliant - The subject refuses to comply with officer's lawful commands or cooperate with an officer's directions. Includes passive resistance where subject uses dead weight to prevent being taken into custody. (e.g. includes subjects who remain in a sitting, standing, or limp or prone positions without holding on to fixed objects or other persons in an attempt to delay or resist arrest.

Serious bodily injury - A serious impairment of physical condition, including but not limited to the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement (Cal. Penal Code § 243(f)(4)).

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Totality of the circumstances - All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force (Cal. Penal Code § 835a).

300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The UCI police department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

300.2.1 FAIR AND UNBIASED USE OF FORCE

Officers are expected to carry out their duties, including the use of force, in a manner that is fair and unbiased (Cal. Government Code § 7286(b)). Refer to Bias-Based Policing Policy for additional guidance.

300.2.2 DUTY TO INTERCEDE

Any officer present and observing another law enforcement officer or an employee using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, shall, when in a position to do so, intercede (as defined by Cal. Government Code § 7286) to prevent the use of unreasonable force.

When observing force used by a law enforcement officer, each officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject (Cal. Government Code § 7286(b)).

300.2.3 FAILURE TO INTERCEDE

An officer who has received the required training on the duty to intercede and then fails to act to intercede when required by law, may be disciplined in the same manner as the officer who used force beyond that which is necessary (Cal. Government Code § 7286(b)).

300.2.4 DUTY TO REPORT EXCESSIVE FORCE

Any officer who observes a law enforcement officer use force that potentially exceeds what the officer reasonably believes to be necessary, shall when safe and reasonable to do so report their observations to a supervisor (Cal. Government Code § 7286(b)).

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Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Cal. Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Cal. Government Code § 7286(b)).

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the approved or authorized tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 ALTERNATIVE TACTICS - DE-ESCALATION

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, officers should consider actions that may increase officer safety and may decrease the need for using force:

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Cal. Government Code § 7286(b)). Such alternatives may include but are not limited to:

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- (a) Attempts to de-escalate a situation.
- (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.

300.3.2 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use objectively reasonable force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. Retreat does not mean tactical repositioning or other de-escalation techniques (Cal. Penal Code § 835a).

300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit (Cal. Government Code § 7286(b)). These factors include but are not limited to:

- (a) The apparent immediacy and severity of the threat to officers or others (Penal Code § 835a).
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time (Penal Code § 835a).
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The conduct of the involved officer leading up to the use of force (Cal. Penal Code § 835a).
- (e) The effects of suspected drugs or alcohol.
- (f) The individual's apparent mental state or capacity (Cal. Penal Code § 835a).
- (g) The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).
- (h) Proximity of weapons or dangerous improvised devices.
- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness (Cal. Penal Code § 835a).
- (k) Seriousness of the suspected offense or reason for contact with the individual prior to and at the time force is used.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, bystanders, and others.

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- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

300.3.4 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers should apply those pain compliance techniques for which they have successfully completed Department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the person can comply with the direction or orders of the officer.
- (c) Whether the person has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.5 RESTRICTIONS ON THE USE OF CAROTID CONTROL HOLD

Officers of this Department are not authorized to use a carotid restraint hold. A carotid restraint means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person's neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person (Cal Government Code § 7286.5).

300.3.6 RESTRICTIONS ON THE USE OF A CHOKE HOLD

Officers of this Department are not authorized to use a choke hold. A choke hold means any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe (Cal. Government Code § 7286.5).

300.3.7 ADDITIONAL RESTRICTIONS

Terms such as "positional asphyxia," "restraint asphyxia," and "excited delirium" continue to remain the subject of debate among experts and medical professionals, are not universally recognized medical conditions, and frequently involve other collateral or controlling factors such as narcotics or alcohol influence, or pre-existing medical conditions. While it is impractical to restrict an officer's use of reasonable control methods when attempting to restrain a combative individual, officers are not authorized to use any restraint or transportation method which might unreasonably

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impair an individual's breathing or respiratory capacity for a period beyond the point when the individual has been adequately and safely controlled. Once the individual is safely secured, officers should promptly check and continuously monitor the individual's condition for signs of medical distress (Cal. Government Code § 7286.5).

300.3.8 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the UCIPD for this specific purpose.

300.4 DEADLY FORCE APPLICATIONS

When feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify him/herself as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts (Cal. Penal Code 835a).

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Cal. Government Code § 7286(b)).

The use of deadly force is only justified when the officer reasonably believes it is necessary in the following circumstances (Cal. Penal Code § 835a):

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Cal. Penal Code § 835a).

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as

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an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Cal. Penal Code § 835a).

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective and may involve additional considerations and risks. When feasible, officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others (Cal. Government Code § 7286(b)).

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

300.4.2 DISPLAYING OF FIREARMS

Given that individuals might perceive the display of a firearm as a potential application of force, officers should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public. (Cal. Government Code § 7286(b)):

- (a) If an officer reasonably believes that a threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter, threatened use of force), firearms may be pointed in a manner reasonable for the situation. Once it is reasonably safe to do so, officers should carefully secure all firearms.

