

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 1:15-CV-01046
)	
Plaintiff,)	
)	JUDGE SOLOMON OLIVER, JR.
vs.)	
)	
CITY OF CLEVELAND)	
)	
Defendant.)	<u>MOTION RECOMMENDING</u>
)	<u>APPROVAL OF REVISED USE OF</u>
)	<u>FORCE POLICIES OF THE</u>
)	<u>CLEVELAND DIVISION OF POLICE</u>

Pursuant to Paragraphs 49 through 83 and 341 through 349 of the Consent Decree, and the First-Year Monitoring Plan, in the above-captioned matter, the Cleveland Division of Police (“CPD” or the “Division”) has revised its policies relating to the use of force. The revised policies were finalized after constructive discussions with and direct input from CPD officers, the Division’s command staff, the Department of Justice (“DOJ”), City of Cleveland (the “City”), the Community Police Commission (“CPC” or the “Commission”), community organizations, and residents from throughout Cleveland, as well as the Monitoring Team.

The policy revisions include important changes to: (1) CPD's General Police Order ("GPO") regarding Use of Force – General, which outlines clear use of force principles and specific expectations about when CPD authorizes officers to use force (attached hereto as Exhibit A); (2) a Use of Force – Definitions GPO, which defines commonly used terms in the various force policies (attached hereto as Exhibit B); (3) a Use of Force – De-escalation GPO, which requires that officers use affirmative strategies and tactics aimed toward ensuring officer and subject safety while reducing the need for or the severity of force to be used (attached hereto as Exhibit C); (4) a Use of Force – Intermediate Weapons GPO, which provides specific guidance on the use of less-than-lethal force tools, such as the Taser, OC Spray, and baton (attached hereto as Exhibit D); and (5) a Use of Force – Reporting GPO, which addresses the requirement that officers report force when used (attached hereto as Exhibit E) (collectively, the "Use of Force policies").

The Monitoring Team has closely reviewed the updated policies. For the reasons set forth below, the Monitor concludes that the policies are consistent with the Consent Decree because they promote officer and public safety, enhance effective and proactive law enforcement, and advance constitutional policing in a manner consistent with the values of Cleveland's communities as articulated by those communities during extensive community outreach and engagement on the force policies. Subject to the conditions outlined in Section V, the Monitor therefore approves the CPD's new Use of Force policies and requests that this Court order them effective upon CPD's successful completion of upcoming use of force training.

I. SUMMARY OF CONSENT DECREE REQUIREMENTS REGARDING USE OF FORCE POLICIES

Following an investigation in 2014, the United States found reasonable cause to believe that there was a pattern and practice of excessive force within the Cleveland Division of Police in

violation of the U.S. Constitution and federal law. The United States and City of Cleveland entered into an agreement, the Court-ordered Consent Decree, in which the City and CPD agreed to make a host of important reforms and changes. Dkt. 7-1.

On the fundamental issue of use of force, the Consent Decree requires CPD to “revise, develop, and implement force policies, training, supervision, and accountability systems with the goal of ensuring that force is used in accordance with the Constitution and laws of the United States . . .” (Dkt. 7-1 ¶ 45). The updated force policies must be “designed with the goal of ensuring that officers use techniques other than force to effect compliance with police orders whenever feasible; use force only when necessary, and in a manner that avoids unnecessary injury to officers and civilians; de-escalate the use of force at the earliest possible moment; and accurately and completely report all uses of force.” *Id.* Specifically, all such force policies must “incorporate” the Decree’s enumerated “use of force principles,” *id.* ¶ 46, specific provisions relating to the use of firearms and other intermediate weapons, *id.* ¶ 50, and requirements involving the uniform reporting of incidents where officers use force. *Id.* ¶ 46.

A. Use of Force Principles

The Consent Decree requires that CPD’s policies are consistent with, embody, and promote a number of foundational use of principles to ensure that CPD and its officers routinely comply with the U.S. Constitution, and federal and state law. At the same time, the Decree requires the Division to ensure effective law enforcement that prioritizes both community and officer safety. Dkt. 7-1 ¶ 46. Among other things, the principles provide that officers should:

- “[A]llow individuals the opportunity to submit to arrest before force is used”;
- “[U]se de-escalation techniques whenever possible and appropriate

- “[N]ot use force against persons who are handcuffed or otherwise restrained”
- “[N]ot use force against persons who only verbally confront them”
- Not use “retaliatory force” or neck holds. (*Id.*)

Further, the policies must allow CPD “to account for, review, and investigate every reportable use of force and reduce any improper uses of force.” *Id.* ¶ 47. Any use of force deemed to be unreasonable or excessive under the new policies “will subject officer to the disciplinary process, possible criminal prosecution, and/or possible civil liability.” *Id.* ¶ 49.

B. Force Instrument-Specific Policies

The Consent Decree also outlines specific requirements for the use of various force instruments, including firearms and less-lethal or intermediate weapons. For example, as to firearms, pointing a firearm at an individual is prohibited unless there is a reasonable belief that lethal force may be necessary, and the pointing of a firearm at a subject is in most circumstances a reportable use of force that must be reported by officers and put through an administrative review by the Division. Officers may not fire warning shots, must consider their surroundings before discharging their firearms so as to avoid unnecessary risk to others, and may not fire a gun at a moving vehicle except in exceptional circumstances. *Id.* ¶¶ 55–60.

With respect to the use of Electronic Control Weapons (“ECW”s), also known as Tasers, officers must, for example, “determine the reasonableness of ECW use based upon all the relevant circumstances, including a subject’s apparent age, size, physical, and mental condition.” *Id.* ¶ 65. The agreement also requires officers be annually certified on the use of ECWs and receive training on medical assistance/interventions after applying the intermediate weapon on an individual. *Id.* ¶¶ 71, 74.

Similarly, OC Spray, also referred to as pepper spray, may be used only when necessary and reasonable to protect an officer, individual and/or third party from physical harm or as a means of dispersing crowds. *Id.* ¶ 77. The Consent Decree provides that each separate spray must be justified as reasonable and cannot generally be used on individuals who are handcuffed or otherwise restrained. *Id.* ¶¶ 78, 79.

C. Reporting

The Consent Decree requires that CPD officers notify supervisors when force is used and uniformly document the details and circumstances of such force. *Id.* ¶ 87. The degree and detail of the specific reporting requirements directly correspond with the level, general degree, or outcome of the force used.

Specifically, the Consent Decree classifies force into three Levels, with “[e]ach level of force...requir[ing] increasingly rigorous reporting.” *Id.* ¶ 87. Level 1 force is relatively low-level force “that is expected to cause only transient pain and/or disorientation during its application . . . but that is not reasonably expected to cause injury, does not result in an actual injury, and does not result in a complaint of injury.” *Id.* ¶ 87(a). This would, for instance, “include[e] pressure point compliance and joint manipulation techniques” but would “not include escorting, touching, or handcuffing a person with no or minimal resistance.” *Id.*

Level 2 force “is force that causes an injury” to a subject, “could reasonably be expected to cause any injury,” or “results in a complaint of an injury” and does not rise to the severity of Level 3 force. *Id.* ¶ 87(b). This generally includes the deployment of intermediate weapons and a variety of defensive techniques and maneuvers that do not involve weapons. *Id.*

Level 3 force includes lethal force, force that results in death or serious physical injury, force resulting in admission to a hospital, all neck holds, force resulting in loss of consciousness, canine bites, and, more than three applications of an ECW on an individual during one single incident. *Id.* ¶ 87(c).

D. Forthcoming Work & Additional Force Requirements

The First-Year Monitoring Plan charged CPD with the task of crafting policies related to CPD officers' use, deployment, or application of force on subjects and the immediate responsibilities of officers after they use such force. Dkt. 43-1. Accordingly, much of the work in the next year of the Consent Decree process will focus on how CPD responds to, investigates, analyzes, and reviews force incidents when they do occur – and on how, if force was found to be applied improperly, the Division addresses deficiencies in officer performance.

II. PROCEDURAL HISTORY AND THE PROCESS USED TO DEVELOP FORCE POLICIES

The Consent Decree requires that the revisions of the Use of Force policies be developed with input from officers, the CPC, the community, and the Parties. *Id.* ¶¶ 15, 17, 18, 341–49. Consequently, the stakeholders created and the First-Year Monitoring Plan codified a process for resident participation, community involvement, and public input without precedent in federal consent decree processes. *See generally* Dkt. 43. As discussed below, the City and CPD have actively and genuinely engaged with community stakeholders – both “early in the process, when the Community Police Commission and Division of Police gather[ed] views, values, experiences, and expectations from the community that inform[e]d the initial drafting of new policies and

processes” and “later on, when the Monitor work[ed] with stakeholders to get real, direct, and substantive feedback about” the proposed force policies.” Dkt. 65 at 6. This section describes the City and CPD’s extensive engagement with the community on the Use of Force policies.

A. Pre-Policy Drafting Engagement

1. CPC

Consistent with the First-Year Monitoring Plan, CPD consulted the CPC regarding their revised Use of Force policies. Dkt. 43-1 at 8. Specifically, the Consent Decree directs the CPC to make recommendations related to CPD “policies and practices related to use of force.” Dkt. 7-1 ¶ 18.

The CPC engaged in an intensive process to gather community input on use of force and to distill the experiences, comments, feedback, input, histories, values, and experiences of Cleveland residents into substantive recommendations about the Use of Force policies. The CPC’s community engagement and feedback process started in February 24, 2016 when it held a full meeting on the topic of use of force. The Commission then hosted a separate town hall and held special meetings with individual organizations from across Cleveland, such as the Black Shield Police Association, Cuyahoga Metropolitan Housing Authority (“CMHA”) residents, 100 Black Men, local clergy, and members of the Consent-Decree-created Mental Health Advisory Committee (“MHAC”). At the same time, CPC developed a use of force questionnaire in which community members could provide direct, anonymous input.

Based on the totality of community engagement and feedback related to force, the Commission proposed a set of recommendations to the CPD and other Consent Decree stakeholders (attached hereto as Exhibit F). These recommendations focused on a broad range of

topics including emphasizing “life preservation” in policy, providing “updated state-of-the-art training” and ensuring the policies are “aligned with community values and expectations.” Ex. F at 7–8. The Monitor has previously praised “the final, written work product of the CPC addressing force” as reflecting “a very high level of quality.” Dkt. 65 at 25.

2. The City of Cleveland’s Engagement

In March, 2016, the City’s Community Relations Board conducted a separate, informal feedback process on use of force issues. A total of 1,092 residents completed a questionnaire in some capacity, whether online, by paper and pencil, or otherwise. Although the City’s survey did not secure a random statistically-significant sample that would permit the findings to be considered as representative in any particular way to the Cleveland community as a whole, the City’s outreach efforts were noteworthy and yielded valuable findings.

3. CPD’s Engagement

The Division itself engaged in a significant process for gathering input directly from CPD officers about the former Use of Force policies. In partnership with the leadership of the Cleveland Police Patrolmen’s Association (“CPPA”), Fraternal Order of Police (“FOP”), and other police officer organizations, CPD conducted several forms of officer outreach and engagement, including a non-scientific online officer survey, focus group discussions, anonymous written submissions, and a series of meetings with union and officer organization leadership. Among other things, the anonymous, online survey for officers found that:

- Most officers who completed the feedback form did not believe that force types and categories in CPD’s current force policies are sufficiently clear.

- Officers appeared to want clearer definitions of key terms used in the force policy, with fewer than 40 percent of officers saying that the prior definitions made that previous policy more understandable.
- Fewer than one-third (31 percent) of responding officers believed that the current CPD policy reflected a priority on using techniques other than force to effectuate law enforcement objectives.
- Of officers who had experience using the Taser, nearly two-thirds (65 percent) of respondents found the less-lethal very effective or effective.

Data from CPD (Mar. 31, 2016).

B. The Collaborative Policy Drafting Process

After receiving input from the CPC, the City, and its own members, the Division drafted revised Use of Force policies. During that process, the Division evaluated the practices of other police departments (such as the Seattle Police Department and Las Vegas Metropolitan Police Department), consulted the officer and community feedback, and crafted specific policy provisions consistent with the Consent Decree. Accordingly, CPD attempted to draft the policies in light of sound, real-world practices and then tailored such practices to the Cleveland community through an engagement process that included the community, including the Division's officers.

Beginning in March of 2016, Consent Decree stakeholders met regularly to discuss and collaborate on various iterations of the drafts. During this period, the Monitoring Team provided real-time technical assistance to CPD on how to comply with the Consent Decree's requirements. In doing so, the Monitoring Team drew upon the force and force-related policies of other jurisdictions, model policies from police officer organizations such as the International

Association of Chiefs of Police (“IACP”) and the Police Executive Research Forum (“PERF”), and the recommendations of recent blue-ribbon task forces.¹ Consequently, the updated policies were not based on CPD’s speculation or conjecture, nor were they invented from thin air.

On September 8, 2016, the Parties agreed on draft versions of four Use of Force policies – the general policy on when officers may and may not use force, a policy defining key terms throughout the force policies, a policy outlining specific guidelines for intermediate weapons, and a standalone de-escalation policy — that were sufficiently well-developed to benefit from community review and comment. The versions of the policies made available for community-wide input and engagement were not the final policies; however, they did reflect a sufficient amount of the necessary, substantive detail for community input to be worthwhile.

C. The Monitoring Team’s Engagement

Starting on September 8, 2016 the Monitoring Team, working closely with the City of Cleveland, CPD, the Department of Justice, and the CPC, coordinated the solicitation of public input on the CPD’s proposed Use of Force policies. Between September 8 and November 4, 2016, the Parties engaged in a comprehensive feedback process. The Monitoring Team made several resources available, including:

¹ See, e.g., President’s Task Force on 21st Century Policing, Final Report (2015) [hereinafter President’s Task Force on 21st Century Policing] (emphasizing comprehensive and clear and concise use of force policies); Bureau of Justice Assistance, Understanding Community Policing (1994) 9 (discussing the positive impact of community engagement on substantive policy); *Guiding Principles on Use of Force*, POLICE EXECUTIVE RESEARCH FORUM at 34 (2016) [hereinafter “PERF Guiding Principles”] (recommending police departments “stress the sanctity of human life in their mission and policy statements”).

- A video overview presentation, with Monitor Matthew Barge and Deputy Monitor Charles Ramsey, about the proposed new Use of Force policies, produced in conjunction with Cuyahoga Community College;
- A four-page summary of the most important provisions of CPD's new Use of Force policies;
- A one-page summary of the key differences between CPD's prior Use of Force policy and the new proposed policy; and
- The complete, proposed Use of Force policies themselves – including the General Policy, Definitions, De-Escalation Policy, and Intermediate Weapons Policy – were made available online, along with a brief summary of key policy changes.

