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To: [LESC](#)
Subject: Please reject suggested changes to Unjustified or Excessive Use of Physical or Deadly Force
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Dear LESC Commission Members,

I would like to follow up on my verbal comment at your meeting today with this written one. It is regarding the proposal that there be a different disciplinary standard for unjustified or excessive use of physical force that results in an injury versus one that does not result in an injury. Let me step through the logic of an example.

The conduct is reviewed and found to be **within policy** (not unjustified or excessive) and the subject is **not injured**— no discipline for the officer because the review board finds no misconduct.

The conduct is reviewed and found to be **within policy** (not unjustified or excessive) and the subject is **injured**— no discipline for the officer because the review board finds no misconduct.

The conduct is reviewed and found to be **out of policy** (force used was unjustified or excessive) and the subject is **not injured**— Suspension for the officer

The conduct is reviewed and found to be **out of policy** (force used was unjustified or excessive) and the subject is **injured**— Termination for the officer

Do you really want a department to retain an officer who has willfully used unjustified or excessive force on a community member just because the community member was lucky enough not to sustain enough injury to meet some artificial criteria? Why would the injury level sustained by the victim have anything to do with the level of consequences for the perpetrator, whom a review board has presumably already determined acted improperly? One broken tooth is suspension, but two broken teeth are termination? The point is that the officer used physical force when they shouldn't have (again, this is determined by an internal review process, assuming there is one) so it is already established that the officer committed a serious violation of department policy and the discipline level should depend on the behavior, not on the injury of the victim.

In addition, there is legal precedent that states that excessive force is not determined by the level of injury. Not being a lawyer I can't explain this further than quoting from a [recent opinion](#) (page 14) by District Court Judge Mustafa Kasubhai in an excessive force lawsuit against the Eugene Police Department (case #6:22-cv-01144-MTK), but I think the sentiment expressed is worth your consideration.

Here, when describing the amount of force used, Defendants place too much of an emphasis on the fact that [the subject] did not suffer a severe injury and that the taser was ineffective.

"[F]orce can be unreasonable even without physical blows or injuries." Bryan, 630 F.3d at

824.

“Consideration of both the actual harm and the risk of harm is important as the Fourth Amendment is concerned with reasonableness.” Williamson, 23 F.4th at 1152. Just as [t]here can

be situations in which the risk of harm presented is objectively less significant than the actual harm that results[,]” so too there can be situations in which the risk of harm presented is objectively more significant than the actual harm that results. Id. at 1153. In either circumstance,

the type and amount of force used may be unreasonable if the officer “failed to appreciate the risks presented and act accordingly.” Id.

Please reconsider this unnecessary modification to the existing rules regarding excessive use of force. Consequences should depend on the officer’s actions, not on the victim’s injuries.

Thank you,
Barbara Kenny