

Police Officer Use of Force

City of New Brighton Public Safety Commission

Monday, August 10, 2020

Public Safety Director Tony Paetznick

Roadmap for review

- Philosophy
- Policy
- Practice
- Performance
- Progress

NBDPS Mission Statement

The New Brighton Department of Public Safety, in partnership with the community, is dedicated to protect, serve, and educate. We value and promote a respect for human dignity by ensuring a common goal of a safe community.

Public Safety Commission role in Use of Force

- January 2016: police use of force overview
- 2017: Police Body Worn Camera (BWC) program, including impact on use of force
- February 2018: less than lethal use of force policy
- February 2019: police officer use of force

- Monthly report on incidents

Policy Guidance/Development

- Minnesota State Statute
- Minnesota Board of Peace Officer Standards and Training (POST)
- Task Force Report on 21st Century Policing
- Police Involved Deadly Force Encounters Working Group
- Case Law / Supreme Court Decisions
 - Tennessee v. Garner (1985): a police officer can justifiably use deadly force if the officer believes that a suspect poses “a significant threat of death or serious physical injury to the officer or others”
 - Graham v. Connor (1989): “all claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other seizure of a free citizen should be analyzed under the Fourth Amendment and its objective reasonableness standard...” (danger, severity of crime, risk of flight)

Special Session Legislation: Minnesota Police Accountability Act

- Sections 7 and 8: Banning Chokeholds and Other Certain Restraints
 - Prohibits a peace officer from using certain neck restraints, unless section 609.066 authorizes the use of deadly force to protect the peace officer or another from death or great bodily harm.
- Section 9: Use of Force Reporting
 - This section requires a chief law enforcement officer of an agency to submit a monthly report to the BCA with information related to each use of force incident that resulted in serious bodily harm or death.
- Sections 15 – 17: POST Board Model Policies
 - Requires the POST Board to adopt a comprehensive use of force model policy that will be distributed and implemented to every law enforcement agency across the state. The model policy must include (1) a duty for an officer to intervene, (2) a duty for an officer to report illegal use of force, and (3) a duty to only use deadly force when authorized by statute, and even then, less lethal measures should be considered first by the officer. Law enforcement agencies have until December 15, 2020 to update their policies to align with the policies mandated in this section.

609.06 Authorized Use of Force

Reasonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor reasonably believes them to exist:

- (1) when used by a public officer or one assisting a public officer under the public officer's direction:
 - (a) in effecting a lawful arrest; or
 - (b) in the execution of legal process; or
 - (c) in enforcing an order of the court; or
 - (d) in executing any other duty imposed upon the public officer by law

609.066 Authorized Use of Deadly Force by Peace Officers

The use of deadly force by a peace officer in the line of duty is justified only when necessary:

- (1) to protect the peace officer or another from apparent death or great bodily harm;
- (2) to effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force; or
- (3) to effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the person's apprehension is delayed.


Other relevant statutes

- 629.32 Minimum restraint allowed for arrest
 - A peace officer making an arrest may not subject the person arrested to any more restraint than is necessary for the arrest and detention.
- 629.33 When force may be used to make an arrest
 - If a peace officer has informed a defendant that the officer intends to arrest the defendant, and if the defendant then flees or forcibly resists arrest, the officer may use all necessary and lawful means to make the arrest but may not use deadly force unless authorized to do so under section 609.066.

Industry standards and publications

CRITICAL ISSUES IN POLICING SERIES

Guiding Principles On Use of Force



SANCTITY OF LIFE • PROPORTIONALITY • DUTY TO INTERVENE • DE-ESCALATION
• OFFICER SAFETY • DISTANCE + COVER = TIME • CRISIS INTERVENTION •
CRITICAL DECISION-MAKING MODEL • CONTAIN AND NEGOTIATE • TIME
IS ON OUR SIDE • TACTICAL COMMUNICATIONS • CHALLENGING CON-
VENTIONAL THINKING • TACTICS • SCENARIO-BASED TRAINING • LESS-LETHAL
OPTIONS • ETHICS • AGENCY VALUES • RENDER FIRST AID • OFFICER
WELLNESS • TRAINING AS TEAMS • PERSONAL PROTECTION SHIELDS •
SUPERVISORY RESPONSE • SLOWING THE SITUATION DOWN • TACTICAL
REPOSITIONING • COMMUNITY-POLICE TRUST • POLICE CULTURE • SAFE
ZONE • CALL-TAKERS AND DISPATCHERS • TRANSPARENCY • ACCOUNTABILITY