To gather community feedback on the new policies, the City, CPC, CPD, DOJ, and Monitoring Team all collaborated on two community roundtable events. More than 195 residents from across the Cleveland community gathered at these events to discuss, in small group environments facilitated by representatives of the various stakeholders, their views, opinions, and feedback on the proposed force policies. The forums were structured to facilitate open intimate conversations and also link ideas to the large group. Community members were offered an opportunity to engage directly with a small group of fellow community members and residents, see what others thought, and compare their own individual perspective to their small group perspective – and then report out their small group recommendations to the full group. Cleveland residents have continued to discuss the impact of having a Consent Decree stakeholder in the small groups, actively engaging in and listening to what individual residents were saying. Several community members have represented to the Parties and/or Monitor that they believed that they were heard in a unique way during the forums.

Further, a single, unified online feedback form with various questions about the policies was available on the Monitoring Team’s website, and linked to or advertised by other Consent Decree stakeholders. Several community organizations, such as the Schubert Center for Child Studies at Case Western Reserve University and the American Civil Liberties Union, sent the Parties and Monitoring Team thoughtful, written feedback about the versions of the policies made public.

Overall, community members were generally supportive of the new policy. The Parties and Monitor heard consistently that they were a “great start” in transforming the relationship between the community and the Division by providing clarity – for community members and individual officers alike – on when officers may and may not use force. In particular, a number of community members at the community forums endorsed the express inclusion of the concepts of necessity and proportionality in the policies.

Many of the small-group discussions at the community forums focused on the importance of effective communication between officers and residents during police interactions. Community members expressed substantial support for officers using tactical de-escalation techniques – from strategic communication to the proactive use of distance, cover, concealment, and time – when safe and feasible to do so.

Community members also made a number of constructive and important suggestions about how the policies could be further strengthened. Key findings and recommendations from the community following the Community Roundtables can be found in Exhibit G.

At the same time, the Community Police Commission evaluated the proposed force policies. The CPC made a number of suggestions about how that organization’s original recommendations on force – informed by its community outreach and engagement in early 2016

– could be more fully incorporated into the policies. CPD made a number of important changes to the policies to reflect the community discussion on those policies. *See* Ex. F.

D. Incorporation of Community Feedback into Final Policies

Following the Community Roundtables, the City, DOJ, CPD, and the Monitoring Team met to discuss ways to incorporate the community feedback into the new policies. The CPD revised the force policies to make a number of important, substantive changes or additions that reflect the extensive community outreach on force. These specific changes are outlined in Part IV, below.

III. STANDARD OF REVIEW

“As an agent of the Court,” a primary duty of the Monitor and the Monitoring Team is to “assess and report whether the requirements” of the Consent Decree “have been implemented.” Dkt. 7-1 ¶ 351; *accord id.* ¶ 352 (requiring the Monitor to “review CDP policies, procedures, practices, training curricula, and programs developed and implemented under” the Decree). The task of the Monitor here is to determine whether the policies that CPD developed and that the City submits comply with the Consent Decree’s requirements on use of force. *Id.* ¶¶ 45–83, 87–92.

In some instances, the evaluation of whether the policies include what the Decree requires is relatively mechanical. For example, the Consent Decree requires that “[n]o officer . . . carry any weapon that is not authorized or approved by CDP.” *Id.* ¶ 52. Section III-A of the proposed Use of Force: General policy provides that “Officers shall not . . . [c]arry weapons that are not authorized or approved by the Division.” Ex. A at 4, Procedures III(A)(8). Consequently, the Monitoring Team can readily determine that the Use of Force: General policy is consistent with the Consent Decree.

However, in other instances, the policies must comply with more general provisions or provide more significant detail than the Consent Decree provides. The Consent Decree includes specific requirements for the policies, but such a document could not outline every particular policy provision of the required policies. Accordingly, a good deal of the work within the Division and among the stakeholders was spent determining how to adhere to the Consent Decree while providing clear and specific guidance for Cleveland officers and residents.

For example, the Consent Decree requires that CPD officers “use force only when necessary.” Dkt. 7-1 ¶ 45. The proposed CPD policies attempt to provide greater specificity and clarity to CPD officers about precisely when force may be considered necessary by outlining the five classes of situations in which the use of force may be considered to have “a lawful objective.” Ex. A at 1, Principles (II) (C)(5). Consequently, the task of the Monitor is to determine whether this additional material is consistent with the Consent Decree’s overriding guidelines, requirements, and principles.

The Monitoring Team’s assessment of the force policies also draws upon the review of CPD’s policies in light of the force and force-related policies of other jurisdictions, model policies from police officer organizations such as the International Association of Chiefs of Police (“IACP”) and the Police Executive Research Forum (“PERF”), the recommendations of recent blue-ribbon task forces, and the substantial experience of the careers of the five former law enforcement professionals on the Monitoring Team.² Consequently, the Monitor’s evaluation of the force policies is not based on speculation, conjecture, or invented benchmarks but, rather, the real-world experience of other law enforcement agencies and professionals.

² *Id.*

The Monitor notes here that the force policies represent an important, early milestone in compliance with the Consent Decree. Still, the Decree requires that the force policies are not only developed and adopted but also “implement[ed],” Dkt. 7-1 ¶ 45. That is, the policies must exist not simply on paper but in practice such that CPD officers affirmatively comply with them, day in and day out, on the streets of Cleveland. This requires the completion of high-quality training for officers on the force policies and the substantial and effective implementation of a host of processes, procedures, policies, and systems for reviewing, investigating, and evaluating use of force incidents. *Id.* ¶¶ 84–86, 93–130.

IV. ANALYSIS OF THE FINAL PROPOSED FORCE POLICIES

CPD provided completed, proposed Use of Force policies on November 8, 2016. Those policies consist of five related CPD “General Police Orders”:

- **Use of Force: General.** This is the core CPD policy that outlines when officers may and may not use force. That is, incorporating the Consent Decree’s use of force principles, into a policy that governs officer performance on the streets of Cleveland. The other four policies build from, correspond to, or explain this core policy. *See Ex. A.*
- **Use of Force: Definitions.** This policy provides the meaning of specialized or key terms used throughout the other force policies. *See Ex. B.*
- **Use of Force: De-Escalation.** Although an officer's duty to de-escalate situations where it is safe and feasible to do so is contained within the General policy, the De-Escalation policy goes into greater detail about this important requirement. *See Ex. C.*

- **Use of Force: Intermediate Weapons.** This policy contains a number of regulations about particular types of force instruments or tools that officers use, such as the baton, OC (pepper) spray, and Taser that are less-lethal instruments. *See* Dkt. 7-1 ¶¶ 55–60; Ex. D.
- **Use of Force Reporting.** This policy outlines the obligation of officers to report when they use force and what officers can expect about CPD’s administrative response to force, which depends on the nature and severity of the force used. *See* Ex. E.

The following discussion provides a non-exhaustive summary of the new policies and details some of the ways that feedback from CPD officers and Cleveland residents have been expressly incorporated into the new Use of Force policies.

A. Use of Force: General

At the outset, the new force policy emphasizes the Division’s “commitment to carry out its duties with a reverence for the sanctity of human life.” Ex. A at 1. This express commitment is responsive to feedback from the Use of Force Community Roundtables. “Several groups suggested the policies include statements such as ‘reverence for life’ and ‘respect for all individuals.’” Ex. G at 7. It also addresses CPC’s recommendation that “the sanctity and preservation of all human life” and commitment to treating people with dignity and respect be highlighted in the Use of Force policy. The specific language also aligns CPD’s policy with its new, Court-approved mission statement. Dkt. 74. Additionally, it comports with the policies of other law enforcement agencies and recommendations of major police officer organizations. *See, e.g.,* Philadelphia Police Department Directive 10.1 at Section 1-A (“It is the policy of the Philadelphia Police Department[] that officers hold the highest regard for the sanctity of human

life”); New Orleans Police Department, Operations Manual, Chapter 1.3, Use of Force Policy Statement (“The policy of the New Orleans Police Department is to value and preserve human life when using lawful authority to use force.”); PERF Guiding Principles No. 3 at 34 (“The sanctity of human life should be at the heart of everything an agency does.”).

After outlining the purpose of the policy, the General GPO articulates the policy’s four fundamental requirements: that force be used only when it is (1) necessary, (2) proportional, and (3) objectively reasonable, and that officers (4) use strategic de-escalation tactics and strategies when it is safe and feasible to do so. Ex. A at 3, Principles (V). The inclusion of necessity, proportionality, and de-escalation is a notable shift from CPD’s prior force policy. Ex. H. The previous, fifteen-page policy – which a majority of CPD officers told the Division was unclear and gave them insufficient guidance on when precisely force can and cannot be used – prohibited “excessive force,” without defining precisely what would be excessive, and situated authorized force in terms of force “that is objectively reasonable to bring an incident under control.” Ex. H at 2.

By requiring all force to be necessary and proportional, the new policy matches community expectations and best practices. *See, e.g.*, Seattle Police Department, Manual Section 8.000 (“An officer shall use only the degree of force that is objectively reasonable, necessary under the circumstances, and proportional to the threat or resistance of a subject.”); PERF Guiding Principles No. 2 and No. 3 at 35-40.

The fourth principle, de-escalation, is now required before officers resort to the use of force. Although the CPD has a separate de-escalation policy, the Division has included de-escalation as one of the major principles in the general policy. Ex. A at 3, Principles (V). This

serves to reiterate and highlight the important expectation that officers employ de-escalation techniques.

The new policy also provides thirteen specific factors or circumstances that “[o]fficers shall consider” during an incident and that, by “impair[ing] a subject’s ability to comply with officer commands or affect the nature or degree of the threat presented,” impact the objective reasonableness of using force in a given situation. Ex. A at 2, Principles (IV). For instance, officers are instructed to consider the subject’s “proximity or access to weapons,” “[t]he officer’s distance from the subject(s),” the subject’s “[l]imited English proficiency or other language barrier,” and “differences between the officer’s and subject’s age.” *Id.*

Many Community Roundtable participants expressed concern that the proposed policies failed to address how officers should interact with community residents with mental disabilities. The Parties responded to this feedback by adding, in the list of “officer/subject factors and circumstances” that must be considered “when choosing a force response,” that officers should consider “[k]nown or reasonably apparent mental illness, developmental disability, or crisis incident” and “[k]nown or reasonably apparent physical disability or other medical or physical condition, including visual or hearing impairment,” when choosing a force response. Ex. A at 2-3, Principles (IV).

The new policy provides specific guidance as to when deadly force may be authorized, Ex. A at 4, Procedures (II). It also provides a specific list of actions in which, “[c]onsistent with the principles of necessity, proportionality, objective reasonableness, and e-escalation, Officers shall not” engage. Ex. A at 4-5, Procedures (III). These actions include using force against subjects “who only verbally confront officers,” applying force to those “who are handcuffed or otherwise restrained” except in very limited circumstances, using “neck holds,” and using “head strikes with

hard objects.” *Id.* This prohibited activity list also follows many of the CPC’s recommendations, including prohibiting the “use of force against those who are exercising their First Amendment rights.” Ex. A at 5, Procedures (III)(A)(7).; Ex. F at 12. It also prohibits officers from “reaching into, or placing themselves in the path of a vehicle” Ex. A at 5, Procedures (III)(A)(7); Dkt. 7-1 ¶ 59.

No law, court, or policy can prescribe specific rules that can apply to every conceivable circumstance involving all possible police encounters under any possible permutation of circumstances. Linda S. Miller, et al, *Community Policing: Partnerships for Problem Solving* 46 (11th ed. 2011) (“Police use discretion because no set of policies and procedures can prescribe what to do in every circumstance.”). Indeed, CPD was mindful that any force policy “must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving.” *Graham v. Connor*, 490 U.S. 386, 397 (1989). Consequently, the policy provides that “[i]n rare and exceptional circumstances” where deadly force would be authorized, the subject’s actions “constitute an immediate danger and grave threat to the officer or others,” and “no other force options, techniques, tactics, or choices consistent with the Division’s policy are available, it may be necessary for an officer to take extraordinary or unanticipated actions in order to overcome the threat” that might resemble approaches that are prohibited in nearly every other circumstance by CPD’s policy. Ex. A at 5, Procedures (III)(B). The expectation of the Parties and Monitor are that this “immediate danger and grave threat” policy provision would apply exclusively “[i]n rare and exceptional situations,” Ex. A at 5, Procedures (III)(B), that CPD’s policy will be routinely and fairly applied “without regard to” an officers “underlying intent or motivation,” *Graham v. Connor*, 490 U.S. 386, 397 (1989), and that “[t]he officer’s actions” in such exceptional circumstances “shall be subject to

strict review.” Ex. A at 5, Procedures (III)(B). Indeed, it is the hope and expectation of all stakeholders that no Cleveland officer or resident will find themselves in the type of dangerous encounter with a subject where an officer’s options are so severely limited that a safe resolution of the incident is only possible by using otherwise prohibited force techniques.

The General policy outlines two important duties related to the use of force: the duty to intervene and the duty to provide medical attention. The duty to intervene provides that “[e]ach officer at the scene of a use of force incident has a duty to intervene by taking all reasonable actions to stop any use of force that is perceived to be unauthorized by this policy.” Ex. A at 5, Procedures (III)(A)(7). The duty to provide medical aid is an affirmative duty for officers themselves. CPD’s prior policy required only that officers “ensure medical care was provided.” Ex. H at 4.

The General policy outlines CPD’s new commitment to providing training on use of force “at least yearly.” Ex. A at 6, Procedures (VI). Separate policies, procedures, and specific curricula on force will be forthcoming and submitted to the Court for review and approval.

Some community comments focused on the need for officers to tailor their responses to young people in a manner consistent with their age, maturity, and relative development. The Monitor understands that CPD is working closely with the Schubert Center for Child Studies at Case Western Reserve to craft a standalone GPO about officer interactions with youth. To the extent that any Use of Force policy cannot exhaustively detail the particular knowledge that officers should have about young people, the Team applauds the Division’s forward-looking focus on the specific issues that relate to interacting with children and juveniles in various stages of physical and cognitive development. To the extent that this protocol on addressing young subjects is successful, other such protocols might be developed to address the disabled or those with

language barriers. *See* Ex. F at 6 (recommending “specific protocols for dealing with those with physical . . . conditions, . . . differently abled, and language barriers”).

Some community comments focused on issues relating to holding officers accountable with complying with the requirements of the force policy or on actions not squarely within the realm of use of force. For instance, the CPC suggested that the force policy address issues related to “verbal abuse, intimidation, . . . sexual favors,” sexual violence, and retaliation. Ex. F at 2, 7. The importance of each of these subjects demands a full treatment in a separate General Police Order, both to make clear that professional obligations and standards relating to such areas apply not just when force is used but across officer interactions with the public and to ensure that CPD’s revised General Use of Force policy maintains the focus and clarity that officers and community members routinely urged.

