

Denver Protest Response

Brighton/Commerce City Police Department SWAT





Mutual Aid Agreement

- Commerce City Police Department Policy 327 Outside Agency Assistance
 - This policy provides guidance to members when requesting or responding to a request for mutual aid or when assisting another law enforcement agency.
 - Typically approved by a Commander or above.
 - Commerce City Police Department employees follow Commerce City Police Department policy under Mutual Aid Agreements.





Denver Request for Mutual Aid

- Request for Mutual Aid was made by Denver Police Department at 1641 hours on Saturday, May 30, 2020.
 - Request for protest management assistance after two nights of violent protests in Downtown Denver.
- Two Police Commanders, four Sergeants and the joint Brighton/Commerce City Police Department SWAT Team approved to assist.
- Twenty-three personnel in total.



Briefing Notes

- Denver Police Department Incident Commander provided briefing for all deployed personnel.
 - Agencies required to follow their policies with regards to use of force.
 - Rules of engagement
 - Pepper Ball and OC Spray
 - Pepper Ball, less lethal shotgun, 40/37mm impact munitions, diversion devices
 - Chemical munitions (only under IC authority)



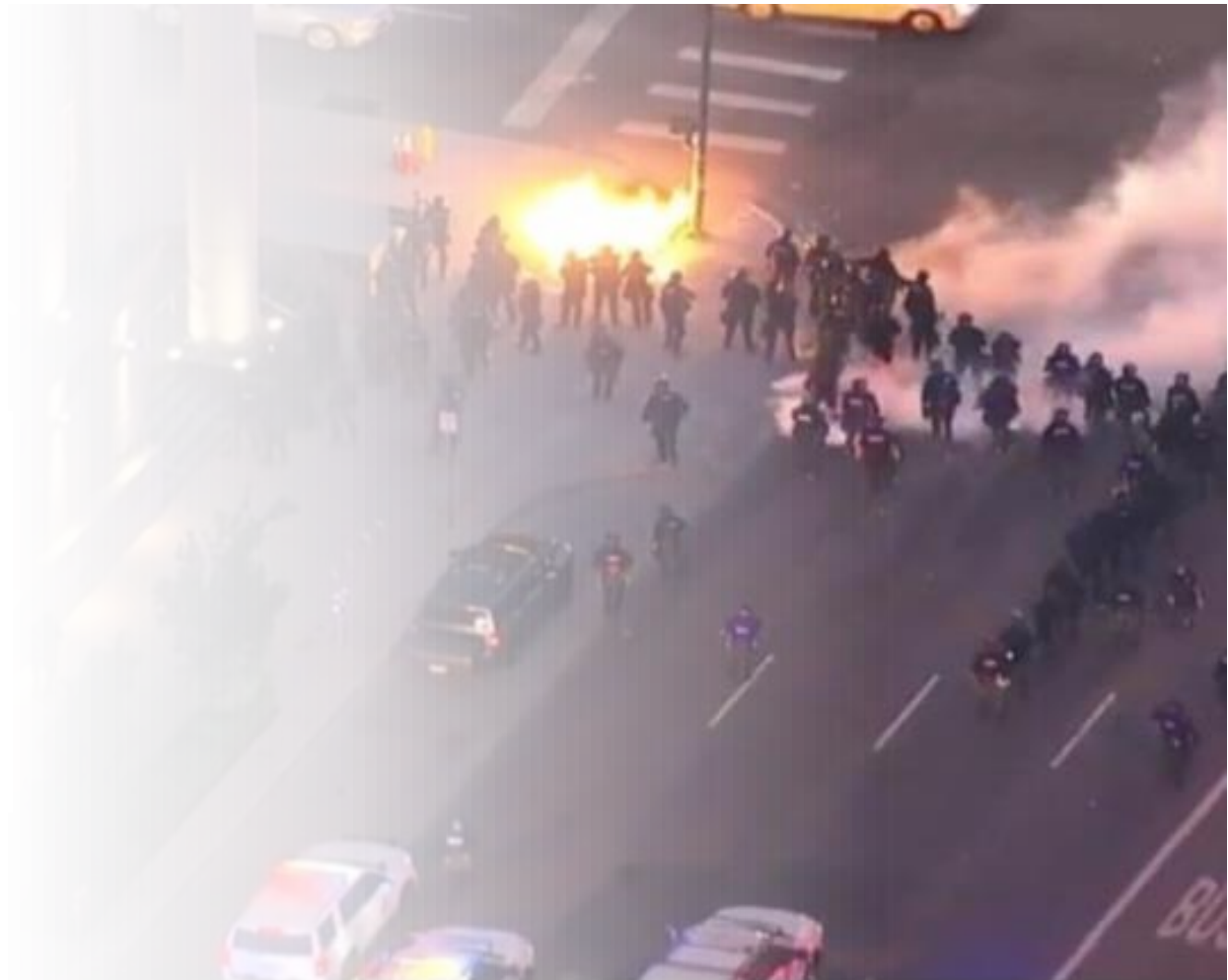


Deployed Munitions

- ☐ Pepper Ball projectiles
- ☐ 12 Gauge less lethal rounds
- ☐ 40mm Direct impact rounds
- ☐ 37MM Direct Impact Rounds
- ☐ Sting ball Grenades
- ☐ CS gas

Injuries Reported

- Two members sustained contusions from thrown bricks
- Four Members were exposed to thrown unknown putrid liquid substance
- One member suffered a severe sprained ankle



Accountability



Use of Force report
completed



BWC Footage is
being reviewed



Staff review will
occur



Final review will be
submitted to me
for adjudication

Impact to
Commerce City
Police
Department

Senate Bill 20-217

June 19, 2020



New Requirements

What we must do:

- Body worn cameras
- Anti-profiling measures
- Business cards
- Data reporting
- Duty to intervene
- Use of force limits

What we must report:

- Reporting requirements
 - Use of force
 - Resignations
 - Contacts
 - Anti-profiling data
 - Unannounced entry
 - Intervention



New Requirement (Body Worn Cameras)

- Body Worn Cameras (effective July 1, 2023)
 - Commerce City implemented BWCs in 2016 and upgraded system in 2019
 - Internal impacts:
 - Operational requirements
 - Mandates discipline in some situations for failure to activate