Drawing, displaying, or exhibiting a firearm in itself is not a use of force. However, when a firearm is drawn or exhibited to gain compliance from a subject, the circumstances shall be documented in a CAD, criminal, or incident report. The requirement to report the incident does not apply to a firearm kept at the low-ready or other positions where an officer does not intentionally point a firearm directly at an individual.

300.5 REPORTING THE USE OF FORCE

Officers shall document any use of force promptly, completely, and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why the officer believed the use of force was reasonable under the circumstances.

300.5.1 NOTIFICATION TO SUPERVISORS

Any use of force by an officer shall be reported immediately to a supervisor, including but not limited to the following circumstances (Cal. Penal Code § 832.13):

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation in regards to force used.

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- (e) Any application of a Conducted Energy Device or control device.
- (f) Any application of a restraint device that is not approved by the Department.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges unreasonable force was used or that any of the above has occurred.

As used in this subsection, "immediately" means as soon as it is safe and feasible to do so.

300.5.2 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

Statistical data regarding all officer-involved shootings and incidents involving the use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Cal. Government Code § 12525.2. See the Records Bureau Policy.

300.6 MEDICAL CONSIDERATIONS

Once it is reasonably safe to do so, properly trained officers should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident (Government Code § 7286(b)).

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until the individual can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff, or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics, and imperviousness to pain, or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should

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request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

See the Medical Aid and Response Policy for additional guidelines.

300.7 SUPERVISOR RESPONSIBILITY

A supervisor should respond to any reported use of force, if reasonably available. The responding supervisor is expected to Complete a Supervisor's Use of Force Report to include the following:

- (a) Basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are medically examined and treated.
- (c) When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her Miranda rights, the following shall apply:
 1. The content of the interview should not be summarized or included in any related criminal charges.
 2. The fact that a recorded interview was conducted should be documented in a property or other report.
 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) Once initial medical assessment has been completed and/or treatment has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain from both the subject(s) and involved officer(s), as well as overall photographs of the involved subject(s) and officer(s). These photographs should be retained until all potential for civil litigation has expired.
- (e) Identify any witnesses not already included in related reports and obtain a statement.
- (f) Review and approve all related reports to ensure thorough and accurate documentation of the use of force.
- (g) Determine if there is any indication that the subject may pursue civil litigation.
 1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- (h) Evaluate the use of force incident and document any violation of policy.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.7.1 COMMAND LEVEL RESPONSIBILITY

The Chief of Police or designee shall assign a member of his or her command staff to review each use of force incident by any personnel within his or her command to ensure compliance with this policy and to address any training issues. The assigned command staff member is responsible

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for reviewing the Use of Force Report (e.g., Supervisor's Use of Force Review, crime and arrest reports, photographs, and/or other pertinent information). After final review, the Chief of Police or designee will ensure custody and storage of the Use of Force Report.

300.7.2 REASSIGNMENT FROM REGULAR DUTIES

Employees involved in a use of force or critical incident that results in the death or serious physical injury of another person may be reassigned from regular duties or temporarily placed on administrative leave pending a documented administrative review of the incident.

See in accordance with the Personnel Complaints Policy for additional guidelines.

300.8 USE OF FORCE COMPLAINTS

The receipt, processing, and investigation of civilian complaints involving use of force incidents should be handled in accordance with the Personnel Complaints Policy (Cal. Government Code § 7286(b)).

300.9 TRAINING

Officers, investigators, and supervisors will receive annual training on this policy and demonstrate their knowledge and understanding (Cal. Government Code § 7286(b)).

Subject to available resources, the [training Manager/Supervisor] should ensure that officers receive periodic training on de-escalation tactics, including alternatives to force.

Training should also include (Cal. Government Code § 7286(b)):

- (a) Guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities.
- (b) Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

See the Training Policy for restrictions relating to officers who are the subject of a sustained use of force complaint.

300.10 USE OF FORCE ANALYSIS

At least annually, the Operations Lieutenant should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police by the end of February. The report should not contain the names of officers, suspects, or case numbers, and should include:

- (a) The identification of any trends in the use of force by members.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.

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300.11 POLICY REVIEW

The Chief of Police or authorized designee should regularly review and update this policy to reflect developing practices and procedures (Cal. Government Code § 7286(b)).

300.12 POLICY AVAILABILITY

The Chief of Police or the authorized designee should ensure this policy is accessible to the public (Cal. Government Code § 7286(c)).

300.13 PUBLIC RECORDS REQUESTS

Requests for public records involving an officer's personnel records shall be processed in accordance with Cal. Penal Code § 832.7, Peace Officer Procedural Bill of Rights, and the Personnel Records and Records Maintenance and Release policies (Cal. Government Code § 7286(b)).