Similarly, a number of community recommendations focused on issues relating to use of force data, investigations, accountability, transparency, body cameras, and the role of the Office of Professional Standards (“OPS”) in reviewing force incidents. *See, e.g.*, Ex. F at 12–14. The Monitoring Team concurs that these issues, which are all addressed in the Consent Decree, are squarely related to force and the long-term ability of the Division to implement the Use of Force policy in practice. Because the General Use of Force policy focuses on when officers may and may not use force on the streets of Cleveland, these topics will be subsequently addressed in the Consent Decree process in other General Police Orders and Operation Manuals.

B. Use of Force: Definitions

Common definitions of frequently-used terms that apply throughout the force-related policies are located in the newly revised Definitions policy. These definitions provide a common

framework for officers, and the public, that can be used to create clarity, fairness, and accountability. The three-page Definitions policy defines thirteen terms, three levels of force, and three levels of subject resistance. Ex. B. CPD’s prior force policy only defined force, deadly force, less lethal force, objectively reasonable force, intermediate weapons, and types of subject resistance. Ex. H at 1-3.

The revised policy directly responds to feedback from CPD officers. One of the key findings from the electronic survey that the Division conducted was that “officers appeared to want clearer definitions of key terms used in the force policy, with fewer than 40 percent of officers saying that current definitions make the current policy more understandable.” Dkt. 43-1 at 33. Consequently, CPD endeavored to make the new definitions both concise and precise – so that policy provisions using the defined terms are readily understandable. For instance, “neck hold” is defined as “a hold around the neck that may restrict the follow of oxygen or blood through the neck.” Ex. B at 3; *see also*, Ex. F at 11 (recommending prohibition against any maneuver “that restricts the blood or oxygen flow through the neck”). Because the General policy prohibits the use of neck holds, officers must clearly understand what is prohibited by the Division through this and other definitions. Similarly, the new policy defines “necessary” as “. . . us[ing] physical force only when no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” Ex. B at 3. This definition provides a specific meaning that governs the use of the term throughout the document and conforms to longstanding conceptions of necessity in the use of force context. *See*, U.S. Department of Justice, Policy Statement, Use of Deadly Force 14 (last visited Nov. 14, 2016), *available at* <https://www.justice.gov/ag/attorney-general-october-17-1995-memorandum-resolution-14-attachment-1>.

The Definitions section also outlines the three Levels of force discussed. *See supra* Part (I)(C). It should be noted that, consistent with the Decree, Dkt. 7-1 ¶ 56, low-level, Level 1 reportable force now includes “un-holstering a firearm and pointing it at a subject.” Ex. B at 2. This is directly responsive to the CPC recommendation that the policy “[i]ncorporate in GPO Definitions, explicit language regarding pulling out and pointing of firearms—even when not fired.” Ex. F at 2. The Monitor observes that an officer’s activity becomes a Level 1, reportable force when the officer has both unholstered a firearm *and* pointed it *at* a subject. Accordingly, any suggestion that this requirement will either prevent officers from having their weapon out and in a “low ready” or “sul” position, where required and consistent with training on addressing certain subjects in higher-risk encounters, or will bury officers in paperwork would not be consistent with the tailored definition of Level 1 reportable force.

C. Use of Force: De-Escalation

De-escalation is the use of affirmative and strategic techniques to preserve a greater array of tactical options, thereby increasing the likelihood that a subject will voluntarily comply while minimizing the likelihood that force will need to be used during an incident and/or reducing the severity of force that is used. A number of police departments require that police officers de-escalate situations, when feasible and safe – including Dallas, New York, Salt Lake City, San Francisco, San Antonio, Seattle, and Washington, D.C. Additionally, a focus on de-escalation in policy and training has been emphasized by several groups of law enforcement professionals. *See e.g.*, President’s Task Force on 21st Century Policing at 20; PERF Guiding Principles No. 17 at 54;

CPD's revised policies now impose an affirmative duty on police officers to de-escalate situations unless it is not safe or not feasible for them to do so. The concept has been set forth both in a distinct policy section and as a requirement in the General Use of Force policy. *See*, Ex. C (emphasizing the significant breadth of the duty and the primary importance of de-escalation in the Division's approach to policing and using force going forward); *see also*, Ex. F at 15-16 (recommending that CPD's policies "[a]ffirm de-escalation as the preferred approach").

In an informal survey conducted by the City's Community Relations Board, residents indicated that CPD's use of de-escalation tactics would address fairness in use of force issues. Dkt 43-1 at 33. Thus, as recommended by the CPC, de-escalation has become a "core theme" and officers are expected to have the skill set and intention to not escalate situations themselves. The De-escalation policy reinforces that officers should de-escalate rather than escalate: "Officers should avoid taking unnecessary actions that may escalate the need to use force, e.g. aggressive body language, proximity, harsh level of voice and tone, officer's own stress level or excitement." Ex. C; *see also* Ex. F at 8.

CPD's stated intent of having both a separate, standalone De-escalation policy and incorporating de-escalation expressly into the General Use of Force policy is to clarify that officers understand that "the guidelines relative to de-escalating situations in order to gain voluntary compliance and reduce the need to use force" apply to all encounters, regardless of whether force is ultimately required to resolve the situation or not. Ex. C at 1; *see also* Dkt. 7-1 ¶ 36. Further, the De-escalation policy describes a host of "de-escalation tactics, verbal persuasion and warnings and tactical de-escalation techniques, such as slowing down the pace of an incident, waiting out subjects, creating distance (and thus the reactionary gap) between the officer and the threat, and requesting additional resources. . ." Dkt. 7-1 ¶ 46(b); *see also* Ex. F at 8.

During the Use of Force Community Roundtables, many community members discussed the importance of incorporating specific protocols for de-escalating individuals with mental health conditions. Ex. G at 6. Consistent with this feedback, the de-escalation policy requires officers to consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comprehend and/or comply based on "[k]nown or reasonably apparent mental illness, developmental disability, or crisis incident or [k]nown or reasonably apparent physical disability or other medical or physical condition, including visual or hearing impairment. Ex. C at 1, Procedures (D). Additionally, and consistent with policies and training related specifically to interacting with individuals experiencing behavioral crisis that the City will soon submit to the Monitor and Court for review, the policy provides specific protocol officers must follow if it is determined the subject is in a mental health/behavioral crisis. Ex. C at 2, Procedures (I)(F)

D. Use of Force: Intermediate Weapons

Intermediate weapons, sometimes called less-lethal weapons, can be an important tool used by officers to gain control of a subject posing a threat without needing to use more deadly force. The appropriate use of less-lethal weapons has been associated with a lower rate of injuries to both officers and civilians. *See e.g.*, John M. MacDonald, et al, "The Effect of Less-Lethal Weapons on Injuries in Police Use-of-Force Events," 99 *Am. J. Pub. Health* 2268 (2009) (concluding that "[i]ncidence of . . . injuries can be reduced dramatically when law enforcement agencies responsibly employ less-lethal weapons in lieu of physical force").

CPD previously did not have a separate policy section or manual specifically dedicated to intermediate weapons. Ex. H. Instead, different rules applied to different intermediate weapons, and all were contained in the Division's single force policy. Indeed, the only guideline that applied

to all intermediate weapons was that officers were not permitted to use an intermediate weapon against someone who was passively resisting. Ex. H. at 6, Procedures (IV). Thus, consistent with feedback from Division officers, the Parties concluded that CPD should have a more robust set of policies to provide specific guidance to officers on the use of various intermediate weapons.

The revised Intermediate Weapons policy focuses on four authorized intermediate weapons: (1) ASP Baton/Riot Baton/Impact Weapons; (2) Oleoresin Capsicum (OC) Spray; (3) Conducted Electrical Weapon (“CEW” or “Tasers”); and (4) and the beanbag shotgun. The new policy sets out clear provisions that apply to all intermediate weapons, regardless of type, including when officers are and are not authorized to use *any* intermediate weapon. Ex. D at 1-2, Procedures (I). Under the revised policy, officers are required to carry at least two intermediate weapons, which ensures that officers will have multiple less-lethal options immediately available to them. Ex. D at 1, Procedures (I)(A)(2).

The policy also provides force-instrument-specific guidelines – or particular policy provisions that apply to the specific nature of the instrument and the risks associated to each to officers and subjects. Ex. D at 2-8, Procedures (II-V). Because OC Spray and CEW are purportedly to be more widely carried and used by CPD officers, the guidelines for those instruments are discussed in detail. Ex. D at 3-7, Procedures (III-IV).

Specifically, the policy guidelines related to OC Spray is designed to provide more clarity about when and how to use OC Spray. Officers may use OC Spray “only (a) [w]hen such force is reasonable to protect the officer, the subject, or another party from physical harm and lesser means would be ineffective; or (b) [f]or crowd dispersal or protection and other means would be more intrusive or less effective.” Ex. D at 3, Procedures (III)(A)(1). The revised policy also now urges officers to be “aware of the risks of using OC spray in confined or enclosed environments” – a

provision that CPD specifically added in response to community feedback and aligned with the policies of other law enforcement agencies. Ex. D at 3, Procedures (III)(A)(3), Ex. F at 26.

The Decree also details the guidelines and protocols officers must follow when using CEWs, or Tasers. The Intermediate Weapons policy is consistent with the Decree's provisions and, in some instances, provides additional information and instruction in an effort to provide greater clarity to officers. For example, the manufacturer of the Taser indicates that officers must deploy the CEW at specific target zones on a subject's body in order for the application to be effective and to avoid undue risk or injury to the subject. TASER International, *TASER Handheld CEW Warnings, Instructions, and Information: Law Enforcement 3* (March 1, 2013) [*hereinafter* "TASER Handheld CEW Warnings"] (instructing officers to "[u]se preferred target areas" of below the neck and lower center mass and "[a]void sensitive areas"). Though the Consent Decree prohibits the use of CEWs to a subject's head, neck, or genitalia, the newly revised GPO provides additional clarity by specifically identifying the preferred target zones for Tasers, specifically, "the lower center mass of the body on the front of the body and below the neckline of the back upper body." Dkt. 7-1 ¶ 68; Ex. D at 4, Procedures (IV)(A)(2); *accord* TASER Handheld CEW Warnings at 3.

Further, consistent with the Taser manufacturer's instructions, officers must "[l]imit each CEW cycle to 5 seconds" and "[u]se the minimum number of 5-second CEW cycles necessary to gain control of the subject. Ex. D at 5, Procedures (IV)(A)(2)(d)-(e); *accord* TASER Handheld CEW Warnings at 2 ("Minimize the number and duration of CEW exposures."). "If after three CEW applications the subject has not become compliant . . . , the officer shall assume that the CEW is ineffective and shall reassess and seek to transition to alternative control measures." Ex. D at 5, Procedures IV(A)(2)(j); *accord* TASER Handheld CEW Warnings at 2 ("If a CEW

deployment is ineffective in incapacitating a subject or achieving compliance[,] consider alternative control measures”). Pursuant to community feedback and the CPC’s recommendation, the final Intermediate Weapons policy now indicates that officers must “[r]eevaluate the situation after each CEW application” to consider alternative tactics, which might “include other less-lethal instruments and force techniques of the same or lesser Level and are not, therefore, limited to the application of higher-Level force.” Ex. D at 4, Procedures (IV)(A)(i); *see* Ex. F at 19 (noting that “ineffective CEW deployment does not mean an officer should immediately resort to a firearm”).

E. Officer Use of Force Reporting

Finally, the Division’s Officer Use of Force Reporting policy is consistent with the requirements of the Consent Decree and incorporates community feedback. Dkt. 7-1 ¶¶ 87–99. This policy outlines what officers must do to notify supervisors after force has been used, what they must be prepared to do in terms of describing and reporting what happened, and the administrative response from the Division that officers can expect to be followed immediately after a use of force incident.

The proposed policy captures the affirmative duty placed on all witness officers to report such force in writing. The Division has created a Witness-Officer Narrative Statement, which requires officers who are bystanders or witnesses to the use of force by a CPD officer to provide, among other things: (1) detailed account of the incident from the witness-officer’s perspective; (2) the reason for the initial police presence; (3) a specific description of the acts that led to the use of force; (4) the level of resistance encountered; and (5) a complete and accurate description of every type of force used or observed. Dkt. 7-1 ¶ 88; Ex. E at 1, Procedures (III).

As described previously, in Part (I)(C) each use of force is now classified into one of three Levels, with each category of force “trigger[ing] a specific administrative response, investigation, and review of a force incident after it occurs.” Dkt. 43-1 at 35.

The comments of the CPC and other community organizations focused on how force reports would be evaluated, reviewed, and made public. Specifically, in a separate document reviewing the reporting policy, attached hereto as Exhibit I, the CPC indicated that “Use of Force Reports need to be consistently evaluated for departmental values and integrity of reporting of the facts of the case,” and that “Use of Force . . . be reported out to the community . . . on a monthly or quarterly basis.” Ex. I at 1. The Monitoring Team agrees. However, the Officer Use of Force Reporting Officer applies to officers. The response of supervisors to use of force incidents, the administrative inquiries and reviews of force, and the Department’s tracking of data about use of force will all be the subjects of subsequent GPOs that will be separately completed, made available for wider review, and submitted to this Court.

V. CONDITIONS TO APPROVAL OF THE FORCE POLICIES

The Monitor’s approval of CPD’s revised Use of Force policies are subject to three specific conditions.

A. CPD Will Submit Its Policies, Procedures, Manuals, and Documentation Relating to All Canine Deployments Not Later Than April 15, 2017.

During conversations among Consent Decree stakeholders, it became apparent that CPD has been operating without a comprehensive, rigorous set of policies, procedures, manuals, and documentation governing all canine deployments. Under the revised Use of Force policies, a canine deployment amounts to reportable force when it can be considered a “canine apprehension”, e.g. “[w]hen a canine is deployed and plays a clear role in the capture of a person.” Ex. B at 1;

accord Dkt. 7-1 ¶ 408. Because police canines can effectuate a seizure for the purposes of the Fourth Amendment, the Parties and Monitor have agreed that CPD should create clearer, codified policies for all canine deployments – whether they ultimately constitute reportable force or not – and should ensure that all such deployments are tracked in an electronic database. Consequently, the Monitor approves the new Use of Force policies on the condition that CPD provides to this Court its revised policies, procedures, manuals, and documentation relating to all canine deployments not later than April 15, 2017 for review and approval.

B. CPD Will Have Implemented an Electronic System or Systems That Permits the Tracking of Instances Where Officers Unholster Their Firearms in the Context of Other Incidents, Interactions, or Events That Trigger a Reporting or Data Collection Requirement Not Later Than January 31, 2018.