NATIONAL
CONSENSUS
POLICY AND
DISCUSSION
PAPER ON USE OF
FORCE

October 2017



Task Force Report on 21st Century Policing

“Paramount among the policies of law enforcement organizations are those controlling use of force. Not only should there be policies for deadly and nondeadly uses of force but a clearly stated ‘sanctity of life’ philosophy must also be in the forefront of every officer’s mind. This way of thinking should be accompanied by rigorous practical ongoing training in an atmosphere of nonjudgmental and safe sharing of views with fellow officers about how they behaved in use of force situations.”

Task Force Report on 21st Century Policing

- 2.2 Recommendation: Law enforcement agencies should have comprehensive policies on the use of force that include training, investigations, prosecutions, data collection, and information sharing. These policies must be clear, concise, and openly available for public inspection.
- 2.2.1 Action Item: Law enforcement agency policies for training on use of force should emphasize de-escalation and alternatives to arrest or summons in situations where appropriate.
- 2.2.2 Action Item: These policies should also mandate external and independent criminal investigations in cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths.

Police-Involved Deadly Force Encounters Working Group

POLICY AND LEGAL IMPLICATIONS

RECOMMENDATION 4.2: All police agencies should adopt use-of-force policies that, at a minimum

- Make sanctity of life a core organizational value.
- Require officers to de-escalate when such effort does not compromise officer safety.
- Require force used by officers to be reasonable, necessary, and proportionate.
- Hold officers accountable to use sound tactics, such as time, distance, and cover, to reduce the need to use force.
- Require officers to intervene, when appropriate and safe, when witnessing unreasonable use of force.
- Require officers to report all incidents of unreasonable use of force to a supervisor.

Police-Involved Deadly Force Encounters Working Group

RECOMMENDATION 4.8: Law enforcement agencies should adopt data practices that promote transparency, openness, and accountability. This includes collecting, analyzing, translating, and publishing data to create clear and accurate knowledge about the nature of police-community interactions, use of force, and police-involved deadly force encounters.

PREVENTION AND TRAINING

RECOMMENDATION 2.3: Ensure that all law enforcement agencies are trained in de-escalation tactics and skills (time, cover, distance) in order to reduce use-of-force, especially when responding to persons in crisis.

Lexipol policy services

- Provides comprehensive, state-specific policies developed by a team of public safety attorneys and law enforcement experts
- Carefully research and continuously update all policies to comply with the most current federal and state legal standards and best practices
- Helps agencies develop and comply with constitutional policing practices, supporting protection of civil rights and community safety
- Unique aspect of Lexipol's policy solution is Daily Training Bulletins (DTBs) that present scenarios to help officers understand and apply policies, including a test question

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. These factors include, but are not limited to:

- Immediacy and severity of the threat to officers or others.
- The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- The effects of drugs or alcohol.
- Subject's mental state or capacity.
- Proximity of weapons or dangerous improvised devices.
- The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- The availability of other options and their possible effectiveness.
- Seriousness of the suspected offense or reason for contact with the individual.
- Training and experience of the officer.
- Potential for injury to officers, suspects and others.
- Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- The risk and reasonably foreseeable consequences of escape.
- The apparent need for immediate control of the subject or a prompt resolution of the situation.
- Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- Prior contacts with the subject or awareness of any propensity for violence.
- Any other exigent circumstances.

