

## **PROPOSAL**

*Adopt a PPB directive for use of force that incorporates a disengagement/de-escalation policy and training as an organizing principle for use of force. [The WG acknowledges that PPB “use of deadly force” directives are no longer separate from other use of force polices: several directives may pertain to use of deadly force].*

## **BACKGROUND**

The Use of Deadly Force Work Group (WG) was formed in 2012 to investigate concerns about PPB use of deadly force and resulting injuries and deaths. This inquiry was triggered, at least in part, by the belief expressed to CRC by some in our community that some of these injuries and deaths were unjustified and/or avoidable.

WG members have, during the WG’s term, talked with and absorbed information during work group meetings from many groups from within the PPB:

1. PPB training division,
2. Behavioral Health Unit,
3. SERT (special emergency reaction team)
4. Robert Day, Precinct Commander (crowd control)
5. Daryl Turner, PPA

WG members have also met with many community individuals and organizations:

6. Albina Ministerial Alliance,
7. “Don’t Shoot Portland”
8. Portland Cop Watch,
9. League of Women Voters,
10. mental health professionals (Project Respond),
11. Portland City Attorneys,
12. Office of Internal Review (OIR),
13. OHSU Public Safety

The WG has also studied and commented on the USDOJ / City agreement and its effect on use of force in Portland..

## **FACT FINDING MEETINGS**

**The Work Group’s meetings have studied many aspect of ‘use of force’ in policing:**

1. PPB training division : Learn about action / reaction; use of surprise; dealing with the mentally ill, drug and alcohol influence, communication barriers; use of tactics such as command presence, control holds, less than lethal force and intimidation to discourage resistance.
2. Behavioral Health Unit (BHU ) and Project Respond: discuss training and handling of those perceived to have mental illness. Hours and availability of BHU and Project Respond.

3. SERT (Special Emergency Reaction Team): discuss SERT use of force including advantage of time and distance available to SERT due to circumstances sometimes unique SERT deployments.
4. Precinct commander Bob Day: About use of force mostly in crowd control. circumstances (**again advantages of time, distance and planning**)
5. AMA (Albina Ministerial Alliance): Disproportionate use of force against minorities.
6. “Don’t Shoot Portland”: Disproportionate use of force against minorities and force use against demonstrators.
7. Portland Cop Watch
8. League of Women Voters
9. Mental health Professionals (Project Respond) uses and limitations of Project Respond to deal with mental health crisis.
10. Portland City Attorneys: Office perspective on directives and US Constitutional law applicable to Use of Deadly Force
11. PPA: Union representation perspective on use of force and protections of collective bargaining agreement.
12. Office of Internal Review (OIR). Discussion about OIR findings on PPB use of force.
13. OHSU Public Safety : OHSU unique perspective of de-escalation of use of force to deal with resistance to arrest.
14. Labor Lawyer Barb Bloom (represents Gov: Discussed arbitration and effect of ambiguous work rules; directives.)

Among the WG conclusions are the following:

\*Use, or threat of use, of even moderate force against people with diminished capacity due to mental health crisis, fear of police, drugs, alcohol, language barriers or hearing deficit can trigger fright, resistance and aggression on part of person being confronted: Fight or Flight reaction.

\*Use of Force against people of diminished capacity can lead to a quick spiral into added force to combat added resistance, quickly endangering both officer and citizen.

\* Laws give inadequate guidance on when and how force should be used. The *Graham v. Connor* legal case, a US Supreme Court decision that states what is the United States Constitution’s **minimum standard for lawful police use of force**, does not represent the standard for use of force by PPB officers; does not reflect current best practices for use of deadly force; and, does not give guidance to officers on use of force.

\* Use of Force should be a last resort, especially against persons unlikely to comply with police directions due to drugs, alcohol, mental health crisis, language barrier, or hearing deficit.

PPB now has policies that attempt to direct officers to avoid precipitating situations which may likely result in the need to use deadly force: [Dir 1010 (3.1.4)]. Currently PPB’s use of force directives call for officers to use **“less force than the maximum allowed by (law)”** and for

**“minimizing or avoiding force when possible”**. [Dir. 1010 Policy 8; 315.30 (3.1) and (3.4)]. PPB directives also state officers must be aware that PPB directives **require use of force that is less than that allowed by state statute**: [Dir 1010 (3.1.4)]: “Members are to be aware that this Directive is more restrictive than state statutes.” Current PPB training teaches officers to de-escalate and disengage under certain circumstances, primarily in situations involving identified as in mental health crisis. **HOWEVER, THE CURRENT PPB DIRECTIVES HAVE NO CLEAR, ORGANIZING PRINCIPLE FOR OFFICER CONDUCT THAT LEADS TO DIMINISHED RELIANCE ON USE OF FORCE AGAINST PEOPLE WITH IMPAIRED CAPACITY OF ANY KIND.**