The general rule is that only unholstering a firearm and/or having a firearm in the “sul” or low ready in a manner consistent with training for various high-risk encounters is not, unless or until the firearm is pointed at a subject, reportable force. Importantly, however, the Consent Decree provides that “[i]f an officer unholsters a firearm during an incident, interaction, or event that would otherwise trigger a reporting or data collection requirement, officers will document that a firearm was unholstered,” with CPD “annually collect[ing] and analyz[ing] this data.” Dkt. 7-1 ¶ 55. Currently, CPD is in the process of implementing an electronic data tracking system that will track a host of officer performance and basic information, including those instances in which officers unholster their weapons during the course of effectuating their duties.

Because CPD will need to provide officers on guidance about what incidents are subject to standard reporting or data collection requirements and how specific information, including information about when an officer unholsters his or her firearm, is documented to comply with the Consent Decree, the Monitoring Team’s approval of CPD’s revised force policies are premised on CPD implementing an electronic database system or systems not later than January 31, 2018 that

track instances, which would otherwise trigger a reporting or data collection requirement, in which officers unholster their weapon.

C. The Monitoring Team Will Conduct a Review of the Force Policies and Report to the Court Not Later Than 550 Days After the Court Approves the Policies as to Whether the Policies Are Providing Effective Direction to CPD Personnel.

CPD's new force policies will only be successful to the extent that they promote officer and public safety, effective law enforcement, and constitutional policing across Cleveland's diverse communities. Although CPD has taken care to base its policies on real-world practices of other police agencies, guidance from law enforcement organizations, and feedback from the Cleveland community, it is possible that some refinement may be necessary in the future to ensure that the force policies are adequately fulfilling the requirements and objectives of the Consent Decree.

Consequently, the Monitor's approval of the force policies is conditioned on the Monitoring Team conducting a review, no later than 550 days after this Court approves the force policies, as to whether the policies continue to provide effective direction to CPD personnel and remain consistent with the purpose and requirements of the Consent Decree and current law. If adjustments appear necessary based on the review of officer performance data and in-depth assessments of force incidents, the Monitoring Team and Parties will work to revise the policies as appropriate at that time.

VI. CONCLUSION

The task of the Monitor was to duly consider whether the updated CPD Use of Force policies sufficiently reflect, embody, and adhere to the requirements of the Consent Decree. The Monitor and the Monitoring Team have determined that the policies attached here adequately do

so. Accordingly, the Monitor approves the CPD's new Use of Force policies subject to the conditions outlined in Section V and requests that this Court order them effective upon CPD's successful completion of upcoming Use of Force training.

Respectfully submitted,

/s/ Matthew Barge

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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2016, I served the foregoing document entitled Motion Recommending Approval of Revised Use of Force Policies of the Cleveland Division of Police via the court's ECF system to all counsel of record.

/s/ Matthew Barge

MATTHEW BARGE

EXHIBIT A



GENERAL POLICE ORDER CLEVELAND DIVISION OF POLICE



ORIGINAL EFFECTIVE DATE :	REVISED DATE: 2016-11-08	NO. PAGES: 1 of 6	NUMBER:
SUBJECT: <p style="text-align: center;">USE OF FORCE: GENERAL</p>			
ASSOCIATED MANUAL:		RELATED ORDERS:	
CHIEF OF POLICE:			

This General Police Order has been revised in its entirety

PURPOSE: To establish guidelines for officers of the Cleveland Division of Police relative to the use of force, and to provide direction and clarity, in those instances when a subject’s actions require an appropriate use of force response.

POLICY: Consistent with the Division’s mission, including the commitment to carry out its duties with a reverence for the sanctity of human life, it is the policy of the Division 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. Officers shall also take all reasonable measures to de-escalate an incident and reduce the likelihood or level of force. 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.

PRINCIPLES:

I. General

- A. The use of force is regulated by state and federal law and is not left to the unregulated discretion of the officer. Use of force decisions are dictated by the actions of the resistant or combative subject, the law, Division policy, proper tactics, and training.
- B. Officers will be held accountable to the Division’s use of force policies on-duty and off-duty.
- C. These principles apply to all uses of force, not only the use of deadly force.

II. Necessity

- A. **ALL FORCE MUST BE NECESSARY TO ACHIEVE A LAWFUL OBJECTIVE**
- B. Officers shall use force only as necessary, meaning only when no reasonably effective alternative to the use of force appears to exist, and then only to the degree which is reasonable to effect the intended lawful objective.

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- C. Force has a lawful objective when it is used for any of the following:
 - 1. To effect a lawful arrest or detention of a subject
 - 2. To gain control of a combative subject
 - 3. To prevent or terminate the commission of a crime
 - 4. To intervene in a suicide or self-inflicted injury
 - 5. To defend or protect an officer or an individual from the violent or resistant physical acts of another

III. Proportionality

- A. **ALL FORCE MUST BE PROPORTIONAL TO THE LEVEL OF THE SUBJECT'S RESISTANCE.**
- B. To be proportional, the level of force applied must reflect the totality of the circumstances known to the officer at the time force was applied. Generally, only the amount of force required to control the subject shall be used by the officer.

IV. Objective Reasonableness

- A. **ALL FORCE MUST BE OBJECTIVELY REASONABLE**
- B. Objectively Reasonable Force is a level of force that is appropriate when analyzed from the perspective of a reasonable officer on scene, rather than with 20/20 hindsight. Objective reasonableness takes into account, where appropriate, the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations. All uses of force are analyzed under the Fourth Amendment as guided by the United States Supreme Court. Graham v. Connor (490 U.S. 386 (1989)).
- C. Officers shall assess each incident and determine, based on law, policy, training, and experience, which level of force should be used to control the situation in the safest manner for all individuals involved. Reasonable and sound judgment will dictate the force option to be deployed.
- D. The reasonableness inquiry with respect to force is an objective one, whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting and reasonably known to the officer at the time of the incident. These factors include, but are not limited to the following:
 - 1. The severity of the crime(s) at issue
 - 2. Whether the subject is actively resisting arrest or attempting to evade arrest by flight
 - 3. Whether the subject poses an immediate threat to the safety of the officer(s) or others
- E. Officers shall consider the following officer/subject factors and circumstances when choosing a force response, including for example, how the presence of one or more of these factors could impair a subject's ability to comply with officer commands or affect the nature or degree of the threat presented:
 - 1. The influence of drugs and/or alcohol
 - 2. Known or reasonably apparent mental illness, developmental disability, or crisis incident

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3. Known or reasonably apparent physical disability or other medical or physical condition, including visual or hearing impairment
 4. Limited English proficiency or other language barrier
 5. The time available to an officer to make decisions
 6. The availability of officers/resources to de-escalate the situation
 7. The proximity or access to weapons by the subject
 8. The differences between the officer's and the subject's:
 - a. Age
 - b. Gender
 - c. Body size
 - d. Skill level
 - e. Relative strength
 9. Injury or exhaustion
 10. Officer's and subject's position (e.g., being on the ground)
 11. The officer's distance from the subject(s)
 12. The officer's special knowledge or training
 13. Degree to which the subject is already restrained (handcuffed, physically controlled by others, or whose mobility has been otherwise severely compromised).
- F. The unreasonable use of force shall subject officers to the disciplinary process, possible criminal prosecution, and/or possible civil liability.

V. De-Escalation

- A. **OFFICERS SHALL USE DE-ESCALATION TECHNIQUES WHEN IT IS SAFE AND FEASIBLE TO DO SO UNDER THE TOTALITY OF THE CIRCUMSTANCES.** (Refer to De-escalation GPO # TBD).
- B. Officers shall continue to assess/evaluate whether the force response being deployed remains proportional to the changing nature of the threat or circumstances being encountered, while still achieving the lawful objective. Officers shall reduce the level of force applied as the nature of the threat diminishes.

PROCEDURES:

I. General Procedures

- A. When feasible, officers shall attempt to identify themselves as police officers and make an attempt to advise subject(s) of their intent to detain, arrest, or search a subject before using force.
- B. Where feasible, and to do so would not increase the danger to officers or others, officers shall issue a verbal warning to submit to their authority prior to the use of force.
- C. Officers shall take all reasonable steps under the circumstances, before and during any use of force, to avoid unnecessary risk to bystanders, victims, hostages, and other involved civilians, as well as other officers and emergency personnel.

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- D. Officers shall consider their surroundings when un-holstering or before discharging their firearms and shall avoid unnecessary risk to bystanders, victims, and other officers.
- E. Officers shall notify a supervisor to respond to the scene of any reportable use of force incident.
- F. Officers shall promptly, accurately, and thoroughly document the reasons for and types of force used.

II. **Deadly Force: When Authorized** (Tennessee v. Garner, 471 U.S. 1 1985)

- A. All of the provisions of this policy, including the Division's commitment to recognizing the sanctity of human life and requirements that officers use only the degree of force necessary under the circumstances governing force, also govern deadly force. (See "Principles")
- B. Deadly force may be used only if a subject, through their own actions, poses an imminent threat of death or serious physical harm to an officer or another.
- C. Deadly force may be used to prevent the escape of a fleeing suspect only when an officer would reasonably believe, under the circumstances, that it is necessary, and where feasible, some warning has been given, and there is probable cause to believe that:
 - 1. The suspect is in the process of committing or has committed a violent felony involving the infliction or threatened infliction of serious physical harm or death and the suspect would pose a continuing imminent threat of serious physical harm, either to the officer or others; OR
 - 2. The escape of the suspect would pose an imminent danger of death or serious physical harm to the officer or to another if the suspect is not apprehended without delay;

III. **Use of Force: When Prohibited**

- A. Consistent with the principles of necessity, proportionality, objective reasonableness, and de-escalation, **Officers shall not:**
 - 1. Use force to subdue a subject(s) who is not suspected of any criminal conduct, other than to protect an officer's or another person's safety.
 - 2. Use retaliatory force (which includes, but is not limited to, force in excess of what is objectively reasonable to prevent an escape, force to punish individuals for fleeing or otherwise resisting arrest, force used to punish an individual for disrespecting officers, and other such circumstances).
 - 3. Use force against subject(s) who only verbally confront officers and are not involved in criminal conduct.
 - 4. Use force against subject(s) who are handcuffed or otherwise restrained, unless it is objectively reasonable and necessary under the circumstances to stop an assault, escape, or as necessary to fulfill other law enforcement objectives.

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5. Un-holster and display or un-holster and point a firearm unless the circumstances surrounding the incident create an objectively reasonable belief that the situation may escalate to the point at which deadly force would be authorized.
 6. Use force to overcome passive resistance, except where it is necessary, proportional, and objectively reasonable to achieve a legitimate law enforcement objective.
 7. Use force against those who are exercising their First Amendment rights. Physically moving a subject is permitted when it is necessary and objectively reasonable for the safety of that individual or the public. It shall be done with sufficient personnel so as not to endanger the subject or the officers and will not be considered a reportable use of force unless it meets the criteria of a Level 1, Level 2, or Level 3 use of force.
 8. Carry weapons that are not authorized or approved by the Division.
 9. Use a firearm as an impact weapon.
 10. Fire warning shots.
 11. Use deadly force solely to protect property or solely to effectuate an arrest.
 12. Use neck holds.
 13. Discharge a firearm from or at a moving vehicle, unless use of deadly force is justified by something other than the threat from the moving vehicle. (Refer to GPO 3.2.02 Vehicle Pursuits)
 14. Reach into, or place themselves in the path of a vehicle. Officers shall move out of the path of a moving vehicle. (Refer to GPO 3.2.02 Vehicle Pursuits)
 15. Discharge a firearm at a threat that is not verified and visible.
 16. Use head strikes with hard objects.
- B. In rare and exceptional situations where, under the facts and circumstances confronting the officer, a reasonable officer would believe that (a) the use of deadly force would be objectively reasonable, necessary, and proportional according to this policy, and (b) the subject's actions constitute an immediate danger and grave threat to the officer or others, and (c) no other force options, techniques, tactics, or choices consistent with the Division's policy are available, it may be necessary for an officer to take extraordinary or unanticipated actions in order to overcome the threat.

In these rare and exceptional situations, officers must specifically articulate and justify with particularity the specific tactic(s) or action(s) employed and the reasons why their actions met each of the criteria (a), (b), and (c) set forth above. The officer's actions, including all actions preceding the use of deadly force, shall be subject to strict review.

IV. Duty To Intervene

- A. Officers who are present at the scene of a police use of force are obligated to ensure that the use of force complies with the requirements of the law, Division rules, policy, and training.
- B. Each officer at the scene of a use of force incident has a duty to intervene by taking all reasonable actions to stop any use of force that is perceived to be unauthorized by this policy.
- C. Officers witnessing suspected unreasonable force shall factor into their response their ability to de-escalate the use of force. The officer's response may range from physical

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intervention, to voice commands, to appropriate after-action notification. If reasonably able to do so, the officer shall:

1. Physically intervene to stop the objectively unreasonable force.
2. Take protective custody of the subject being subjected to the apparent unreasonable force.
3. Ensure that medical care is provided as needed.
4. Report the suspected unreasonable use of force to the next non-involved supervisor in their chain of command, document the same in their duty report, and complete a Form-1 detailing the use of force and surrounding circumstances as soon as safe and practical, before the end of the tour of duty.

V. Duty to Provide Medical Attention

- A. Immediately following any use of force and when the scene is secure, officers, and upon their arrival, supervisors, shall inspect and observe subject(s) for injury or complaints of pain resulting directly or indirectly from the use of force.
- B. If needed, officers and supervisors shall immediately obtain any necessary medical care while providing emergency first aid until professional medical care providers arrive.
- C. Officers shall immediately request Emergency Medical Services (EMS) to respond for the following Use of Force applications regardless of visible injury or complaint of injury:
 1. Discharges of a firearm that strike a subject
 2. Impact of subject's head against a hard, fixed object.
 3. Any use of force on subjects who are reasonably believed or known to be pregnant, children, elderly, physically or medically frail, or disabled.
 4. Refer to GPO TBD Use of Force-Intermediate Weapons for additional situations requiring a request for EMS.
- D. Whenever EMS is requested, officers shall be sure the scene is tactically safe, or, when tactically unsafe for EMS response, as soon as practical, but without unnecessary delay, the subject shall be transported to a safe location for treatment.
- E. Officers shall closely monitor subjects who are taken into custody if the subject is injured, exhibits physical distress, complains of pain, or has been rendered unconscious.

VI. Training

- A. Officers shall be trained and tested at least yearly on the law, Division policy regarding the use of force, and appropriate methods to effect arrests.

EXHIBIT B



GENERAL POLICE ORDER CLEVELAND DIVISION OF POLICE



ORIGINAL EFFECTIVE DATE :	REVISED DATE: 2016-11-08	NO. PAGES: 1 OF 3	NUMBER:
SUBJECT: <p style="text-align: center;">USE OF FORCE: DEFINITIONS</p>			
ASSOCIATED MANUAL:		RELATED ORDERS:	
CHIEF OF POLICE:			

PURPOSE: To define terminology used in the Cleveland Division of Police Use of Force Policies.

