

**Community and Police Relations Committee
of the Portland Human Rights Commission**

Use of Force Policy Review and Recommendations

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I. Background

In November 2010, Assistant Chief Larry O’Dea requested that the Human Rights Commission’s Community and Police Review Committee conduct a review of the Portland Police Bureau’s Use of Force Policy with the intent of revising policy to reflect what community members wanted to see in their police force. During the months of November 2010 through January 2011, committee members received presentations focused on case law, the history of force policies, recent changes to the policy, and policy implementation. In February 2011, a subgroup of CPRC members attended an experiential training on use of force at Camp Withycomb. The CPRC tasked an ad hoc committee to conduct a more detailed review of the Use of Force policy. Following are the ad hoc committee’s recommendations.

II. Introduction

Every year, the Portland Police Bureau makes an average of 400,000 contacts with members of the Portland community. About half of these contacts are radio calls, the other half are contacts initiated by the officers themselves. Officers use force in less than 1% of these contacts, yet it is these few instances that receive the public’s attention and directly or indirectly frame the community’s perception of police work.

We recognize the pressure of this scrutiny and the ways in which the media and our community’s heightened attention to force incidents overshadows good police work. Under the leadership of Chief Mike Reese, the Police Bureau has demonstrated an unprecedented level of openness and transparency in inviting a community review of its force policies. Such actions help restore public trust and build legitimacy for officers who rely on positive relationships with communities to carry out their mission to protect and serve our city.

III. Human Rights and Disparate Impacts

The Universal Declaration of Human Rights, which guides the work of the Portland Human Rights Commission, reaffirms through Articles 3 and 5 our rights to life, liberty, security; and our right to be free of torture, cruel or degrading treatment or punishment. Articles 12, 28, and 29 also affirm our right to a social and international order in which our freedoms can be fully realized¹. Public safety institutions, such as the Portland Police

¹ Universal Declaration of Human Rights (1948). General Assembly of the United Nations.
Article. 3: Everyone has the right to life, liberty and security of person.

Bureau (PPB), play an integral role in ensuring public order, and hence the general welfare in our democratic society. At times, this requires the use of force. The PPB leads the nation in directing its police officers to accomplish the bureau's mission as effectively as possible with as little reliance on force as practical. Incidents of excessive force undergo intense review both by internal committees and the Auditor's Independent Police Review Division. Though review systems could be enhanced and training strengthened, we believe that the PPB policies uphold human rights.

A. People With Mental Illness

Police officers are often called to intervene as first responders in situations better suited for service providers. Because as a community, we have not invested in expanding service options for vulnerable populations, our police officers must continually interface with people who are in crisis. Force incidents will invariably impact these populations to a greater extent than the general population² The PPB has invested resources in crisis intervention training to ensure more effective and compassionate responses to crisis situations. The Bureau is also piloting a program that pairs officers with a Project Respond staff member to assist in crisis incidents. Given changing demographics, the increased co-occurrence of mental illness and substance abuse, and limited resources to serve our communities, we recommend continual and updated training for our officers to ensure safe and effective interventions with people who are in crisis. We also urge the Police Bureau to dedicate ongoing resources – such as a specialized unit - to more effectively respond to this systemic problem.

Recommendation:

- a. Direct ongoing resources to better equip officers to respond effectively in crisis situations. In addition to the current Crisis Intervention Training, equip a specialized Crisis Unit to respond to mental health crisis situations. (Specialized units already exist to respond to domestic violence, for example. The Crisis Unit could be modeled after the DV Unit and should include dedicated officers, Project Respond staff, a sergeant and a lieutenant).*
- b. Continue to partner with community organizations and public agencies (e.g. Project Respond, Central City Concern, Multnomah County Mental Health and Addiction Services), to develop thoughtful, progressive and effective strategies to identify ways to reduce use of force on medically vulnerable individuals, people with mental illness, and people who are addicted to drugs/alcohol.*

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 28: Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article. 29(2): In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