Accepted police training teaches that in situations involving people with diminished capacity, mental health crisis, fear, communication barriers and for people other forms of “crisis”, officers should create “time and distance” between themselves and the person, in order to attempt to defuse the situation, to obtain needed resources, to gain voluntary compliance and to avoid endangering both the officer and the subject. A general Use of Force directive that requires officers to apply *DE-ESCALATION* tactics where such tactics are reasonable and practical, would clearly codify and highlight the goals of existing PPB directives’ and training. An example of such a directive is that adopted by the City of Seattle:

**8.100****Use of Force – DE-ESCALATION****1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force**

De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, which that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance. (See 8.050.)

When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.

When time and circumstances reasonably permit, officers shall consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:

- Medical conditions
- Mental impairment
- Developmental disability
- Physical limitation
- Language barrier
- Drug interaction
- Behavioral crisis

An officer's awareness of these possibilities, when time and circumstances reasonably permit, shall then be balanced against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.

Mitigating the immediacy of threat gives officers time to utilize extra resources, and increases time available to call more officers or specialty units.

The number of officers on scene may increase the available force options and may increase the ability to reduce the overall force used.

Other examples include:

- Placing barriers between an uncooperative subject and an officer
- Containing a threat
- Moving from a position that exposes officers to potential threats to a safer position
- Decreasing the exposure to potential threat by using
  - Distance
  - Cover
  - Concealment
- Communication from a safe position intended to gain the subject's compliance, using:
  - Verbal persuasion
  - Advisements
  - Warnings
- Avoidance of physical confrontation, unless immediately necessary (for example, to protect someone, or stop dangerous behavior)
- Using verbal techniques, such as Listen and Explain with Equity and Dignity (LEED) Training, to calm an agitated subject and promote rational decision making
- Calling extra resources to assist or officers to assist:
  - More officers
  - CIT officers
  - Officers equipped with less-lethal tools
- Any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject

## AMONG THE WG CONCLUSIONS ARE THE FOLLOWING:

\*Use, or threat of use, of even moderate force against people with diminished capacity due to mental illness, fear of police, drugs, alcohol, language barriers or hearing deficit can trigger fright, resistance and aggression by person being confronted by police: Fight or Flight reaction.

\*Use of Force against people with diminished capacity can lead to a quick upward spiral of added force to combat added resistance, quickly endangering both officer and citizen.

\* Current PPB directives give inadequate guidance on when and how force should be used. The ***Graham v. Connor*** U.S. Supreme Court decision, which states the current United States Constitutional **minimum standard for lawful police use of force**. The standard is, to paraphrase: “‘Graham’ held that deciding ***whether the force used by police in a given instance was "reasonable" under the Fourth Amendment*** requires a careful balancing of the nature and quality of the intrusion on the person’s Fourth Amendment interests against the countervailing governmental interests at stake. The Fourth Amendment protects an individual’s personal privacy and dignity against unwarranted intrusion by the government. In order to evaluate claims of excessive force, several criteria are to be applied: Noting there is no precise or mechanical application possible for this test of reasonableness, the Court requires careful attention to the facts and circumstance of each case, considering ***severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.***

\*Graham does **not** consider whether or not a person to be arrested is in CRSIS: whether the person has the mental, intellectual or physical capacity to follow lawful police directions. Police are not asked to consider ***why*** a person is acting “weird”, threatening, violent, resistant. Graham was a perfect example: he was acting ‘weird’ due to a diabetic attack.

\*The Graham decision does not (1) provide adequate direction to PPB officers and (2) does not reflect current best practices for use of force. Several courts have held that police have a different responsibility to people with diminished capacity: to also protect them from themselves.

\* Use of Force is properly a last resort, against persons unlikely to comply with police directions due to drugs, alcohol, mental and physical illness, emotional crisis, language barriers, or hearing deficit.

\*Arresting officers should slow down their decision making process in order to consider all facts and circumstances before using force. A high percentage of arrestees, especially in sometimes predictable circumstances, are suffering from some form of diminished capacity. Use of Force in such circumstances is degrading and often dangerous to both the officer and the arrestee.

***\*PPB officers need a central use of force directive that requires de-escalation of situations in order to avoid the need for unwarranted use of force.***