DEFINITIONS:

Canine Apprehension: When a canine is deployed and plays a clear role in the capture of a person. The mere presence of a canine at the scene of an arrest or use of a canine solely to track a subject will not count as a canine apprehension.

De Minimus Force: Physical interactions meant to guide and/or control a subject that do not constitute reportable force (e.g. use of control holds that do not cause pain and are not reasonably likely to cause pain; using hands or equipment to stop, push back, separate, or escort a person in a manner that does not cause pain, and are not reasonable likely to cause any pain).

De-escalation: Is the process of taking action to stabilize the situation and reduce the immediacy and level of a threat so that more time, options, and resources are available to resolve the situation and gain voluntary compliance. De-escalation techniques may include, but are not limited to, gathering information about the incident, assessing the risks, verbal persuasion, advisements and warnings, and tactical de-escalation techniques, such as slowing down the pace of the incident, waiting out subjects, creating distance (reactionary gap) between the officer and the threat, repositioning, and requesting additional resources (e.g., specialized CIT officers or negotiators).

Deadly Force: Is any action that is likely to cause or does cause death or serious physical harm. It may involve firearms, but also includes any force or instrument of force (e.g. vehicle, edged weapon) capable of causing death or serious physical harm. Deadly force includes firing at or in the direction of a subject, head and/or neck strikes with any hard object, and any action that restricts the blood or oxygen flow through the neck.

FIT (Force Investigation Team): FIT is a team within the Internal Affairs Unit, comprised of personnel with specialized training and expertise from various units. FIT membership shall be tailored to the circumstances of each investigation, but normally includes one or more FIT detectives, the FIT Sergeant, an Office of Professional Standards investigator, an Internal Affairs investigator, and a Homicide Unit supervisory officer, who will serve as the Team's leader. OPS investigators will not participate in criminal investigations. At least one supervisory member of FIT will be available at all times to evaluate potential

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referrals from supervisors. FIT Team will conduct investigations as specified in GPO (forthcoming upon future completion and approval of FIT policy).

Force: Means the following actions by an officer: any physical strike, (e.g., punches, kicks), any intentional contact with an instrument, or any physical contact that restricts movement of a subject. The term includes, but is not limited to, the use of firearms, electronic control weapon (CEW- e.g. Taser), ASP, chemical spray, hard empty hands, or the taking of a subject to the ground. Reportable force does not include escorting or handcuffing a subject, with no more than minimal resistance.

Intermediate Weapons: Weapons that interrupt a subject’s threatening behavior so that officers may take control of the subject with less risk of injury to the subject or officer than posed by greater force applications, including but not limited to the ASP batons, and Conducted Electrical Weapon (CEW), Oleoresin Capsicum (OC) Spray and the beanbag shotgun.

Law Enforcement Officer: includes; without limitation, all City of Cleveland police officers and any other law enforcement officers (including federal agents, state and county enforcement officers, and any other police officer of a foreign agency.)

Levels of Force:

Level 1 Use of Force: Force that is reasonably likely to cause only transient pain and/or disorientation during its application as a means of gaining compliance, including pressure point compliance and joint manipulation techniques, but that is not reasonably expected to cause injury, does not result in an actual injury, and does not result in a complaint of injury. It does not include escorting, touching, or handcuffing a subject with no or minimal resistance. Un-holstering a firearm and pointing it at a subject is reportable as a Level 1 use of force.

Level 2 Use of Force: Force that causes an injury, could reasonably be expected to cause an injury, or results in a complaint of an injury, but does not rise to the level of a Level 3 use of force. Level 2 includes the use of a CEW, including where a CEW is fired at a subject but misses; OC Spray application; weaponless defense techniques (e.g., elbow or closed-fist strikes, kicks, leg sweeps, and takedowns); use of an impact weapon, except for a strike to the head, neck or face with an impact weapon; and any canine apprehension that involves contact.

Level 3 Use of Force: Force that includes uses of deadly force; uses of force resulting in death or serious physical harm; uses of force resulting in hospital admission due to a use of force injury; all neck holds; uses of force resulting in a loss of consciousness; canine bite; more than three applications of a CEW on an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different officers; a CEW application for longer than 15 seconds, whether continuous or consecutive; and any Level 2 use of force against a handcuffed subject.

Levels of Resistance:

Active Resistance: Refers to instances in which a subject takes physical actions to defeat an officer’s attempts to place the subject in custody and/or take control, but is not directed toward harming the officer. Active resistance may include but is not limited to pushing away, hiding from detection, fleeing, tensing arm muscles to avoid handcuffing, or pulling away from an officer who

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is using force in the lawful performance of their duties. Verbal statements alone do not constitute active resistance.

Aggressive Physical Resistance: Refers to instances in which a subject poses a threat of harm to the officer or others, such as when a subject attempts to attack or does attack an officer; exhibits combative behavior.

Passive Resistance: Refers to instances in which a subject does not comply with an officer's commands and is uncooperative but is nonviolent and prevents an officer from placing the subject in custody and/or taking control. Passive resistance may include but is not limited to standing stationary and not moving upon lawful direction, falling limply and refusing to move (dead weight), holding onto a fixed object, linking arms to another during a protest or demonstration, or verbally signaling an intention to avoid or prevent being taken into custody.

Necessary: Officers will use physical force only when no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.

Neck Hold: Is a hold around the neck that may restrict the flow of oxygen or blood through the neck.

Officer Involved Shooting: is an event that irrespective of injury, involves any firearm discharge by a police officer other than: authorized firearms training, an accidental shooting not resulting in injury or death, or the necessary destruction of a sick or injured animal.

Reportable Force: Refers to force that officers must document and report in the manner outlined by the Use of Force Reporting Policy, GPO#?. Cleveland Division of Police uses of force are divided into three levels of response. The three levels for the reporting and subsequent inquiry and review of uses of force correspond to the level of force used and/or the outcome of the force.

Proportional: To be proportional, the level of force applied must reflect the totality of circumstances surrounding the immediate situation, including the presence of an imminent danger to officers or others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Proportional force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater level of force that may be proportional, objectively reasonable, and necessary to counter it.

Serious Physical Harm: Any physical harm that carries a substantial risk of death; any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity; any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement; any physical harm that involves acute pain of such duration as to result in substantial suffering or involves any degree of prolonged or intractable pain. (ORC 2901.01)

EXHIBIT C



GENERAL POLICE ORDER CLEVELAND DIVISION OF POLICE



ORIGINAL EFFECTIVE DATE :	REVISED DATE: 2016-11-08	NO. PAGES: 1 OF 3	NUMBER:
SUBJECT: <p style="text-align: center;">DE-ESCALATION</p>			
ASSOCIATED MANUAL:		RELATED ORDERS:	
CHIEF OF POLICE			

PURPOSE: To establish guidelines for officers of the Cleveland Division of Police relative to de-escalating situations in order to gain voluntary compliance and to reduce the need to use force.

POLICY: Officers have the ability to impact the direction and outcome of the situation with their decision making and employed tactics. Policing, at times, requires that an officer may need to exercise control of a violent or resisting subject, or a subject experiencing a mental or behavioral crisis. At other times, policing may require an officer to serve as a mediator between parties, or defuse a tense situation. Officers shall use de-escalation tactics and strategies when safe under the totality of the circumstances and time and circumstances permit.

PROCEDURES:

I. De-escalation Tactics and Techniques

- A. De-escalation tactics and techniques are proactive actions and approaches used by officers, when feasible, to gain the voluntary compliance of subject(s) and reduce or eliminate the need to use force.
- B. Officers should avoid taking unnecessary actions that may escalate the need to use force, e.g. aggressive body language, proximity, harsh level of voice and tone, officer’s own stress level or excitement.
- C. When safe and feasible to do so, and before using force and/or to reduce the need for force, officers shall attempt to slow down the situation so that more time, options and resources are available for the incident to be resolved.
- D. Officers shall consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comprehend and/or comply based on, but not limited to the following:
 - 1. The influence of drugs and/or alcohol
 - 2. Known or reasonably apparent mental illness, developmental disability, or crisis incident
 - 3. Known or reasonably apparent physical disability or other medical or physical condition, including visual or hearing impairment

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4. Limited English proficiency or other language barrier
 5. Perceived age of a child
- E. When deciding which tactical options are the most appropriate to bring the situation to a safe resolution, the officer's awareness of the above factors (Paragraph I. C.) shall be weighed in light of the facts of the incident and the totality of the circumstances facing the officer.
- F. De-escalation techniques shall be used, if feasible, once officers assess any threats present at the incident. The nature and immediacy of the threat will help determine what de-escalation or other tactics an officer may use to address the threat. In determining whether and what de-escalation techniques may be appropriate, officers should also:
1. Determine whether the subject is in a mental health/behavioral crisis.
 - a. If the subject is in a mental health/behavioral crisis, officers shall call a Specialized CIT Officer to the scene. Specialized CIT officers who are dispatched to an incident involving an individual in crisis will have primary responsibility for the scene unless or until a supervisor arrives and assumes responsibility. (Refer to Crisis Intervention GPO 3.2.06).
 - b. If a supervisor has assumed responsibility for the scene involving a subject in a mental health/behavioral crisis, the supervisor will seek the input of a specialized CIT officer regarding strategies for resolving the crisis where it is reasonable for them to do so.
 - c. If the subject is not in a mental health/behavioral crisis, officers shall de-escalate in accordance with this policy.
- F. De-escalation techniques include:
1. Proactive use of distance, cover, concealment, and time
 - a. Separate yourself from the threat and create a safe distance to speak with subject(s). This allows you to assess the situation and your options, bring additional resources to the scene, and develop a plan for resolving the incident without use of force.
 - b. Place barriers between an uncooperative subject and yourself.
 - c. Move from a position that exposes you to potential threats to a safer position.
 - d. Avoid physical confrontation, unless immediately necessary (for example, to protect someone or to stop behavior that creates an imminent threat).
 - e. Slow down the pace of the incident, from the time you receive your radio broadcast, and utilize Division trained anxiety and stress management techniques when necessary.
 - f. Allow time and/or opportunity for a subject(s) to regain self-control or cease struggling or resisting, when their actions do not immediately threaten the safety of themselves or others.
 - g. Request additional personnel and wait, when safe and feasible to do so, for arrival of additional personnel.
 2. Hearing and Listening
 - a. Demonstrate you are listening by interacting in conversation; people have a desire to be heard and understood.
 3. Strategic communication or voice commands to de-escalate the situation

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- a. Verbalize to the subject(s), in a calm manner and normal tone of voice, all the options available to them, which you can help with, and which would be best to end subject's crisis.
 - b. Ask questions rather than issue orders.
 - c. Advise the subject(s) of the actions that you will take to end their crisis in the best way possible.
 - d. As a last resort, inform the subject that not following orders may result in the need to use force. When possible and appropriate, give subjects the opportunity to comply with directives.
4. Increase officer presence, if necessary, to increase strategic options available for bringing a subject under control and/or reduce the severity of the threat.
 - a. Request additional personnel respond to the scene/subject.
 - b. Where a subject appears to be experiencing a behavioral or mental health crisis, call a Specialized CIT Officer to the scene.
 - c. Request a supervisor.

II. Training

- A. Officers shall receive integrated, scenario based training at least yearly on de-escalation techniques, tactical decisionmaking, and strategic ways to handle situations where the use of force can be avoided or the level of force minimized.

EXHIBIT D



GENERAL POLICE ORDER CLEVELAND DIVISION OF POLICE



ORIGINAL EFFECTIVE DATE :	REVISED DATE: 2016-11-08	NO. PAGES: 1 of 8	NUMBER:
SUBJECT: USE OF FORCE: INTERMEDIATE WEAPONS			
ASSOCIATED MANUAL:		RELATED ORDERS:	
CHIEF OF POLICE:			

PURPOSE: To establish guidelines for officers of the Cleveland Division of Police relative to the use of force when deploying intermediate weapons, while providing direction and clarity, in those instances when a subject’s actions require a use of force response.

POLICY: Intermediate weapons are used to interrupt a subject’s threatening behavior so that officers may take control of the subject with less risk of injury to the subject or officer than posed by greater force applications. Intermediate weapons may be used when objectively reasonable, necessary, proportional, and permitted under this policy.

PROCEDURES:

I. General

A. Intermediate Weapons: Requirements to Carry and Qualify

1. Officers shall carry only weapons that are issued by the Division.
2. Officers are required to successfully complete annual mandatory training which includes scenario based training, meet the Division’s proficiency standards, and requalify, as set forth by the Training Section, in order to be issued and carry intermediate weapons on duty and while engaged in secondary employment. (See Training GPO TBD)
3. Uniformed officers shall carry the Conducted Electrical Weapon (CEW), if qualified, and a second intermediate weapon: ASP baton or Oleoresin Capsicum (OC) Spray. If not CEW qualified, officers shall carry both approved intermediate weapons: ASP baton and OC Spray. Officers may elect to carry all three intermediate weapons.
4. All intermediate weapons shall be worn only on the officer’s duty belt.
5. Officers and supervisors assigned to specialized units may carry intermediate weapons as dictated by their responsibilities. The Officer-in Charge of each Unit will provide guidance and direction in this area to Unit members according to the Unit’s manual.

B. Intermediate Weapons: When Authorized

1. Intermediate weapons shall be used in accordance with the Division’s policies including those related to the Use of Force: General (GPO TBD), De-escalation (GPO TBD) and training.

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2. Prior to the use of any approved intermediate weapon, when feasible and appropriate, the officer shall communicate to the subject, other officers, and bystanders that the use of the weapon is imminent and allow the subject an opportunity to comply. An opportunity to comply typically means a reasonable amount of time to comply.
3. Officers shall be mindful that in some instances a subject's disability or condition may limit or restrict their ability to comply with an officer's direction. See General Use of Force Policy (GPO TBD)
4. Before using intermediate weapons on children and juveniles, officers must consider the following factors: body mass, physical build, perceived age, and emotional condition. Officers shall use appropriate responses for children and juveniles at all times.

C. Intermediate Weapons: When Prohibited

1. Officers shall not use intermediate weapons on subjects who are passively resisting.
2. Officers shall not use intermediate weapons to prevent the destruction of evidence.
3. Officers shall not use intermediate weapons against small children, the elderly, individuals who are visibly frail, or women visibly or known to be pregnant, except where deadly force is authorized.
4. Officers shall not use intermediate weapons on subjects who are handcuffed or otherwise restrained, unless the subject is displaying aggressive physical resistance AND lesser means would be ineffective or have been tried and failed.
5. Officers shall not use less-lethal tools to prod individuals.
6. Officers shall not use intermediate weapons on subjects who are under control or complying with police direction.

