



**CITIZEN REVIEW COMMITTEE
USE OF DEADLY FORCE WORKGROUP**

October 3, 2018

A Policy Review Conducted by the Use Of Deadly Force Workgroup

Citizen Review Committee

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Introduction and Background

A significant number of people in Portland have over time expressed concerns to the Citizen Review Committee (CRC) about the Portland Police Bureau's (PPB) policies, directives, training and practice regarding use of deadly force in encounters with people in this City. These concerns are also reflected in the U.S. Department of Justice enforcement action against the City of Portland and PPB and resulting consent decree with the City of Portland (the DOJ/PPB consent decree was entered into during the Workgroup's deliberations).

In response to these concerns, in 2012, CRC established the Use of Deadly Force Workgroup (WG). The purpose of this WG was to review PPB policies, directives, training and practices regarding use of deadly force, in order to advise PPB on possible changes in use of deadly force. From the beginning, the WG concluded that the use of deadly force would be inseparable from the police policies, training and directives that govern all police use of force, so the WG included in its review the entire field of use of force by Portland police.

Summary of WG Activity

The WG set out to get input on use of force from all directions. Between 2012 and 2017, the WG met with many representatives of PPB, with interested groups and organizations from the community and with subject matter experts. These sources included:

1. PPB Training Division
2. PPB Behavioral Health Unit
3. PPB SERT (Special Emergency Reaction Team)
4. Commander Robert Day, then Central Precinct Commander
5. Officer Daryl Turner, President, Portland Police Association
6. Albina Ministerial Alliance
7. Don't Shoot Portland-Black Lives Matter leadership
8. Portland Cop Watch
9. League of Women Voters
10. Project Respond (mental health professionals)
11. Portland City Attorneys Dave Worboril and Mark Amberg
12. Office of Internal Review
13. Oregon Health Sciences University Public Safety Office
14. Labor Attorney Barbara Bloom

The Use of Deadly Force Workgroup has been in existence and has carried on its work longer than most other CRC workgroups. It should be noted that certain significant events and changing circumstances contributed to the need to prolong the WG's work – most notably the 2012 suit against the City, the subsequent Federal Court Consent Decree review process, and several changes in the Chief of Police. The WG also decided early on that it would be more beneficial and effective to take the WG's work product and conclusions directly to the Police Bureau in an effort to get PPB buy-in and, hopefully, to cooperate with PPB to bring about any changes the WG would be recommending.

Results of WG Research and Outreach

The WG engaged the various groups and individuals to learn not only about the particulars of how use of force is trained and carried out, but also about the competing government/individual interests involved and the effects and consequences of use of force.

The following are some of subject matter areas and a brief description of considerations covered by the WG's outreach with these various groups and individuals:

1. PPB Training Division: Review of police defensive tactics and action/reaction time disadvantage; use of surprise; dealing with those in mental crisis; 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. PPB Behavioral Health Unit (BHU): Review of training for and handling of those perceived to have mental illness (exhibiting fight-or-flight response) and limitations on availability of BHU.
3. PPB SERT (Special Emergency Reaction Team): Review of SERT use of force including tactics, such as disengagement, de-escalation and the advantages to officers afforded by time and distance, which may be available due to circumstances (sometimes unique to SERT deployments).

4. PPB Precinct Commander Bob Day: Discussed use of force mostly related to crowd control circumstances (covering advantages of time, distance and advanced planning).
5. AMA (Albina Ministerial Alliance): Discussed unnecessary and disproportionate use of force, especially against minorities.
6. Don't Shoot Portland-Black Lives Matter: Discussed disproportionate use of force against minorities and force use against demonstrators.
7. Portland Cop Watch: Attended most WG meetings and provided input on most subjects covered.
8. League of Women Voters: Attended most WG meetings and provided input on most subjects covered.
9. Project Respond and PPB Behavioral Health Unit: Discussed deployment of Project Respond to deal with persons in mental health crisis and the flight or fight reaction as well as limited resources of Project Respond.
10. Portland City Attorneys: Discussed city attorneys' perspective on PPB directives and the U.S. Constitutional law applicable to police use of force (*Graham vs Connor* and other decisions.) as well as interpretation of use of force directives.
11. Portland Police Association President Daryl Turner: Discussed PPA perspective on use of force and protections of member's collective bargaining rights.
12. Office of Internal Review (OIR): Discussed Los Angeles consultant OIR's findings on facts and circumstances with respect to historical PPB use of deadly force.
13. Oregon Health Sciences University (OHSU) Department of Public Safety: Discussed OHSU unique perspective on de-escalation of use of force to deal with resistance to arrest; a use of force policy is actually a 'response to resistance policy.'

14. Labor Lawyer Barb Bloom (government labor lawyer): Discussed arbitration law and procedures, effects of directives and possible ambiguity in directives.

Fact Finding

The Workgroup found the following:

PPB's use of force directives reviewed by the WG were primarily contained in PPB Dir. 315.30, 1010 and 850.20. The directives seemed to the WG to be sometimes inconsistent, often vague and sometimes at odds with training.