 - Disclosure mandates and privacy protections
 - Hearings in criminal cases
 - External
 - Inferences in criminal court
 - District Attorney reporting requirements
- CRS 24-31-901 to 902 (Section 2)



New Requirement (Anti-Profiling)

- Requires a legal basis for a “contact” for enforcing the law or investigating a possible law violation
- Requires collection of data:
 - Perceived demographic data
 - Details of contact (location, time, duration, reason, etc.)
 - Result of contact
 - Other actions taken
- CRS 24-31-309(3.5) (Section 16)



New Requirement (Officer Information)

- Business Cards must be provided to all we “contact” but do not issue a citation or arrest
- Must include:
 - officer’s identifying information including name, division, precinct, badge or other ID number
 - a phone number that may be used to report comments (positive and negative) regarding the traffic stop
 - information about how to file a complaint related to the stop
- CRS 24-31-309(4)(a)) (Section 16)



New Requirement (Data Reporting)

- Reporting (CRS 24-31-903)
 - Report “contact” data to State
 - Use of force – death and serious injury cases
 - Resignations in context of personnel investigation
 - Unannounced entry
 - Intervention – internal reporting to supervisors
 - Demographic anti-profiling data to State
- Effective July 1, 2023 (Section 2)



New Requirement (Intervention)

- Current policy imposes a duty to intercede
- Requirement:
 - Every officer is obligated to stop or prevent another from using excessive force during certain events
 - Internal and external investigation and reporting
 - Retaliation protections
- CRS 18-8-802 (Section 6)
- Misdemeanor for failure to intervene to prevent the unlawful use of force (CRS 18-8-802(1.5)(d))



New Use of Force Limit (General)

- Requires nonviolent means before physical force is used
- Limits physical force to when an officer is:
 - Effecting an arrest
 - Preventing an escape
 - Preventing imminent threat of serious bodily injury or death to the officer or another person
- No deadly force where person is suspected of only a minor or nonviolent offense
- Must use a degree of force consistent with minimizing injury to others
- Ensure assistance and medical aid is rendered to the injured
- Notify relatives and next of kin of serious bodily injuries/death
- Reporting requirements (CRS 18-8-802)
- CRS 18-1-707(1-2) (effective September 1, 2020) (Section 5)