D. Intermediate Weapons: Reporting

1. Officers shall report the use of intermediate weapons in accordance with the Use of Force-Reporting (GPO TBD)

II. ASP Baton/Riot Baton/Impact Weapons

A. ASP Baton/Riot Baton/Impact Weapons: Guidelines

1. Officers are authorized to deploy the ASP baton when such force is objectively reasonable, necessary, and proportional to protect the officer or another party from physical harm and lesser means would be ineffective.
2. Officers shall consider each separate ASP baton strike as a separate use of force that officers must individually justify and report as objectively reasonable, necessary, and proportional.
3. The use of riot batons is authorized only during field force deployments.

B. ASP Baton/Riot Baton/Impact Weapons: When Prohibited

1. Officers shall not intentionally target ASP baton strikes to sensitive tissue areas, such as the head, neck, spine or genitalia. Baton strikes to the head and neck constitute deadly force. Preferred target areas are the arms, legs and torso.
2. Impact weapons other than the ASP Baton, or in field force deployments the riot baton, are prohibited by the Division unless extreme circumstances require their use to gain compliance from aggressively resistant subjects.

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3. Officers shall not use head strikes with hard objects, except where deadly force is justified. Officers shall be trained that a strike to the head with any hard object could result in death.
 4. Officers shall not use their firearm as an impact weapon, due to the possibility of unintentional discharge and/or the possibility that it could result in the death of the officer, the subject, or others.
- C. Medical Attention After the Use of the ASP Baton/Riot Baton/Impact Weapons
1. Officers shall request Emergency Medical Services (EMS) after striking a subject to the head, neck, spine or genitalia with an ASP baton or any other impact weapon for an examination. See also GPO TBD General Use of Force Section: V. C (Duty to provide Medical Attention) for additional requirements to provide medical attention.

III. Oleoresin Capsicum (OC) Spray

- A. OC Spray: Guidelines
1. Officers are authorized to deploy OC Spray only:
 - a. When such force is reasonable to protect the officer, the subject, or another party from physical harm and lesser means would be ineffective; or
 - b. For crowd dispersal or protection and other means would be more intrusive or less effective.
 2. Officers shall be aware of the risks of positional asphyxia and shall use restraint techniques that do not impair the subject's respiration following an OC Spray application.
 3. Officers shall be aware of the risks of using OC spray in confined or enclosed environments.
 4. Officers shall direct OC Spray at the specific subject(s) who are posing a threat, attempting to minimize exposure to non-targeted subjects or parties.
 5. Officers shall consider each one-second application as a separate use of force that the officer shall individually justify and report as objectively reasonable, necessary, and proportional.
 6. Officers shall discontinue use if a subject does not comply after two one-second bursts of OC Spray that successfully contact the target.
 7. The use of OC Spray on a dangerous animal is permissible to deter an attack or to prevent injury to persons present. Documentation shall be provided in the related incident report.
- B. OC Spray: When Prohibited
1. Officers shall not use OC Spray on subjects with a known respiratory condition unless it is an extreme and articulable situation.
- C. Medical Attention After the Use of OC Spray
1. As soon as practicable, but no later than 20 minutes after establishing control of the scene, the officer shall make a reasonable effort to relieve the subject's OC Spray discomfort by washing OC Spray from the subject's eyes with cool water. If the subject was exposed in a confined space, officers will remove the subject as soon as possible from the contaminated area and expose the individual to fresh air.

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2. Officers shall monitor exposed subjects for changes in their condition while in police custody and request medical attention as needed.
3. Officers shall immediately request that EMS respond for any of the following circumstances:
 - a. Symptoms other than mild, last beyond 45 minutes.
 - b. The subject has or indicates that they have difficulty breathing or loses consciousness.
 - c. The subject indicates they have a pre-existing condition (such as asthma, emphysema, bronchitis, or heart ailment) that may be aggravated by chemical spray.
 - d. The officer believes that the subject needs medical attention regardless if the subject requests it or not.
 - e. The officer is made aware that the OC Spray was used on a child, or elderly, pregnant, physically disabled or mentally ill subject.

IV. Conducted Electrical Weapon (CEW)

A. CEW Guidelines

1. The CEW **shall** only be used in either of the following situations:
 - a. Where grounds for arrest or detention are present and the subject is actively or aggressively resisting and lesser means would be ineffective.
 - b. Where such force is necessary to protect the officer, the subject, or another party from immediate physical harm and lesser means would be ineffective or have been tried and failed.
2. Officers **shall**:
 - a. Carry the CEW in a Division issued holster, on the opposite side of the firearm, to reduce the chances of accidentally drawing and/or firing a firearm.
 - b. Deploy the CEW at the preferred target zones which include the lower center mass of the body on the front of the body and below the neck line of the back upper body. When encountering subjects wearing heavy or loose clothing on the upper body, officers may consider the legs as targets.
 - c. Determine the reasonableness of the CEW use and probe placement based on all the relevant circumstances, including the subject's apparent age, size, physical, and mental condition and the feasibility of lesser force options.
 - d. Limit each CEW cycle to 5 seconds.
 - e. Use the minimum number of 5-second CEW cycles necessary to gain control of the subject.
 - f. Consider each CEW application (i.e., 5 second cycle) as a separate use of force that officers shall individually justify and report as objectively reasonable, necessary, and proportional.
 - g. Consider that exposure to the CEW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury.
 - h. Immediately after a CEW application, attempt to handcuff or restrain the subject if compliance has been gained and it is tactically safe to do so.
 - i. Reevaluate the situation after each CEW application to determine if subsequent cycles are reasonable, considering a subject may not be able to

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respond to commands during or immediately following a CEW application. Alternatives to a CEW include other less-lethal instruments and force techniques of the same or lesser Level and are not, therefore, limited to the application of higher-Level force.

- j. If after three CEW applications the subject has not become compliant, even temporarily, the officer shall assume that the CEW is ineffective and shall reassess and seek to transition to alternative control measures.
 - k. Use caution when dealing with exhausted subjects exhibiting symptoms of physical or mental distress and be aware that certain subjects may be at a heightened risk for serious physical injury or death when subjected to CEW applications.
 - l. Avoid using restraint techniques that impair a subject's respiration following a CEW application.
 - m. Consider a CEW in the hands of a subject a deadly weapon when no other officer is present to provide deadly force cover. If multiple officers are present, the CEW in the hands of a subject is not a deadly weapon unless it can be clearly articulated that an officer or innocent party was in imminent danger of serious physical injury or death due to the subject's possession of a CEW.
3. If an initial CEW shot does not make contact or is ineffective, the same or another officer may attempt additional shots as needed or practical in order to make successful contact on a subject.
 4. The use of the CEW on a dangerous animal is permissible to deter an attack or to prevent injury to persons present. Documentation shall be provided in the related incident report.

B. CEW: When Prohibited

1. Officers **shall not** use the CEW:
 - a. In drive stun mode solely for pain compliance. The CEW is only to be used in drive stun mode to supplement the probe mode in order to complete the incapacitation circuit or as a countermeasure to gain separation between officers and the subject so that officers can consider another force option.
 - b. On fleeing subjects who do not pose a threat of physical harm to the officer, bystanders, or themselves.
 - c. If the subject represents a lethal threat unless a second officer is present and prepared to deploy deadly force.
2. Officers shall not intentionally target the CEW at a subject in sensitive tissue areas, such as the head, neck, or genitalia.
3. Except where deadly force is authorized, officers shall not use the CEW in situations where:
 - a. A deployment may cause serious physical injury or death from situational hazards, including but not limited to: falling, losing control of a moving vehicle, or becoming ignited from the presence of potentially explosive or flammable materials or substances, including OC Spray.
 - b. The subject has obviously low body mass or is in apparent medical crisis.
4. Officers shall not intentionally activate more than one CEW at a time against a subject.
5. An officer shall not hold both a CEW and a firearm at the same time.

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C. CEW Exceptional Circumstances

1. Absent rare and exceptional circumstances, officers shall not exceed three 5-second CEW cycles in total on any one subject during a single incident unless the following apply:
 - a. the officer reasonably believes that the initial CEW applications have been effective in gaining the subject's temporary compliance, but the subject continues to actively or aggressively resist;
 - b. the subject's continuing non-compliance presents a threat of imminent physical harm to the officer or others;
 - c. no other less lethal technique, tactic or choice consistent with Division policy would be effective; and
 - d. the use of the CEW beyond a third cycle will prevent resorting to deadly force options.
2. Each CEW application shall be independently justifiable and shall be weighed against other force options.
3. More than three applications of a CEW on an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different officers, or a CEW application for longer than 15 seconds, whether continuous or consecutive, shall be reported and investigated as a Level 3 use of force.

D. Medical Attention After the Use of the CEW

1. After deployment of the CEW, officers **shall**:
 - a. Call EMS to the scene without unnecessary delay to evaluate a subject who has been exposed to a CEW shock. EMS personnel or medical personnel at a medical facility shall remove probes penetrating sensitive areas (e.g. head, face, neck, groin, or breast areas). While it is preferred that medical personnel remove penetrating probes, a CEW-qualified officer may remove probes penetrating non-sensitive areas (e.g. buttocks, thighs) if it is reasonable to do so.
 - b. Inform medical personnel of all subjects who have been subjected to multiple CEW applications, including prolonged applications (more than 15 seconds); or who appear to be under the influence of drugs or exhibiting symptoms associated with physical or mental distress; or who were kept in prone restraints after CEW use.
 - c. Request that EMS transport the subjects to the hospital in any of the following circumstances:
 1. The officer is made aware that the CEW was deployed on a child or elderly, pregnant, physically disabled or mentally ill subject.
 2. The subject experiences or complains of difficulty breathing, chest pains, or loss of consciousness.
 3. The officer believes the subject requires medical attention (whether or not the subject requests attention).
 4. The officer becomes aware afterward of a medical condition (e.g., epilepsy or heart ailment) that a CEW may aggravate.

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- d. Monitor the subject for signs of medical distress for as long as the subject is in Division custody, paying particular attention to indicators of positional asphyxia.
 - e. Notify the Corrections Officer when booking a prisoner *who* was exposed to a CEW shock. The same notification shall be made when transporting or transferring the prisoner to any entity outside of the Division.
2. In extreme circumstances when EMS is unable to transport or is delayed and if the officer reasonably believes medical attention is necessary without delay, the officer may transport the subject to the hospital using the zone car.

V. Beanbag Shotgun

A. Beanbag Shotgun: Guidelines

1. The beanbag shotgun shall only be deployed by qualified officers (Supervisors/SWAT officers). Beanbag shotgun inspections will be conducted on an annual basis to ensure that all are operable and perform any necessary maintenance or repairs.
2. The beanbag shotgun may be deployed when a subject presents an imminent risk of serious physical harm to an officer or others, de-escalation and other force options have proven ineffective and the subject is within safe range of the beanbag shotgun.
3. The optimal range for effective deployment while minimizing risk is 21 to 50 feet.
 - a. Deployment at less than 21 feet increases the risk of serious injury or death.
 - b. At over 50 feet, the effect and accuracy of the beanbag shotgun are diminished to the point that this option will not achieve its purpose.
4. If the subject represents a lethal threat, a second officer prepared to deploy deadly force shall be present when deploying a beanbag shotgun.
5. All beanbag shotguns must be clearly marked so as to make them instantly distinguishable from a weapon firing live rounds.
6. Officers **shall** request via Communication Control Section (CCS) a beanbag shotgun equipped supervisor respond to the scene, when circumstances exist that meet the guidelines for deployment.
7. Supervisors **shall**:
 - a. Use equivalent standard precautions as used with all firearms per GPO TBD in order to protect others from the harm of a misdirected beanbag round.
 - b. Avoid the body's center mass, head, neck, and groin.
 - c. Consider each discharged beanbag round as a separate use of force that officers shall individually justify and report as objectively reasonable, necessary, and proportional.

B. Beanbag Shotgun: When Prohibited

1. Officers **shall not**:
 - a. Subject themselves or others to undue risk while waiting for the arrival of a supervisor with a beanbag shotgun. The situation must be continually assessed and other appropriate action must be taken if the risk to self or others demands immediate attention.
2. Supervisors **shall not**:

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- a. Use the beanbag shotgun as a substitute for notifying the SWAT Unit when circumstances warrant that unit's deployment.
- b. Fire more than two beanbag shotguns simultaneously. In the event that four rounds have proven to be ineffective, officers shall consider the beanbag shotgun ineffective and exercise other options.

C. Medical Attention After the Use of a Beanbag Shotgun

1. Officers **shall**:

- a. Notify EMS via CCS to respond and convey subject(s) struck by a beanbag round, to the hospital for medical treatment/evaluation.
- b. When booking a prisoner who was struck by a beanbag round notify the Corrections Officer that the prisoner was struck with a beanbag round. The same notification shall be made when transporting or transferring the prisoner to any entity outside of the Division.

VI. Intermediate Weapons Approved For Use By The SWAT Unit

- A. Intermediate weapons approved for usage by the SWAT Unit shall be used in accordance with the Division Use of Force policies and the SWAT Unit manual.

EXHIBIT E



GENERAL POLICE ORDER CLEVELAND DIVISION OF POLICE



ORIGINAL EFFECTIVE DATE :	REVISED DATE: 2016-11-02	NO. PAGES: 1 of 5	NUMBER:
SUBJECT: <p style="text-align: center; font-weight: bold;">OFFICER USE OF FORCE REPORTING</p>			
ASSOCIATED MANUAL:		RELATED ORDERS:	
CHIEF OF POLICE:			

PURPOSE: To establish guidelines for the reporting of all use of force responses and for documenting objective reasonableness, necessity and proportionality after a use of force response.

POLICY: Officers shall notify their supervisor when they have used force, except for *de minimis* force. Officers shall clearly, thoroughly and properly report use of force incidents. The necessity for each application of force shall be documented, identifying the uniqueness of each situation and justifying every force response.

PROCEDURES:

I. Use of Force Notification Guidelines

- A. Officers who use or witness force shall contact the Communication Control Section and request that their supervisor respond to the scene as soon as practical following any use of force, except for *de minimis* force. *(Cross-reference to Use of Force: Definitions GPO for de minimis force definition).*
- B. An officer who becomes aware of an allegation of unreported, unreasonable, unnecessary or disproportionate force by another officer shall immediately notify his or her supervisor of that force or allegation. *(Cross-reference to forthcoming GPO regarding Reporting Misconduct and Anti-Retaliation).*

II. Use of Force Reporting General Guidelines

- A. Officers shall report all uses of force except for *de minimis* force.
- B. All use of force reports shall be completed with sufficient detail for supervisors and the Division to understand the totality of the circumstances, events, and actions of the officer, subject, and other involved individuals during a use of force incident. The use of force report must also permit the Division to conduct a thorough and appropriate investigation and review of the force incident. The Division shall provide regular training (including roll call, in-service, or electronic-based instruction) on reporting writing.