Use of Force Project / 8 Can't Wait

1. Ban chokeholds and strangleholds: Pursuant to the United States Supreme Court Decision *Graham v. Connor*, they are only permitted when deadly force is authorized based on factors in Policy 300.3.2
2. Require de-escalation: Officers are required to attempt to de-escalate. Policy Reference 429.6
3. Require warning before shooting: Pursuant to United States Supreme Court Decision *Scott v. Harris*, officers must give a warning when feasible. Policy References 302.8.2, 302.3, 304
4. Exhaust all other means before shooting: U.S. *Graham v. Connor* governs utilizing other force before discharging a firearm. Policy Reference 300.3.2
5. Duty to intervene: Yes, all officers are required to intervene if they witness excessive use of force. Policy Reference 300.2.1
6. Ban shooting at moving vehicles: Officers may only discharge firearms at a moving vehicle when the vehicle is being utilized as a deadly weapon. Policy Reference 306.8.2
7. Require use of force continuum: Yes. A use of force continuum is utilized. Policy Reference 300.3
8. Require comprehensive reporting: Yes all uses of force are documented and reported. Policy Reference 300.5

Training

- L.O.C.K.U.P.® (Law Officers Combat Kinetics Unarmed Protection)
 - Teaches reliable and retainable empty hand maneuvers that can be effectively deployed by trained personnel during violent physical altercations. It adapts specific arrest and control maneuvers to fit an officer's physical and physiological change during these altercations, thus maximizing effectiveness of the controlling movements.
- Integrating Communications, Assessment, and Tactics (ICAT)
 - Use-of-force Training Guide designed to fill a critical gap in training police officers in how to respond to volatile situations in which subjects are behaving erratically and often dangerously but do not possess a firearm.
- Crisis Intervention Team (CIT)
 - Promotes the use of verbal de-escalation skills before using force when confronting a mental health crisis. CIT training has been proven to dramatically decrease the risk of injuries or death to both officers and those suffering from mental illness, while also reducing the number of repeat calls.

Control devices

- Baton (ASP)
- Aerosol subject restraint (ASR)
- Less lethal impact munitions (LLIMS)
- Conducted energy device (TASER)

- Firearms (handgun, carbine, and rifle)

Monitoring progress

- Mandatory written report
- Body worn camera evidence/review
- Supervisory oversight
- Weekly internal audit
- Annual analysis

Internal Reporting

- Weapon(s) used
- Number of officers present
- Time of day (shift)
- Day of week
- Gender of subject
- Arrest outcome
- Injuries/fatalities to officer/subject
- Age of subject
- Grid of incident

Historical data

Use of Force Type	2019	2019 Rate	2018	2018 Rate	2017	2017 Rate
No Force Used	16,800	99.52%	15,738	99.60%	16,207	99.68%
Hands	18	0.11%	21	0.13%	14	0.09%
Taser Displayed	16	0.09%	11	0.07%	6	0.04%
Taser Deployed	1	0.01%	3	0.02%	6	0.04%
Irritant Spray Utilized	0	0.00%	0	0.00%	0	0.00%
Baton Utilized	0	0.00%	0	0.00%	0	0.00%
Handgun/Rifle Displayed	40	0.24%	27	0.17%	26	0.16%
Handgun/Rifle Discharged	0	0.00%	0	0.00%	0	0.00%
Canine Bite	0	0.00%	1	0.01%	0	0.00%
Knee Strike	0	0.00%	0	0.00%	0	0.00%
Other	6	0.04%	0	0.00%	0	0.00%

Performance

- Community transparency: Facebook posts, Weekly Memo, etc.
- Special commendation award: consideration for this award may include a display of exceptional courage, intelligence, alertness, or skill in the performance of highly credible and unusual police activity, especially involving grave personal danger, that results in the prevention or solution of a crime, *the safe arrest of an armed or dangerous suspect avoiding direct combat with deadly weapons, or the prevention of death or injury to another.*

Suggested next steps for consideration

- Engage agency subject matter experts (SMEs) (i.e., use of force and firearms instructors, supervisory/administrative personnel, etc.) for additional presentations
- Consult revised MN POST Board and Lexipol model use of force policy, when made available
- Additional questions and comments?