



DIVISION OF POLICE

DATE: April 30, 2020

TO: Chief of Police Calvin D. Williams

FROM: Inspector General Christopher Paul Viland, Esq., CIG®, #3700

SUBJECT: Review and Analysis of Current Division Use of Force Policy for Compliance with Standards Set by the Ohio Collaborative Community-Police Advisory Board

Sir,

This memorandum has been prepared to serve informationally as guidance when determining whether current City of Cleveland, Division of Police (the Division) policy regarding the use of force meets a standard that has been set and published by the Ohio Collaborative Community-Police Advisory Board (the Collaborative).

In 2015, the Collaborative established a standard regarding the use of force and use of deadly forceⁱ which has been published and is deemed a mandatory consideration for compliance with Collaborative review and assessment, should an Ohio law enforcement agency voluntarily enter into that process. The Division is currently not participating in that process.

In July of 2019, in concert with the United States Department of Justice (the DOJ) as part of a Settlement Agreementⁱⁱ, the Division promulgated an updated suite of policies dedicated to the practices and procedures for use of force by Division membersⁱⁱⁱ. Those policies have been filed with the Federal court^{iv}.

As a preliminary matter, it must be noted that compliance with Collaborative standards is not mandatory at this time. Additionally, current policy has been developed with stakeholder input and in cooperation with the DOJ as filed with the court, seeming to obviate any need to meet any other or unessential standards. Nonetheless, this review is being presented as part of a series of informational memoranda detailing compliance with various Ohio Collaborative standards.

In the alternative, this information may be utilized as needed by the Division in any instance where an explanation may be necessary in demonstrating where and why the Division's policy is or is not fully compliant with standards outside the scope of the considerations of the Division, its stakeholders, and the DOJ.

To restate, however, this memorandum is a review specifically of how current Division policy complies with standards promulgated by the Collaborative. It is **not** a review of best practices or recommendations for improvements to policy or procedure otherwise.

Ohio Collaborative Standard 8.2015.1, regarding the use of force and use of deadly force requires that a local law enforcement agency include in policy written statements that support the guiding principles espoused in the standard. Additionally, the standard requires that written policy state specifically when a written report regarding the use of force shall be conducted, how investigations and reporting for use of force incidents are handled for policy compliance, and that sworn agency personnel are provided annual review with written testing on policy^v. Compliance determinations broken down section by section follow below:

STANDARD 8.2015.1, Guiding Principle, Use of Force

“Employees may only use the force which is reasonably necessary to effect lawful objectives, including: effecting a lawful arrest or overcoming resistance to a lawful arrest, preventing the escape of an offender, or protecting or defending others or themselves from physical harm.”^{vi}

Key points as distilled from this principle are that, force used must be:

1. Reasonably necessary
2. To effect lawful objectives including
 - a. Effect lawful arrest or overcome resistance to lawful arrest
 - b. Prevent escape
 - c. Protect and defend others or themselves from physical harm

Point 1

Division policy is “to use only that force which is necessary, proportional to the level of resistance, and objectively reasonable based on the totality of circumstances confronting an officer.”^{vii} Additionally, “Any use of force that is not necessary, proportional, and objectively reasonable and does not reflect reasonable de-escalation efforts, when safe and feasible to do so, is prohibited and inconsistent with Divisional policy.”^{viii}

Division policy is clear that any force used must be necessary and objectively reasonable, as quoted above, as well as contains a clear statement that force that is not necessary and objectively reasonable is expressly prohibited.

Point 2

Division policy states that “**OFFICERS SHALL USE ONLY THE AMOUNT OF FORCE NECESSARY TO ACHIEVE A LAWFUL OBJECTIVE.**”^{ix}[Emphasis and capitalization in original] It further goes on to list specific lawful objectives, as follows: “To effect a lawful arrest or detention of a subject; To gain control of a combative subject; to prevent

or terminate the commission of a crime; To intervene in a suicide or self-inflicted injury; and To defend or protect an officer or an individual from the violent or resistant physical acts of another.^{xv}”

The Division’s policy is clear that force may be used only to achieve a lawful objective, providing a list that is inclusive of the Collaborative standards. Effecting a lawful arrest and preventing harm to self or others are directly equivalent to the standard. The standard’s prevention of escape provision can reasonably be perceived to be semantically included in Division policy’s “gain control of a combative subject”.

As first principles in the Division’s use of force policy are substantially equivalent to the Ohio Collaborative guiding principle on use of force, it appears that the Division is fully compliant with this portion of the Collaborative standard.

STANDARD 8.2015.1, Guiding Principle, Use of Deadly Force

“The preservation of human life is of the highest value in the State of Ohio. Therefore, employees must have an objectively reasonable belief deadly force is necessary to protect life before the use of deadly force. Deadly force may be used only under the following circumstances: 1. to defend themselves from serious physical injury or death; 2. to defend another person from serious physical injury or death; or 3. In accordance with U.S. and Ohio Supreme Court decisions, specifically, *Tennessee v. Garner* and *Graham v. Connor*.^{xib}”

Division policy mirrors the standard in declaring that duties will be carried out “with reverence for the sanctity of human life^{xii} and that the Division has a “commitment to recognizing the sanctity of human life^{xiii}”.

Current policy requires that officers “only use the degree of force necessary under the circumstances^{xiv} with regard to use of deadly force. And, pursuant to policy, members may only use deadly force when a subject “poses an immediate threat of death or serious physical harm to an officer or another.^{xv}” Analogous to the belief that deadly force is necessary to protect life as written in the standard.

Deadly force is only authorized in policy to defend an officer or another from an imminent threat of death or serious physical harm^{xvi}.