B. Impacts on Race, Ethnicity and Gender

A review of the 2009 Use of Force Report reveals that there is a significant disparity in the percentage of arrests and the use of force against African American males arrested by Portland police officers. During 2007 and 2008, African-American individuals accounted for 25% of arrests in Portland and 29% of force reports. The report does not explain why the disparity occurs. Police Bureau Reports compiling crime statistics by neighborhood imply that certain neighborhoods have greater police presence, and likely greater number of arrests. Census data indicates that most of these neighborhoods have higher levels of poverty and/or greater racial/ethnic diversity. Specialized teams such as the gang enforcement team also deploy more officers in targeted neighborhoods where gang activity is greater; and gangs are most often organized along racial and geographic lines. The 2009 Use of Force Report does not offer correlations between race/ethnicity and the suspected underlying offense or levels of intoxication of individuals arrested. Based on the current data, it is not possible to determine specifically why African American males are arrested at disproportionate rates – nor why they experience force disproportionately. The 2009 Use of Force Report affirms that “further study is needed to understand whether and how race and gender influence police use of force.”³

Recommendations:

- a. *Gather, analyze and report meaningful force data on an annual basis. Current data does not permit analysis of the role of race in use of force*
 - *Correlate subject injury data with race/ethnicity data*
 - *Correlate officer race/ethnicity and gender with the race/ethnicity and gender of arrestee.*
 - *Provide more contextual analysis of force data (cross correlate race/ethnicity data with other variables such as the suspected crime, level of intoxication, time of incident, and neighborhood).*
- b. *Train and support sergeants to use force data to improve community policing, especially in neighborhoods where there are higher crime rates, greater police presence, and disparate impacts of policing.*
- c. *Direct sergeants to play a more visible role on the street with officers, providing a professional presence, debriefing incidents, and offering feedback and mentoring to newer officers – again, emphasizing dynamic learning and training.*
- d. *Direct sergeants to reach out to bystanders to offer business cards and explanations for the police actions that have taken place.*
- e. *Direct sergeants to ensure officer contacts are professional and respectful, and that force is used appropriately regardless of race.*
- f. *Actively recruit, retain and support a diverse workforce.*
 - *Use the Cadet Program and local schools to offer opportunities to youth from diverse communities who may be interested in the police profession.*

³ Khalifa, Christy and Derek Reinke and members of the Use of Force Task Force. (July 2009). *Use of Force by the Portland Police Bureau Follow Up.*

- *Identify and recruit candidates who are skilled communicators and who can effectively work within diverse communities.*
 - *Provide additional supports to officers of color to reduce professional isolation and ensure success.*
- g. Continue to partner with culturally specific organizations to develop effective strategies to police diverse communities.*
- *Continue to place new recruits in community organizations within diverse neighborhoods so that they develop effective rapport and experience within Portland's diverse communities.*
- h. Enhance the Police Bureau's training and organizational strategies to increase employee's understanding and ability to work across racial and ethnic differences.*
- *Ensure that officers have a historic context to understand the present reality of the neighborhoods they work in.*
 - *Ensure that officers understand the demographic changes Portland has experienced and the impacts of these changes on policing.*

IV. Policy Overview

A. 1010.20 Physical Force

Ad Hoc Committee members determined that the overall policy regarding use of force by Portland Police officers meets the reasonableness standard; that is, force can be applied within reason for specific official purposes (i.e. preventing or terminating the act of a crime, taking a person into custody, preventing a suicide, self defense or defending another from the use of physical force). The standard set by the court case *Graham v Conner* is articulated clearly: police officers must consider the totality of the circumstances when applying only the force reasonably necessary to perform their duties and resolve confrontations effectively and safely. As previously stated, the Portland Police Bureau leads the nation in setting the expectation that police officers will use the minimal force possible.

Our review of the Force Directives, however, identified contradictions to the guidance set forth in the policy. Specifically, directives on the use of aerosol restraints (1040.00) and the TASER (1051.00) offer details which imply a mechanical approach to the use of these control and weapon systems. Through the course of presentations and consults with PPB leadership we learned that this contradiction creates confusion for officers who have applied force according to the Force Directives and whose actions are scrutinized for falling outside of the Physical Force Policy (Directive 1010.20).

Recommendation:

a. Remove references to the mechanical model within all the force directives. The justification to use force is articulated in 1010.20. For each directive, reference the guiding policy on force (1010.20) and reiterate the expectation that officers will consider the totality of the circumstances and reasonableness standard before applying force.

B. 1050.00 Less Lethal Weapons and Munitions

The directive on the Less Lethal Shotgun (bean bag) was implemented approximately seven years prior to the directive on TASER. Although the directive refers to the Bureau's use of force policy, which governs the use of less lethal weapons and munitions, it lacks the specificity that the TASER directive includes when referencing prohibitions. Given the recent public outcry regarding the use of the less lethal shotgun on a 12 year old child, we believe the PPB should specify prohibited uses of the less lethal shotgun within the directive.

