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Documenting the Use of Force

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Incidents requiring the use of force by police are an unfortunate reality for law enforcement agencies. Each occurrence demands accurate documentation that demonstrates in detail the necessity of such a response. On this subject, the U.S. Supreme Court stated “the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them...”(1)

Despite this emphasis by the Court, use-of-force documentation frequently excludes many of the details that could help explain and justify officers' decisions. Too often, use-of-force reports only include information pertaining directly to the physical interaction with the suspect. Although those details, obviously, are important, additional information about the events leading up to and following the actual encounter may help paint a clearer picture of why officers took a particular course of action.

While all agencies require personnel to document their actions concerning the use of force, many provide little or no guidance as to the type and quantity of information necessary. And, outside of the “check the box” format, little uniformity exists among these reports. This style may provide standardization within a department, but it rarely gives personnel the opportunity to include all necessary information. Although some agencies remedy this by allowing officers to attach a memo or some type of essay to the use-of-force report, this leads back to the original problem of police not receiving training related to the information that they should include. Without proper education in this area, not only will officers receive unfair criticism for inadequate use-of-force documentation but they potentially will suffer other consequences for it.

Varying Purposes

The information included in use-of-force documentation fulfills a number of purposes. For instance, it serves as the basis for statistics and related reports. Agencies track the number of such incidents and the types of force used by and against their officers. Also, the FBI compiles this data for use in its Uniform Crime Reports.

Additionally, agencies employ this documentation to help develop and direct officer survival training. For example, departments can identify trends in the locations, times, and types of calls in which force is needed and focus training appropriately. And, they can use this information to make necessary adjustments in their policies concerning how personnel should respond to calls for service.

Finally and, perhaps, most important to officers, the use-of-force report represents the tool that they will employ to explain their decisions in a particular encounter. Also,

managers in the department's chain of command will use it to evaluate employees' actions. While officers may personally advise first-line supervisors or, perhaps, have them present at the time of the incident, they may never have had any interaction with high-ranking managers. In fact, in larger agencies, those evaluating officers' actions may not even know the employees; they initially will have only the report for information (except, of course, in extreme situations, such as when deadly force is used). Properly prepared documentation will, in many cases, satisfy any post-incident evaluations, avoiding the need for follow-up interviews.

Educating Officers

Agencies must teach their personnel to properly document use-of-force incidents. If officers understand the importance and benefits of completing these reports correctly, they should approach them in the same professional manner that they handle all of their duties.

Departments can draw from several methods that require little time and resources to train officers in completing use-of-force documentation. For instance, they can have recruits prepare reports in conjunction with scenarios they encounter during self-defense and use-of-force training. This technique allows trainers to instill, early in officers' careers, the habit of properly documenting incidents. Obviously, this practice can serve as part of annual refresher training for certified officers, as well.

Agencies also can use footage of police encounters in classroom situations. In doing so, large numbers of officers can watch the same scenario together and then fill out a use-of-force report. Rather than having each individual complete a live enactment, this practice saves time and ensures uniformity in that the officers document the same encounter, enabling trainers to better compare the students' performance.

Each method has its appropriate time and place. And, a combination of both can help ensure that officers receive proper training in the documentation of use-of-force incidents.

Preparing the Report

When writing the report, officers should simply tell the story of the encounter from beginning to end. They need to remember that people unfamiliar with the incident and, perhaps, police training and practices will read it. For direction and uniformity while allowing officers the freedom to include all pertinent information, the report can be divided into several sections: assessment, observations, actions, and summary.

Assessment

The first section deals with the officers' assessment of the situation when initially responding; this takes into account information provided by the dispatcher, including the type of call and, possibly, prior events at the incident location. Such assessments can

change several times during the course of the call as the dispatcher provides updates. Obviously, the severity of the situation will affect how police approach it and if they deem the use of force necessary. Officers must include the call type given at the time of dispatch, as well as what the actual incident turned out to be. For example, if police responded to a reported robbery but, instead, discovered a case of shoplifting, their actions should be evaluated as if they were dealing with the more severe, dangerous robbery incident before they received updated information.