1. Some of these directives required officers to use less force than may be legally allowed while others require officers to use force that is "reasonable under all the circumstances".
2. Officers are not to precipitate a use of force by placing themselves or others in jeopardy through actions that are inconsistent with the Police Bureau's directives and training (Dir. 1010, Sec 9.2.2.).
3. Officers are to use "**less force than the maximum allowed by (law)**" and to "**minimize or avoid force when possible**". (Dir. 1010, Sec 4.8; Dir. 315.30, Sec 2.3.1 and Sec 2.3.4).
4. Officers are to be aware that PPB directives **require use of force that is less than that allowed by state statute** (Dir. 1010, Sec.4.10).
5. PPB directives, however, depended in large measure on the use of force standard contained in the United States Supreme Court decision *Graham vs. Connor*. *Graham* requires officers use only the amount of force that is "objectively reasonable" under the circumstances, as seen at the time from the officer's perspective. Directive 1010 adopts the constitutional standard for the use of force established by the United States Supreme Court in *Graham v. Connor*. The *Graham* standard provides little guidance on how much actual force can, or should be used and says nothing about how an officer should go about reducing or avoiding the use of force.

The WG learned:

- (a) that the use, or threat of use, of even moderate force against people with diminished capacity due to mental crisis, fear of police, drugs, alcohol, physical impairment, language barriers or hearing deficit can trigger fear, resistance, flight and aggression (the fight or flight reaction) by a person being confronted by police.
- (b) use of force against people, especially those with diminished capacity, can lead to a rapid upward spiral of added police use of force to combat added resistance, quickly endangering both officers and citizens.
- (c) *Graham vs. Connor* does **not** directly consider whether or not less force could have been used, nor what to do if a suspect may be in 'crisis' or otherwise not have the mental, intellectual or physical capacity to understand and/or follow lawful police commands. Police should always consider *why* a person is acting "weird", threatening, violent or resistant.
- (d) 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 protect people with diminished capacity from themselves.
- (e) use of force should be a last resort, especially against persons unlikely to comply with police directions due to drugs, alcohol, mental or physical impairment, mental crisis, fear, language barriers, hearing deficit or other impairment.
- (f) sound police practice requires that an arresting officer should, where circumstances allow, create time and distance from the arrestee in order to slow down the officer's decision making process in order to consider all facts and to employ the best tactical alternative that may be available.
- (g) a high percentage of arrestees, especially in sometimes predictable circumstances, are in fact suffering from some form of diminished capacity. Use of force in such circumstances may be unnecessary, as well as degrading and dangerous to both the officer and the arrestee.
- (h) PPB has trained officers to de-escalate certain situations, under certain circumstances, in order to reduce the need for force. These situations

involved primarily citizens identified to be in mental crisis. However, officers sometimes cannot identify whether an arrestee is in metal crisis or has some other form of diminished ability to comply with police commands.

- (i) PPB has also trained officers about their tactical disadvantage in making arrests due to officer's action/reaction time disadvantage; about use of various forms of intimidation, 'command presence', and to sometimes use of the element of intimidation or surprise in making an arrest and applying force. Some of these trained tactics sometimes actually encouraged unnecessary, counterproductive aggression, intimidation and lack of communication with arrestees.

Workgroup Conclusions

Based on the input from our various sources the WG has concluded that PPB officers need an organizing principle requiring officers to attempt to avoid use of force: a use of force directive that requires officers to de-escalate situations, and if necessary even to dis-engage, whenever reasonable and safe to do so, in order to reduce or avoid the use of force.

Recommendations to CRC

The WG recommend to CRC and CRC approved that the WG propose to PPB that PPB be encouraged to adopt, ***as an organizing principle***, a use of force directive that includes use of disengagement/de-escalation principles. The WG then provided its finding to PPB and proposed such a directive. The WG included with its proposal to PPB, the City of Seattle Police Department Use of Force directive as an example. (The City of Seattle adopted this directive as part of Seattle's own DOJ settlement. The directive was considered by the WG as part of the WG's research.)

The WG also recommended to CRC that the WG should take its findings directly to the Portland Police Bureau and try to work with PPB to implement such a directive. In 2016 the WG began a process to work on the directive with the Office of the Chief. After the departure of Chief Larry O'Dea, the WG began working productively with Chief Mike Marshman. Chief Marshman was receptive to adopting a disengagement/de-escalation directive, and in short order, developed

and enacted the de-escalation directive, now contained in PPB Directive 1010.1: Procedure; De-escalation.

Follow Up

Though the Use of Deadly Force Workgroup considers its work concluded, we feel that improvements in both directives and training are still needed. We feel the directives may still be viewed both as internally inconsistent and vague. We are also aware that some PPB training has in the past appeared to misinterpret the meaning of 'de-escalation' of situations, to include as de-escalation training police uses of threat and intimidation to obtain compliance. Though threat and intimidation may have their place in police tactics, they should not be confused with de-escalation and disengagement.