The directive on the less lethal shotgun also needs to grant officers a wider range of options for verbal warnings. The current directive states officers must give a specific warning such as "Stop! Get on the ground or I'll shoot!" Stating "Bean bag!" or "Less lethal!" is considered unacceptable. The specificity of the directive, however, does not allow officers to contextualize their verbal warnings to adjust to varying situations which may actually escalate if the current warning is articulated (e.g. individuals who may be provoking the police to shoot them).

Recommendation:

- a. *Specify prohibited uses of the less lethal shotgun to mirror prohibitions on the use of the TASER.*
- b. *Specify a wider range of verbal warnings to address varying situations and possible responses in the use of a less lethal shot gun.*
- c. *Update training to reflect the need to contextualize verbal warnings in the use of the less lethal shotgun.*

C. 1051.00 TASER, Less Lethal Weapon System

The Portland Police Bureau introduced the use of the TASER in 2002 through a pilot program that intended to test the impact of the weapon and examine the TASER's role in filling a gap in the force choices available to police officers. The TASER was fully adopted and issued to all officers in 2005. A recent study completed by the City of Portland Auditor's Office indicates that TASER use represents 36% of all use of force incidents.⁴ Other than the pointing of a fire arm, the TASER represents the most frequently used less lethal weapon reported by police officers in force reports.⁵

The use of the TASER has generated significant debate within the Portland community. TASERs are said to reduce the chance of injury to both officers and subjects and end conflicts more rapidly and effectively than other forms of force, however little data exists to substantiate this claim. Officers affirm that pointing the TASER results in compliance 60% of the time, yet this data isn't collected through force reports. The City Auditor's Office report on TASER use sites studies that indicate the TASER is a relatively safe form of police force, however this report also notes that more research is needed. A February 2011 study which included a review of Portland's force data, among other cities,

⁴ **Prinz, Martha and Ken Gavette, Office of the City Auditor. (November 2011).** *Police TASER Use: Incidents Generally Resolved, But Some Practices Could be Improved.*

⁵ **Training Division. Portland Police Bureau. (January 2011).** *Power Point Presentation on Officer Involved Shootings.*

counters existing research, concluding that TASERs are associated with a significantly higher probability of injury compared to cases where no TASER is used⁶. We believe greater study and data collection is needed to determine the TASER's effectiveness and appropriateness.

Recommendation:

- a. *Measure the pointing of the TASER as a force action and evaluate the effectiveness of this action with varying and circumstances.*
- b. *Establish a TASER Review Committee to conduct reviews of TASER incidents. The focus of this committee should be to ensure continuous evaluation and improvement of policy and training on the use of TASERs. The TASER Review Committee can be modeled on the Pursuit Review Committee and should include an operational supervisor, a training lieutenant, a commander and a community representative. Ensure monthly meetings to cover an average of 25 TASER incident reviews.*

D. TASER Directive (1051.00)

Authorized Use of the TASER

The TASER directive contains more specific guidance than other less lethal weapon systems. Although the introductory statement on the use of the TASER indicates that the amount of control must be governed by the circumstances of each situation, the specificity of the directive, including its prohibitions, infers a mechanical approach to deployment.

Recommendation:

- a. *Remove references to the mechanical model in the TASER directive.*

Prohibited Use of the TASER

The TASER directive contains specific prohibitions (i.e. s cannot be used on children known to be under the age of 12, women known to be pregnant, individuals who are medically fragile). Certain circumstances, however, can override these prohibitions (i.e. if the person is armed with a dangerous weapon, or if a person is engaging in suicidal behavior). The section on exceptions to prohibitions ends with a catchall statement that must be clarified so as to not invalidate TASER restrictions.

Recommendation:

- a. *Add language to item c. under Exceptions to clarify that the exception applies only if officers **have attempted** other control options.*

Prohibited Uses of Other Less Lethal Weapons

Our team noted that only the TASER directive specifies prohibited uses. We have noted the need to specify prohibitions on the use of the less lethal shot gun and recommend

⁶ **Terrill, William and Paoline III, Eugene A. (2011).** *Conducted Energy Devices (CEDs) and Citizen Injuries: The Shocking Empirical Reality.* Justice Quarterly. First published on 22 February 2011. URL: <http://dx.doi.org/10.1080/07418825.2010.549834>

that these prohibitions mirror the prohibited uses of the TASER. Following the reasonableness standard set forth by *Graham v. Connor*, prohibitions should be clearly articulated for **all** the less lethal weapons (i.e. for the baton, pepper spray and less lethal shotgun).