New Use of Force Limit (Chokeholds)

- Current policy prohibits chokeholds, carotid restraints, and lateral vascular restraints of any type
- New prohibition on chokeholds, defined broadly:
 - Sufficient pressure to make breathing difficult or impossible
 - Includes pressure to neck, throat windpipe to stop the flow of blood to the brain
 - Includes carotid holds and pressure on carotid arteries
- CRS 18-1-707(2.5) (Section 5)



New Use of Force Limit

(Deadly Force to Make Arrest)

- Limited justification: only when all other means of apprehension are unreasonable given the circumstances and:
 - The arrest is for a felony (involving use/threatened use of deadly physical force)
 - The subject poses an immediate threat to the peace officer or another person
 - The force employed does not create a "substantial risk of injury" to another person
- Announcement: Officer must identify self and give clear verbal warning of intent to use firearms or other deadly force with sufficient time for the warning to be observed
- CRS 18-1-707(3-4) (Section 5)



Commerce
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Deadly Force Exception

- Notwithstanding use of force limits, deadly force may be used based on objectively reasonable belief that:
 - lesser force is inadequate and
 - the officer or another person is an imminent danger of being killed or receiving serious bodily injury
- CRS 18-1-707(4.5) (Section 5)
- Effective September 1, 2020*



New Use of Force Limit (Protests)

- When patrolling protests and demonstrations:
 - Prohibits use of non-lethal weapons including
 - Kinetic projectiles and all other non-lethal or less lethal projectiles that target the head, pelvis, or back, and the indiscriminate discharge of kinetic projectiles into a crowd
 - Prohibits use of chemical agents or irritants
 - Includes pepper spray, pepper balls, OC spray, other
 - May be used to disperse crowd if first:
 - given a dispersal order that is heard and repeated if not complied with
 - and sufficient time and space is provided to comply
- CRS 24-31-905 (Section 2)



P.O.S.T. Certification Revocation

- Mandatory permanent revocation of certification (unless exonerated) (CRS 24-31-904)
 - Pleads guilty or convicted of crime related to:
 - use of force
 - threatened use of force
 - to failure to intervene in use of force
 - Found to be civilly liable for:
 - unlawful use of force
 - failure to intervene in the unlawful use of force
- Discretionary revocation for failure to complete training (CRS 24-31-305)



New Civil Liability

- Civil cause of action for deprivations of any individual rights (Art. II of the Colorado Constitution) & failure to intervene (similar to 42 U.S.C. 1983, except for immunity waiver)
 - No governmental immunity (including notice requirements and limits on damages)
 - Qualified immunity is not a defense
 - Liability for City and officer, but requires the City to indemnify officers (with very limited exceptions) for settlements and judgments
 - Allows fee-shifting (equivalent to 42 U.S.C. 1988) (if the City loses, we pay the other sides attorney's fees and litigation costs)
 - Lawsuits must be filed in 2 years
- CRS 13-21-131 (Section 3)



Duty to indemnify for officer liability:

- Exception 1:
 - if the city determines the officer did not act upon a good faith and reasonable belief that their actions were lawful, then the officer must personally pay 5% or \$25,000 of the damages, whichever is smaller
- Exception 2:
 - if the officer was convicted of a criminal violation for the conduct from which the claim arises



Other Remedial Actions

- Authority for Attorney General to institute action to enjoin a pattern or practice of conduct (CRS 24-31-113)
- P.O.S.T. rules enforcement (CRS 24-31-307 (1-2))
- Attorney General criminal actions for willful and wanton failure to comply (CRS 24-31-307(3))
- Misdemeanor for failure to intervene to prevent the unlawful use of force (CRS 18-8-802(1.5)(d))



Anticipated Operational Impacts

- Uncertainties:
 - Liability/insurance
 - Personnel retention
 - Law enforcement roles
 - Compliance with contact reporting
- Policy revisions and training requirements
- Personnel and other costs to increase
 - Record keeping and compliance reporting
 - Records disclosure (including video)
 - Internal review
 - Training (required by Sept. 1 for use of force and duty to intervene)
 - Recruitment and retention