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- C. Officers shall not use conclusory statements, “boilerplate” or “canned” language (e.g., furtive movement, fighting stance), without supporting details that are well articulated in the required reports. When possible, and to ensure clarity, officers will minimize the use of unnecessary acronyms or jargon.
- D. Every application of force by an officer is classified according to the following levels:
 - 1. **Level 1 Use of Force:** Force that is reasonably likely to cause only transient pain and/or disorientation during its application as a means of gaining compliance, including pressure point compliance and joint manipulation techniques, but that is not reasonably expected to cause injury, does not result in an actual injury, and does not result in a complaint of injury. It does not include escorting, touching, or handcuffing a subject with no or minimal resistance. Un-holstering a firearm and pointing it at a subject is reportable as a Level 1 use of force.
 - 2. **Level 2 Use of Force:** Force that causes an injury, could reasonably be expected to cause an injury, or results in a complaint of an injury, but does not rise to the level of a Level 3 use of force. Level 2 includes the use of a CEW, including where a CEW is fired at a subject but misses; OC Spray application; weaponless defense techniques (e.g., elbow or closed-fist strikes, kicks, leg sweeps, and takedowns); use of an impact weapon, except for a strike to the head, neck or face with an impact weapon; and any canine apprehension that involves contact.
 - 3. **Level 3 Use of Force:** Force that includes uses of deadly force; uses of force resulting in death or serious physical harm; uses of force resulting in hospital admission due to a use of force injury; all neck holds; uses of force resulting in a loss of consciousness; canine bite; more than three applications of an CEW on an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different officers, an CEW application for longer than 15 seconds, whether continuous or consecutive; and any Level 2 use of force against a handcuffed subject.
- E. Officers shall report uses of force in accordance with the reporting requirements of the highest level of force used during the incident. (For example, if an officer uses both Level 1 and Level 2 force during an incident, the incident is classified as a Level 2 force for purposes of reporting and review).
- F. All officer use of force reports will be evaluated by the officer’s supervisor, chain of command, and/or the department’s Force Review Board. (*See GPO ##, forthcoming, regarding Supervisor responsibilities and response to use of force incidents*).

III. Involved Officer Reporting Requirements

- A. Officers Using Level 1 and Level 2 Force shall:

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1. By the end of their tour of duty, complete an individual Blue Team Use of Force entry providing a detailed account of the incident from the officer's perspective and including all of the following information:
 - a. The reason for the initial police presence.
 - b. A specific description of the acts that preceded the use of force, to include attempts to de-escalate.
 - c. The level of resistance encountered.
 - d. A complete and accurate description of every type of force used or observed.
- B. Officers Using Level 3 Force shall:
 1. By the end of their tour of duty, complete an individual Blue Team Use of Force entry as directed by the Officer-in Charge of FIT. (Refer to FIT GPO)
 2. Comply with all additional directives from the Officer-in Charge of FIT. (Refer to FIT GPO)

IV. Witness Reporting

- A. Officers Witnessing or Present During a Use of Force shall:
 1. By the end of their tour of duty, complete an officer/witness narrative statement (Attachment A) providing a detailed account of the incident from the officer's perspective and including all of the following information:
 - a. The reason for the witnessing officer's police presence.
 - b. A specific description of the observed acts that preceded the use of force, to include any observed attempts to de-escalate.
 - c. Level of resistance observed.
 - d. A complete and accurate description of every type of force observed.
 2. Submit the witness narrative statement to the reviewing supervisor or Officer-in-Charge of FIT for review/signature.
- B. Officers Witnessing Level 3 Force shall:
 1. In addition to completing a witness narrative statement as described in IV, A,1(a – d) comply with all directives from the Officer-in-Charge of FIT. (Refer to FIT GPO)
- C. Citizens and Non-Division Law Enforcement Officers
 1. Citizens and non-division law enforcement officers who witness force and are unable or unwilling to give a video recorded statement may make a written statement on a witness narrative (Attachment A).
 2. The witness narrative will then be submitted to the reviewing supervisor.

V. Additional Reporting Requirements

- A. CEW
 1. Officers deploying their CEW shall clearly articulate in their Blue Team entry justification for the following:

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- a. Each CEW cycle of any length used on a subject or attempted on a subject.
 - b. Use of the CEW in drive stun mode.
 - c. Each CEW cycle in excess of three 5-second CEW cycles in total on any one subject during a single incident.
 - d. Continuous cycling of the CEW beyond 5 seconds.
 - e. Use of the CEW on a fleeing subject.
 - f. CEW application by more than one officer.
- B. Deployment of a Canine (Refer to GPO Use of Force - Definitions and Use of Force - Investigations, Canine Unit Manual)
1. Other than during training, if a canine deployment does not involve contact, the canine officer shall document the incident using Blue Team.
 2. Deployment of a canine that involves physical contact shall be reported as a Level 2 use of force; a canine bite shall be reported as a Level 3 use of force.
- C. Pointing of a Firearm
1. Un-holstering a firearm or un-holstering and keeping the firearm at the low ready position, high ready position, or “SUL” position, without pointing it at an individual, is not a use of force. Unholstering a firearm will be subject to a future data collection process.
 2. Un-holstering and pointing a firearm at a subject is considered a Level 1 reportable use of force.
 - a. The following are exceptions to this reporting requirement:
 1. SWAT Unit officers are not required to report the pointing of a firearm at a subject as a use of force during the execution of SWAT Unit duties.
 2. Officers who are deputized and assigned to a Federal Task Force are not required to report the pointing of a firearm at a subject as a use of force when conducting federal task force operations during which a supervisor is present. The task force supervisor shall forward any reports or forms regarding any such incidents to the commander in their chain of command.
 3. Officers assigned to the Gang Impact, Narcotics, Homicide, Sex Crimes, Domestic Violence, and Financial Crimes Units shall not be required to report the pointing of a firearm at a subject as a use of force if done solely while entering and securing a building in connection with the execution of an arrest or search warrant and a supervisor prepares a report detailing the incident provided to the commander in their chain of command.
 4. These exceptions shall apply to uniformed officers assigned to duties with all of the above excepted units while performing duties assigned by the supervisor during the execution of the warrant(s).
- D. Off-Duty Police Action Involving a Use of Force Outside the City of Cleveland
1. When safely able to do so, the officer shall immediately notify Communications Control Section (CCS) of the incident and when the member is scheduled or expected to return to duty. CCS shall notify the member’s commander.

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2. Upon return to duty, the officer shall:
 - a. Notify their immediate supervisor of the incident.
 - b. Complete an incident report titled: "Police Intervention / Outside Cleveland." The "INCIDENT" box shall be checked. Do not check the "OFFENSE" box and do not list any of the offenses or code numbers. The incident report shall contain the following information about the incident: date, time, location, and jurisdiction. No details of the incident are to be included in the incident report. The incident report and number are for tracking and documentation only.
 - c. Obtain a copy of the incident report from the reporting agency.
3. Provide all the materials described here to their immediate supervisor. (*Cross-reference to GPO # TBD, Supervisory Review & Investigation*).

VI. Failure to Report Use of Force

- A. Officers shall be subject to the disciplinary process, up to and including termination, for material (significant) omissions or misrepresentations in their Use of Force Reports, regardless of whether the force was objectively reasonable, necessary and proportional.
- B. Officers who use or observe force and fail to report it shall be subject to the disciplinary process, up to and including termination, regardless of whether the force was objectively reasonable, necessary and proportional.

VII. Heightened Responsibilities for Reporting Exceptional Uses of Force

- A. In the rare and exceptional circumstances that officers use force that would otherwise be prohibited by Division policy, they must justify the use of force by articulating the specific facts that led to such a use of force. Officers must describe, in detail, the objective reasonableness, necessity, and proportionality of the force that was used, the actions of the subject that constituted immediate danger and grave threat to the officers or others, the officer's efforts to de-escalate the encounter, why the officer believed that no other force options, techniques, tactics or choices consistent with Division policy were available, and how rapidly the officer was able to return to compliance with Division policies.
- B. Failure to adequately document and explain the facts underlying any use of force that is in conflict with Division policies may subject the officer to the disciplinary process, termination, possible criminal prosecution, and/or possible civil liability.

EXHIBIT F

ANALYTICAL COMPARISON OF PROPOSED GENERAL POLICE ORDERS WITH CLEVELAND COMMUNITY POLICE COMMISSION RECOMMENDATIONS

The following sets forth how the proposed General Police Orders (GPO) on use of force, de-escalation, and intermediate weapons of August 30, 2016 comport and do not comport with Cleveland Community Police Commission (CPC) Recommendations of March 31, 2016. Reference also will be made to Police Executive Research Forum (PERF) Guiding Principles on Use of Force, the Consent Decree, and other municipal police department policies.

The following analysis presumes that future revised policies will address issues concerning accountability and training (though this report at times notes deficiencies as they relate to CPC recommendations). The discussion below does not, therefore, generally address CPC recommendations concerning accountability and training.

I. REVIEW OF PROPOSED GENERAL POLICE ORDER, USE OF FORCE: GENERAL (REVISED DATE: 2016-08-30)

The following analysis compares the revised GPO on general use of force to relevant CPC recommendations.

CPC Recommendation No. 1. Emphasize in GPO Policy opening statement or “Mission,” as well as related GPOs, policies, and training curricula:

1. The “sanctity and preservation of all human life” and treating people with dignity and respect.
2. In Louisville, the Use of Force Policy also affirms the intolerance of any abusive treatment of people.
3. In Albuquerque, the Use of Force Policy also indicates that “officers must remain mindful that they derive their authority from the community and that unreasonable force degrades the legitimacy of that authority.” (6/4/2014 – effective)
4. State up front and clearly consequences of an officer’s violation of the policy should be stated succinctly, e.g. discipline, termination, and/or prosecution. (See ACLU of Nevada Report on Las Vegas Metropolitan Police Department).

Including language stated in Points 1-4 above brings the statement up to 21st century standards, approaches model policies’ mission statements, reaffirms the focus police as guardians of the people, as well as the idea of protect and serve, and uplifts the mandate on community problem-oriented policing and building trust, confidence and legitimacy in the Cleveland Consent Decree.

**How does Proposed General Police Order, Use of Force:
General, comply?**

Mixed Compliance.

- There is no emphasis or mention in the GPO's Purpose or Policy regarding the "sanctity and preservation of all human life."
- However, Procedure II(A), Deadly Force: When Authorized states, "All of the provisions of this policy, including the Division's commitment to recognizing the sanctity of human life and requirements that officers use only the degree of force necessary under the circumstances governing force, also govern deadly force."
- There is no other mention throughout the GPO about treating all people with dignity and respect, the intolerance of abuse, or mindfulness that officers derive their authority from the community. The absence of stating these policies in the opening statement of the GPO misses the opportunity to set the tone for the rest of the GPO regarding the importance of the sanctity of life as a starting point for all GPO procedures and principles.
- Principle I(B), General states, "Officers will be held accountable to the Division's use of force policies on-duty and off-duty." However, no specific consequences are stated throughout the GPO.

CPC Recommendation No. 2. Incorporate in GPO Definitions for Use of Force, "verbal abuse," intimidation, and/or sexual favors.

**How does Proposed General Police Order, Use of Force:
Definitions, comply?**

Noncompliant.

- Use of Force: Definitions do not include definitions for verbal abuse, intimidation, and/or sexual favors. These terms are not currently used in the GPO policy.

CPC Recommendation No. 3. Incorporate in GPO Definitions, explicit language regarding pulling out and pointing of firearms—even when not fired. This is showing use of force. Add in appropriate and relevant sections throughout the GPO. (Also consult SURJ Recommendations, Addenda)

**How does Proposed General Police Order, Use of Force:
General, comply?**

Compliant.

- Use of Force: Definitions include that un-holstering a firearm and pointing it at a subject is reportable as a Level 1 use of force.
- Procedure I(D), General states, “Officers shall consider their surroundings when un-holstering or before discharging their firearms and shall avoid unnecessary risk to bystanders, victims, and other officers.”
- Procedure III(A)(5), Proportionality includes that un-holster and display or un-holster and point are both prohibited uses of force unless the circumstances create an objectively reasonable belief that the situation may escalate to the point at which deadly force would be authorized.
- This is also responsive to the Consent Decree ¶ 56, “Unholstering a firearm and pointing it at a subject constitutes a Level 1 reportable use of force and will be reported and investigated as such.”

CPC Recommendation No.4. Define and Clarify in current Cleveland “Use of Force” GPO, the definitions for “exigent circumstances” (see, e.g., IV.E.1; IV.F.10.b) and “field force deployment” (IV.E.2)

How does Proposed General Police Order, Use of Force: Definitions, comply?

Not applicable.

- Use of Force: Definitions do not include definitions for “exigent circumstances” or “field force deployment.”

CPC Recommendation No. 5. Throughout the GPO—particularly in the Policy, Definitions, and Action Response sections—incorporate language that adopts 21st Century Use of Force principles that maintains police departments should hold a higher standard than *Graham v. Connor*. This law should be the “floor” or minimum standard, not the “ceiling.” Use of Force policies, procedures, and practices should go beyond the legal standard of “objective reasonableness,” which is “necessary but not sufficient.”

How does Proposed General Police Order, Use of Force: General, comply?

Mixed Compliance.

- Principle IV(A)-(E) appears to restate the *Graham v. Connor* “objective reasonableness” standard.
- However, Principles II and III require that all force used be “necessary” and “proportional.” Principles II and III may be viewed as going beyond the *Graham* standard.

- Principles II and III also appear responsive to PERF Guiding Principle No. 2.
- Procedure III Use of Force: When Prohibited, includes examples of prohibitions on certain police conduct such as shooting at a moving vehicle, that are consistent with PERF Guiding Principle No. 2.

CPC Recommendation No. 6. Incorporate in GPO Policy section language that clearly defines and addresses the fact that objective reasonableness standard is “necessary but not sufficient.” This includes consideration of the totality of the facts, as well as the officer’s tactical conduct and decisions leading up to the Use of Force encounter. Consideration needs to be given to the role the officer played in creating the risk. This sets a higher “incident continuum” standard versus “the moment” standard. (See LAPD Use of Force Policy)

How does Proposed General Police Order, Use of Force: General, comply?

Mixed Compliance.

- Principles II and III require that all force used be “necessary” and “proportional.”
- Further, Principle III(B), Proportionality states, “To be proportional, the level of force applied must reflect the totality of the circumstances known to the officer at the time force was applied.”
- Principle IV(B), Objective Reasonableness states, “Objective reasonableness takes into account, where appropriate, the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations.”
- However, there is no language that explicitly considers the role the officer played in creating the risk; it is instead framed from the opposite perspective of how the officer responded to the risk the offender created.
- Principle IV(C), Objective Reasonableness states, “Officers shall assess each incident and determine, based on law, policy, training, and experience, which level of force should be used to control the situation in the safest manner for all individuals involved. Reasonable and sound judgment will dictate the force option to be deployed.”

CPC Recommendation No. 7. Incorporate Use of Force “Proportionality” Standard (PERF, Guiding Principle No. 3).