Current policy specifically cites to Supreme Court cases *Tennessee v. Garner*^{xvii} and *Graham v. Connor*^{xviii}.

Reading of current Division use of force policy regarding use of deadly force and incorporating policy first principles and procedures, including citation to precedential case law, it appears that the Division is fully compliant with this portion of the Collaborative standard.

STANDARD 8.2015.1, Requirement Regarding Reporting

The Collaborative standard requires a policy statement regarding when a written report of a use of force must be completed.

Division policy provides a separate six-page General Police Order dedicated to establishing guidelines for the reporting of all use of force responses and for documenting objective reasonableness, necessity, and proportionality of a use of force response^{xxix}. This policy deals not only with the involved officer's required reporting, but the required reporting of any and all other officers present during the incident^{xx}.

The Division's extensive and specific policies and procedures dealing with the reporting of use of force incidents result in the Division being fully compliant with this aspect of the Collaborative standard.

STANDARD 8.2015.1, Requirement Regarding Reviews of Investigations / Reports

The Collaborative standard requires that policy provide for reviews of use of force investigations and reports for policy compliance.

Division policy provides a separate six-page General Police Order establishing a Force Review Board and detailing how the Board will review investigations and reports of uses of force; to continually analyze tactics, training, policies, processes, and procedures to continually improve^{xxi}. This order details not only the objective composition and training of the Board, but also how and what use of force cases are subject to review. The Board has a responsibility to make formal findings and reports^{xxii}.

The Division's detailed processes for review of use of force investigations and reports as codified in current policy indicate that Division policy is fully compliant with this aspect of the Collaborative standard.

STANDARD 8.2015.1, Requirement of Policy Review and Testing

Finally, the Collaborative standard requires that use of force policy mandates annual use of force policy review, acknowledgement and testing for all sworn members.

Division policy is clear in stating that "Officers shall be trained and tested at least yearly on the laws and Division policies regarding the use of force."^{xxiii} Policy additionally requires annual training for officers on aspects of de-escalation prior to the use of force^{xxiv}. Annual training is also mandatory prior to issue or use of any intermediate weapons authorized by the Division^{xxv}.

Current use of force training is facilitated through the Division's electronic Learning Management System which provides for officers to formally acknowledge and be tested on use of force policy. Those records are maintained by the Training Unit for each individual member.

Division policy is clear and consistent that annual training for sworn police officers is mandated and that the training includes an aspect of testing on policy matters including electronic acknowledgement of that policy such that the Division is fully compliant with this aspect of the Collaborative standard.

SUMMARY

The currently effective group of Cleveland Division of Police General Police Orders which provide for principles, policies, and specific procedures regarding the use of force and the use of deadly force are comprehensively compliant with standard 8.2015.1, Use of Force, as published by the Ohio Collaborative Community-Police Advisory Board.

The Office of the Inspector General has no further comment or recommendations regarding this review.

[The Cleveland Police Monitoring Team has provided an independent review of Division use of force policy compliance with the Settlement Agreement referenced above by motion in Federal district court.]

Respectfully submitted,



Christopher Paul Viland, Esq., CIG®
Inspector General, #3700
Cleveland Division of Police
Work Product Number 20007-R

cc: *via email only:* Deputy Chief J. O'Neill
Hon. Gregory White

ⁱ Ohio Collaborative Community-Police Advisory Board, Standard 8.2015.1 Use of Force / Use of Deadly Force, <https://www.ocjs.ohio.gov/ohiocollaborative/law-enforcement.html>, as downloaded 4-15-20.

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- ⁱⁱ *United States of America v. City of Cleveland*, United States District Court, Northern District of Ohio, Eastern Division, 1:15 CV 01046, Settlement Agreement, June 12, 2015.
- ⁱⁱⁱ City of Cleveland, Division of Police, General Police Order 2.01.01 Use of Force Definitions; General Police Order 2.01.02 Use of Force De-escalation; General Police Order 2.01.03 Use of Force General; General Police Order 2.01.04 Intermediate Weapons; General Police Order 2.01.05 Use of Force Reporting; General Police Order 2.01.08 Force Review Board, July 1, 2019.
- ^{iv} *See, e.g.*, U.S. v. Cleveland, 1:15 CV 01046, Motion to Approve Revised Use of Force Policies, April 19, 2019.
- ^v Ohio Collaborative, *supra*, note i.
- ^{vi} *Id.*
- ^{vii} City of Cleveland, General Police Order 2.01.03 Use of Force General, *supra* note iii.
- ^{viii} *Id.*
- ^{ix} *Id.* at Section Principles II(A).
- ^x *Id.* at Section Principles II(C).
- ^{xi} Ohio Collaborative, *supra*, note i.
- ^{xii} City of Cleveland, GPO 2.01.03, *supra* note iii.
- ^{xiii} *Id.* at Section Procedures II(A).
- ^{xiv} *Id.*
- ^{xv} *Id.* at Section Procedures II(B).
- ^{xvi} *Id.*
- ^{xvii} *Id.* at Section Procedures II.
- ^{xviii} *Id.* at Section Principles IV(B).
- ^{xix} City of Cleveland, General Police Order 2.01.05 Use of Force Reporting, *supra* note iii.
- ^{xx} *Id.* at Section IV.
- ^{xxi} City of Cleveland, General Police Order 2.01.08 Force Review Board, *supra* note iii.
- ^{xxii} *Id.* at Sections V and VI.
- ^{xxiii} City of Cleveland, GPO 2.01.03, *supra* note iii, at Section Procedures VI.
- ^{xxiv} City of Cleveland, GPO 2.01.02, *supra* note iii, at Section II.
- ^{xxv} City of Cleveland, GPO 2.01.04, *supra* note iii, at Section I(A)(2).