

July 12, 2021

CAC - Use of Force - Ad Hoc

Draft Recommendations to Sonoma County Sheriff's Office

TOPIC: Firearms

330.4.2 DISPLAYING OF FIREARMS - PROPOSED ADDITIONAL LANGUAGE

In carrying out their duties, deputies shall, when feasible, apply de-escalation techniques before resorting to the use of a firearm.¹ The pointing of a firearm at an individual is considered a non-deadly use of force.² While the drawing and/or pointing of a firearm can discourage resistance and ensure officer and public safety in potentially dangerous circumstances, it can also escalate a situation³ and be terrifying to the community. Unnecessarily or prematurely drawing a firearm could limit an officer's alternatives in controlling a situation, may create unnecessary anxiety on the part of members of the public, and could result in an unwarranted or unintentional discharge of the firearm.⁴

Any intentional pointing of a firearm at an individual by a deputy should be reported as it is considered a use of force.⁵

When a firearm is drawn or exhibited to gain compliance from an individual, the circumstances shall be documented.⁶ These documented occurrences, provide the Sheriff's Department with the opportunity to review each incident and ensure that appropriate best practices and training are being utilized.⁷

¹ Commission on Peace Officers Standards and Training ("POST"), Use of Force Guidelines 11.4.20, Standard #6, pg. 17.

² Id. The U.S. Supreme Court held in *California v. Hodari D.* (1991) 499 U.S. 621 that a "seizure" of a person within the meaning of the Fourth Amendment occurs when a person submits to an officer's "show of authority." Pursuant to Hodari D., when a person submits to an officer pointing his firearm at him, that is a "seizure under the Fourth Amendment. See also *Robinson v. Solano County* (2002 9th Cir.) 278 F. 3d 1007; *Black v. Stephens* (1981) 662 F 2d 181, 188-89) and *Jacobs v. City of Chicago* (2000 7th Cir.) 215 F. 3d 758, 773-74)

³ Id.

⁴ Id.

⁵ Id. at pg. 18.; Oakland Police Department, Use of Force Policy, pg. 6. IOLERO located 20 law enforcement agencies which document "pointed firearm as a use of force" including but not limited to Oakland, Atlanta, Baltimore, Chicago, Cleveland, Columbia, Dallas, D.C., Des Moines, Detroit, Houston, Indianapolis, New Orleans, Philadelphia, Phoenix, Portland, Raleigh and San Diego, and U.C. Irvine and U.C. Santa Cruz.

⁶ University of California, Santa Cruz, Police Department Policy 830.1.; University of California, Irvine, Police Department, Use of Force Policy.

⁷ In a 2017 review of officer pointed firearm incidents found that police agencies that require officers to file a report when they point their guns but do not shoot at civilians had significantly lower rates of gun deaths by police officers, roughly half of agencies required such reports in 2013: Jennings, Jay, Meghan Rubado, "Preventing the Use of Deadly Force: The Relationship between Police Agency Policies and Rates of Officer-Involved Gun Deaths." Public Administration Review, Volume 77, Issue 2, 2017, pp.217-226; DOI: 10.1111/puar.12738. See also: University of California, Irvine, Police Department Use of Force Policy.

Deputies shall not draw their firearm, direct it toward a person, and threaten to shoot if the person is compliant and does not present a danger.⁸

Firearms must always be holstered by any member attempting to frisk or handcuff a suspect.⁹

⁸ Orange County Sheriff's Department, Use of Force Policy 300.5.7.

⁹ Baltimore Police Department, Policy 409, pg. 4.