Of course, force also may prove necessary when confronting suspects who have committed less serious crimes. However, as the courts do, agencies must consider the severity of the crime in evaluating the use of force. In the previous example, if the police simply stated that they responded to a shoplifting incident, those evaluating the officers' actions would not have an accurate picture of what happened.

Observations

When documenting use of force, police seem most likely to omit details in this category. Instead, they must include the numerous observations they made during a call. First, officers should document information about the suspects. This includes the number of subjects and their size. And, the report should contain a description of their clothing. Was it inappropriate for the environment or climate (e.g., a coat in hot weather)? Did they wear baggy garments, possibly indicating the presence of concealed weapons? Was the clothing gang related? Further, a T-shirt advertising a martial arts school or military unit may indicate extraordinary physical abilities. The report also should note other indicators, such as the suspects' demeanor, body language, evidence of intoxication or drug use, and prior encounters with law enforcement. Police need to document the presence of any factors that may indicate possible resistance by suspects.

Next, officers should note observations of their surroundings. These would include descriptions of the area where the contact occurred (e.g., Were there any escape routes? Did the encounter occur in a known high-crime area or in gang territory?). Further, although the time of the encounter will be known, police should note other factors, such as visibility due to darkness or weather. Officers should record any details connected with the environment that could have heightened the threat to them.

Also, police should include observations about themselves. Important information includes the number, size, experience level, abilities, and limitations of personnel present.

Finally, officers must document all relevant details leading up to their application of force. Failure to include this information in the report may result in an incomplete representation of the facts and circumstances that the police faced when making use-of-force decisions. In turn, anyone evaluating their actions will be unable to do so properly. Consequences could include additional investigation of the officers or, worse yet, a finding against employees whose actions were justified but inadequately explained.

Actions

Obviously, this section constitutes the focus of most use-of-force reports. Generally, officers include a wealth of information concerning their physical actions during an encounter. However, police should document both the physical and verbal behavior, closely intertwined and often simultaneous, of both themselves and the suspect.

Information pertaining to officers' verbal interaction with the suspect should include the announced identification of themselves as police and any commands or warnings issued, as well as the person's reaction. Noncompliance illustrates an individual's state of mind. Did the person make statements acknowledging the officers' identity? Police also should note any threats or confrontational statements made by the suspect. Sometimes, hostile individuals will state their intention to resist or assault officers. Police also should note a suspect's lack of a verbal response or refusal to speak during an encounter. This abnormal behavior also could demonstrate the person's lack of cooperation.

Documentation of the physical encounter should feature the type of resistance exhibited by the suspect and the physical control techniques employed by the officers. Important details include actions by the individual prior to those of the police, such as assuming a fighting stance; removing clothing; hyperventilating, as in preparation for a fight; or any other such behavior. How else did the person show aggression throughout the encounter? Police also need to describe their actions plainly. To ensure clarity, if using terminology from an agency's use-of-force model, officers should elaborate on terms, such as defensive tactics (e.g., Did the officers use punches, kicks, or elbow and knee strikes?).

When appropriate, the report also should include the steps in the officers' escalation of force. Although, many times, the initial application of force by police will gain control of a suspect, in other instances it will not. On those occasions, documentation should include the failure to achieve compliance with a lower application of force, as well as the need to escalate to a higher force level. Of course, situations also exist in which officers need to start at a higher level of force; police should respond with the level necessary to deal with the threat, up to and including deadly force, if appropriate.

Finally, officers should describe the de-escalation of force. The report should have some type of explanation that once they achieved control and compliance, the application of force ceased and control was maintained through the use of some type of restraints in compliance with department policies.