Recommendation:

- a. *Specify prohibitions for all control tools and weapons in each of the directives.*

V. Observations and Recommendations for Incident Review and Training

Committee discussions and consults with Bureau leadership highlighted opportunities to strengthen evaluation and training on force incidents. We learned, for example, that the 2008 Use of Force Policy was rolled out quickly and with limited training. Directives on force tools and weapon systems did not change sufficiently to reinforce the movement away from a mechanical model to a model which requires officers to consider the totality of the circumstances of each incident before determining what level of force to use. The PPB has gradually been catching up to its tenured officers to ensure that all are appropriately trained in the new policy, however some confusion remains as officers who have applied force according to the force directives are scrutinized for the appropriateness of their decisions under the new policy.

We also learned that there is no consistency across precincts regarding supervisor debriefings of force incidents. Good supervisors conduct reviews as soon as practical after a force incident so that officers can learn from their mistakes and improve their responses. Incidents that require investigation don't afford police officers the opportunity for immediate learning. Months can transpire before a practical training review can take place. Interviews with street officers revealed that there has been little follow-up training on weapon systems such as the TASER, and officers are eager to learn more about the effectiveness and safety considerations of this force option. Our analysis leads us to the following recommendations:

Recommendations:

- a. *Direct supervisors to conduct debriefings and situational assessments as soon as practical after every force incident involving a less lethal or lethal weapon.*
 - *Institutionalize a philosophy of supervisor mentoring and coaching to build confidence among newer officers.*
 - *Expand the use of scenario based training to strengthen decision making in rapidly changing situations.*
- b. *Pair police officers in patrol vehicles.*
 - *Partnering officers in patrol vehicles will reduce isolation and provide additional back-up.*
 - *Officers will be able to take advantage of complimentary skill sets in responding to high conflict and crisis situations.*
 - *Pilot effort for crisis response and in geographic areas where there are high numbers of self initiated police contacts.*

- c. *Direct Precinct Commanders to consistently and more effectively utilize their Defensive Tactics instructors to provide immediate training after force incidents.*
 - *Request that the Training Division support satellite instructors to provide more frequent and accessible training at precinct level. Celebrate and duplicate proactive efforts of creative instructors (e.g. Officer Pete Taylor's efforts in East Precinct).*
- d. *Direct supervisors to provide information to bystanders about the force incident they have observed.*

VI. Data

Except for control holds that do not require the use of additional force, Portland police officers are required to report all force incidents both verbally and in writing through the use of Force Data Collection Reports. Though force data is captured, it isn't consistently or effectively utilized to improve organizational outcomes. Street officers don't receive bureau-wide updates on force data and do not connect their own infrequent training with the Bureau's progress in meeting strategic objectives on force issues. The Portland Police Bureau has a tremendous opportunity to learn from its data and implement policy and training improvements that are informed by what is happening in the community and within its police force. We recognize that effective research requires an investment of resources that are presently scarce. We also understand there are willing academic partners who will lend their expertise to strengthen the Bureau's approach to data collection and analysis.

Recommendations:

- a. *Convene a small team of internal and external experts, including a research specialist, to evaluate and redesign the Force Data Collection Report form so that it gathers data that is useful in improving policy and training (i.e. situational data, questions to identify circumstances of the incident and effectiveness or ineffectiveness of force used).*
- b. *Compile annual reports on force data that can be easily understood by internal **and** external audiences.*
 - *Include an analysis of the disparate impacts of force incidents on specific populations (i.e. people experiencing mental illness, people with addictions, youth of color; see recommendations under Section III).*
- c. *Provide more frequent opportunities for sergeants to lead scenario based discussions and conduct situational analysis of the data so that officers understand the impact of the numbers and the effectiveness of their actions.*
- d. *Any time the Police Bureau introduces a new weapon system (eg. new TASERS and pepper spray), ensure that a complete review and analysis of the weapon system has taken place. This review should include research on whether the weapon system actually accomplishes what the Bureau intends, and whether the system is appropriate for use in the Portland context.*

Sources Consulted

Graham v. Connor, 490, U.S. 386 (1989).

Khalifa, Christy and Derek Reinke (on behalf of The Use of Force Task Force.) (July 2009). *Use of Force by the Portland Police Bureau Follow Up*.

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