While police may find it tedious to thoroughly document the numerous actions between themselves and a suspect during an encounter, they must do so to clearly explain their use of force. As the information concerning police actions ties in with the description of the officers' assessments and observations, anyone evaluating the officers' actions will have a clear picture with which to do so.

Summary

Often, officers do not include enough information pertaining to the conclusion of the encounter. While most police address the need for and administration of first aid, many stop there. In addition to first-aid issues, officers should document details concerning any post-arrest events, which help illustrate the suspect's frame of mind during the encounter.

The report should contain documentation and photographs of any first aid required by the suspect or officers. Too often, minor injuries sustained by police that did not require medical treatment receive inadequate attention. Often, officers simply want to “tough it out” or the injury is considered insignificant.

Another unacceptable reason is that many supervisors are reluctant to complete paperwork associated with only a minor injury to an officer.

Any injuries to police, albeit insignificant, need documentation for several reasons. First, department policy probably requires it. Also, a record helps to strengthen the officers' justification for use of force during an encounter. Further, suspects often will argue in court or in support of a false complaint against police that they never resisted and that the officers used force for no reason. While documenting a minor injury does not guarantee a finding in favor of police use of force, it serves as one more step in painting a clear picture for whoever is evaluating officers' actions.

Police also must provide documentation and photographs of suspects requiring and receiving first aid, as well as individuals who do not complain of or display injuries. In this regard, officers can help prevent a false claim of a police-inflicted injury. In addition, the report should document any waiver of medical attention, and, if emergency personnel responded, police should obtain a copy of the refusal-of-treatment form and include it with the report.

Officers must document and photograph any damage to police equipment. This includes uniforms torn during the encounter or damage to patrol vehicles by the suspect during transport. Both instances would signify the combative nature of the individual during the encounter.

And, indication of intoxication or impairment, such as vomiting or urinating, during transport should be documented. Later, when these suspects appear in court or make a complaint, they will do so while cleaned up, presenting themselves as upstanding citizens. However, documented evidence that shows their state at the time of the encounter will allow the judge or the person reviewing the officers' actions to see suspects as they were at the time of the incident.

When remanding a suspect into custody, officers should document their notification of personnel (recording employees' names) at the holding facility of any injuries to the individual. This way, police can avoid blame for any medical complications suffered by the subject after going into custody. Officers also should record their proper use of

handcuffs, as well as leg and other specialty restraints; documentation of this fact demonstrates the continuance of the suspect's combative behavior.

Finally, police should list all witnesses to the incident, including those who observed the suspect's demeanor before or after the encounter (e.g., jail employees, medical personnel, citizens, and other officers). Their names and a brief synopsis of what information they can provide should be included in the report.

Completing the Report

At first, officers may find it overwhelming to include all of this detailed information in a report. But, with a little practice, it will become second nature. Also, all of the aforementioned details probably will not be present in every encounter, but officers should recognize and include the types of information important to a particular incident.

As always, officers need to ensure the accuracy of their work. And, the report should look professional as it ultimately may be reviewed in court. While police usually will complete their use-of-force documentation shortly after the incident, they should wait for a period of time after initial completion before proofreading and making corrections. Officers more likely will make errors if they finish the report immediately after involvement in a physical confrontation with a subject. In this regard, police should practice patience and allow emotions to settle and thoughts to clear. By slowing down, being thorough, and proofreading, officers should produce a professional, error-free report.

Conclusion

All of the facts and circumstances surrounding an incident prove important in the evaluation of a use-of-force incident. The officers involved must ensure that they document and bring to light every relevant detail.

All agencies strive to prepare their personnel for the challenges they will face, both on the street and off. In this regard, departments must ensure that their officers receive proper training pertaining to this learnable skill. After all, the ability of police to thoroughly and accurately document a use-of-force incident benefits both themselves and the agency they work for.

Endnote

1. *Graham v. Connor*, 490 U.S. 386 (1989).