How does Proposed General Police Order, Use of Force: General, comply?

Noncompliant.

- PERF, Guiding Principle No. 3, provides: “Police use of force must meet the test of proportionality; in assessing whether a response is proportional, officers must ask themselves, ‘How would the general public view the action we took? Would they think it was appropriate to the entire situation and to the severity of the threat posed to me or to the public?’”
- Principle III(B), Proportionality, provides: “To be proportional, the level of force must reflect the totality of the circumstances known to the officer at the time the force was applied. Generally, only the amount of force required to control the subject shall be used by the officer.” This approach focuses on what is known to the officer at the time the use of force is deemed necessary and does not take into consideration the general public’s point of view.

CPC Recommendation No. 8. Incorporate Use of Force “necessity” standard. This is a DOJ standard.

How does Proposed General Police Order, Use of Force: General, comply?

Compliant.

- The DOJ standard on necessity reflects its position on the use of deadly force, “The necessity to use deadly force arises when all other available means of preventing imminent and grave danger to officers or other persons have failed or would be likely to fail.”¹
- Procedure III(B), Use of Force: When Prohibited, states: “[When a] reasonable officer would believe that (a) use of deadly force would be objectively reasonable, necessary, and proportional according to this policy, and (b) the subject’s actions constitute immediate danger and grave threat to officers or others, and (c) no other force options, techniques, tactics, or choices consistent with the Division’s policy are available, it may be *necessary* for an officer to take extraordinary or

¹ Attorney General Memorandum on Resolution 14, “Commentary Regarding the Use of Deadly Force in Non-Custodial Situations”, issued October 17, 1995.

unanticipated actions in order to overcome the threat.”
(Emphasis added.)

- Use of Force: Definitions defines “necessary” as “using physical force only when no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to affect [*sic*] a lawful purpose.”
- Procedure II(B), Deadly Force states, “deadly force may be used only if a subject, through their own actions, poses an imminent threat of death or serious physical harm to an officer or another.”

CPC Recommendation No. 9. Incorporate in GPO, specific protocols for dealing with youth in encounters and developmentally informed Use of Force continuum. *See Addenda for detailed recommendations from “Strategies for Youth” and Gabriella Celeste of the Schubert Center for Child Studies.*

How does Proposed General Police Order, Use of Force: General, comply?

Noncompliant.

- Principle IV(E)(6)(a), Objective Reasonableness includes age difference between the subject and officer as a factor for officers to consider when choosing a force response.
- However, there is no developed protocol for dealing specifically with youth.

CPC Recommendation No. 10. Incorporate in GPO, specific protocols for dealing with those with physical or mental health conditions, substance abuse and alcohol addiction, differently abled, and language barriers.

How does Proposed General Police Order, Use of Force: General, comply?

Noncompliant.

- Principle IV(E)(6)(1)-(6), Objective Reasonableness includes, “The influence of drugs and/or alcohol or the mental capacity of the subject”, “body size”, “skill level”, and “relative strength” as factors for the officer to consider when choosing a force response.
- However, there is no developed protocol addressing subjects’ specific conditions or limitations.

CPC Recommendation No. 11. Incorporate in the GPO, specific language that categorizes sexual favors as use of force and forbids police from exposing themselves or demanding sexual favors from the person they are attempting to search, constrain, or arrest, and if they do that they should be go from the police force. This is sexual violence.

How does Proposed General Police Order, Use of Force: General, comply?

Noncompliant.

- There is no specific language that references sexual favors or sexual violence.

CPC Recommendation No. 12. Incorporate language on what independently will not justify a Use of Force. *See the Albuquerque Use of Force policy for an example.*

How does Proposed General Police Order, Use of Force: General, comply?

Compliant.

- Procedure III(A)(1)-(16), Use of Force: When Prohibited gives sixteen specific examples of situations that do not justify force.
- This is also responsive to the Consent Decree ¶ 46(i), which directs that “other than to protect an officer’s or other person’s safety, officers will not use force to subdue an individual who is not suspected of any criminal conduct.”

CPC Recommendation No. 13. De-escalation should be clearly stated as the “preferred, tactically sound approach,” and matched with appropriate content in training, e.g., proportionality standard, issue a verbal warning, using distance and cover, tactical repositioning, and developmentally informed practices, to minimize the need for use of force.

How does Proposed General Police Order, Use of Force: General, comply?

Mixed compliance.

- The Policy states, “Officers shall also take all reasonable measures to de-escalate an incident and reduce the likelihood or level of force. 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.” It appears

de-escalation is now required before officers resort to a use of force.

- Principle V(A), De-Escalation cites to the De-Escalation GPO that lists specific tactics that officers should use to de-escalate a situation; including, verbal persuasion, creating distance, requesting assistance, and waiting. However, de-escalation is not clearly stated as the “preferred, tactically sound approach.” (See CPC Recommendations re: De-escalation)
- This is also partly responsive to PERF Guiding Principle No. 4 entitled, “Adopt de-escalation as formal agency policy,” which requires that “crisis intervention policies and training must be merged with a new focus on tactics that officers can use to de-escalate situations.”
- This is also responsive to the Consent Decree ¶ 46(b), which states that “officers will use de-escalation techniques whenever possible and appropriate, before resorting to force and to reduce the need for force. De-escalation techniques may include verbal persuasion and warnings and tactical de-escalation techniques, such as slowing down the pace of an incident (and thus the reactionary gap) between the officer and the threat, and requesting additional resources (e.g. specialized CIT officers or negotiators).”

CPC Recommendation No. 14. Base Use of Force GPO on concept of Critical Decision-Making Model.

How does Proposed General Police Order, Use of Force: General, comply?

Noncompliant.

- There is no emphasis or mention in the GPO’s Purpose or Policy regarding the “Critical-Decision Making Model.”
- Principle IV of the GPO refers to “Objective Reasonableness” and factors that officers should consider and analyze prior to deciding the amount of force to use, but they do not seem to fall under the Critical Decision-Making Model’s framework.
- This goes against PERF Guiding Principles No. 2 and No. 5, which call for a higher standard than *Graham v. Connor*.

CPC Recommendation No. 15. Emphasize duty to intervene by officers “when they believe another officer is about to use excessive or unnecessary force,” report the incident immediately to a supervising officer, and develop and add explicit measures and processes for accountability for officers.

How does Proposed General Police Order, Use of Force: General, comply?

Compliant.

- Procedure IV establishes a “Duty to Intervene,” though the specific language mentioned in the CPC is missing.
 - “A. Officers who are present at the scene of a police use of force are obligated to ensure that the use of force complies with the requirements of the law, Division rules, policy, and training.”
 - “B. Each officer at the scene of a use of force incident has a duty to intervene by taking all reasonable actions to stop any use of force that is perceived to be unauthorized by this policy.”
- There is a reporting requirement that complies with the recommendation.
- The GPO has specific procedures listed, such as ensuring medical care is provided, and taking protective custody of the subject.
- The GPO is compliant with PERF Guiding Principle No. 7 as well.
 - “C. Officers witnessing suspected unreasonable force shall factor into their response their ability to de-escalate the use of force. The officer’s response may range from physical intervention, to voice commands, to appropriate after-action notification. If reasonably able to do so, the officer shall:
1. Physically intervene to stop the objectively unreasonable force. 2. Take protective custody of the subject being subjected to the apparent unreasonable force. 3. Ensure that medical care is provided as needed.”
- Procedure IV (C)(4) in the GPO lists accountability measures in the reporting requirement, but does not refer to consequences.
 - “Report the suspected unreasonable use of force to the next non-involved supervisor in their chain of command, document the same in their duty report, and complete a Form-1 detailing the use of force and surrounding circumstances as soon as safe and practical, before the end of the tour of duty.”

CPC Recommendation No. 16. Strictly prohibit moving in front of a moving vehicle or high-speed chases of people who have no basis to believe or suspect a felony or immediate threat. (See Milwaukee Section 660 Vehicle Pursuits policy).

How does Proposed General Police Order, Use of Force: General, comply?

Compliant.

- “Officers shall not: ...14. Reach into, or place themselves in the path of a vehicle, thereby creating a justification for the use of deadly force. Officers shall be mindful of, and avoid placing themselves in the potential path of a vehicle. Officers shall move out of the path of a moving vehicle. (Refer to GPO 3.2.02 Vehicle Pursuits).”
- This is also consistent with the Consent Decree ¶ 59.

CPC Recommendation No. 17. Incorporate protocols and/or prohibitions on Use of Deadly Force on fleeing and mere suspicion and foot pursuits; firing into a crowd; in cases of misdemeanors, etc.

How does Proposed General Police Order, Use of Force: General, comply?

Mixed Compliance.

- GPO outlines the use of Deadly Force in fleeing under Procedures II(C) (1), (2) and (3).
 - “C. Deadly force may be used to prevent the escape of a fleeing suspect only when an officer would reasonably believe, under the circumstances, that it is necessary, and there is probable cause to believe that: 1. The suspect is in the process of committing or has committed a violent felony involving the infliction or threatened infliction of serious physical harm or death and the suspect would pose a continuing imminent threat of serious physical harm, either to the officer or others; OR 2. The escape of the suspect would pose an imminent danger of death or serious physical harm to the officer or to another if the suspect is not apprehended without delay; 3. AND in either situation, where feasible, some warning has been given.”
- Although “probable cause” is required, “mere suspicion” nor “foot pursuits” are mentioned throughout the GPO.
- No specific mention of firing into a crowd, but general principle is laid out in the GPO Procedure I (C).
 - “Officers shall take all reasonable steps under the circumstances, before and during any use of force, to avoid unnecessary risk to bystanders, victims, hostages, and other involved civilians, as well as other officers and emergency personnel.”
- No misdemeanors and felonies regarding firing.

CPC Recommendation No. 18. Once someone is detained, force is no longer needed. Use of Force against those already restrained, e.g., in handcuffs, should be strictly prohibited and result in immediate suspension, up to termination.

How does Proposed General Police Order, Use of Force: General, comply?

Noncompliant.

- Procedure III(A)(4) states: “Officers shall not: [...] 4. Use force against subject(s) who are handcuffed or otherwise restrained, unless it is objectively reasonable and necessary under the circumstances to stop an assault, escape, or as necessary to fulfill other law enforcement objectives.”
- The GPO Procedure aligns with the Consent Decree ¶ 46(e), but does not create a strict prohibition.
- The GPO permits exceptions to the general prohibition against use of force on restrained people, which is not the intent of the CPC recommendation.

CPC Recommendation No. 19. Prohibit use of deadly force against individuals who pose only a danger to themselves.

How does Proposed General Police Order, Use of Force: General, comply?

Noncompliant.

- Principle II(C)(4) of the GPO states that, “To intervene in a suicide or self-inflicted injury” is a lawful objective for which Use of Force is necessary.
- This directly contradicts the CPC recommendation as well as PERF Guiding Principle No. 9.

CPC Recommendation No. 20. Prohibit use of strangle-and choke-holds, and hog-tying as a form of restraint. REPLACE the current language in the Cleveland GPO under Deadly Force on page 2 of 15 with this explicit language: “that restricts the blood or oxygen flow through the neck.”

How does Proposed General Police Order, Use of Force: General, comply?

Mixed Compliance.

- Procedure III(12) in the GPO states: “Officers shall not: [. . .] 12. Use neck holds.”
- The GPO language is the same as the Consent Decree ¶ 46(k).
- There is no specific mention of strangle- and choke-holds or hog-tying.

CPC Recommendation No. 21. For additional explicit detailed recommendations on children/youth and Use of Force, see Addenda, Exhibits D and E.

How does Proposed General Police Order, Use of Force: General, comply?

Noncompliant.

- Principle IV, Objective Reasonableness includes age as a factor for officers to consider when choosing a force response.
- However, there is no developed protocol for dealing specifically with youth.
- There is a duty to request EMS for “children” regardless of visible injury or complaint when certain types of force are used. (GPO Procedure V(C))

CPC Recommendation No. 22. Prohibit Use of Force in the enforcement of unconstitutional laws or abridgment of constitutional rights of non-violent free speech and assembly, such as what T-shirt a person is wearing, leaving literature on cars, etc.

How does Proposed General Police Order, Use of Force: General, comply?

Compliant.

- The GPO Procedure III(A)(6) states: “Officers shall not: [. . .] 7. Use force against those who are exercising their First Amendment rights. Physically moving a subject is permitted when it is necessary and objectively reasonable for the safety of that individual or the public. It shall be done with sufficient personnel so as not to endanger the subject or the officers and will not be considered a reportable use of force unless it meets the criteria of a Level 1, Level 2, or Level 3 use of force.”

CPC Recommendation No. 23. Document Use of Force incidents and review to make sure fair and non-discriminatory. *Reference Bias-Free Policing GPO.*

How does Proposed General Police Order, Use of Force: General, comply?

Mixed Compliance.

- Procedure I(F) in the GPO states: “Officers shall promptly, accurately, and thoroughly document the reasons for and types of force used.”

- The GPO has a documentation requirement, but does not address review of incidents to ensure fair and non-discriminatory practices.
- This does not meet the standard in PERF Guiding Principle No. 10 or the Consent Decree ¶¶ 35-44.

CPC Recommendation No. 24. Issue quarterly reports on Use of Force to the public.

How does Proposed General Police Order, Use of Force: General, comply?

Noncompliant.

- No mention of public reports in the GPO.
- This does not comply with PERF Guiding Principles No. 11 and No. 13.

CPC Recommendation No. 25. Critical police incidents and Use of Force investigations should be reviewed by independent specially trained personnel.

How does Proposed General Police Order, Use of Force: General, comply?

Noncompliant.

- No mention of investigation review by specially-trained personnel in the GPO.
- This does not comply with PERF Guiding Principle No. 13.
- This does not comply with the Consent Decree ¶¶ 230-239, which outline how a Police Review Board should function.

CPC Recommendation No. 26. Establish transparency as a standard in Use of Force incidents, releasing information regarding the critical incident to the public as quickly as possible, while indicating the information is preliminary.

How does Proposed General Police Order, Use of Force: General, comply?

Noncompliant.

- No mention of transparency, or releasing information to the public in the GPO.
- Noncompliant with the Consent Decree ¶¶ 250-68.

CPC Recommendation No. 27. Incorporate in GPO, Investigation of Use of Force, the requirement to compare written reports with body cameras, dashboard cameras, etc.

How does Proposed General Police Order, Use of Force: General, comply?

Noncompliant.

- No mention of cameras or their comparison with written reports in the GPO.
- The Consent Decree does not require the use of body cameras. See ¶¶ 337-40.

CPC Recommendation No. 28. Include in GPO, with regard to the Investigation of Deadly Force, the role of the Office of Professional Standards.

How does Proposed General Police Order, Use of Force: General, comply?

Noncompliant.

- No mention of the Office of Professional Standards or their role with the regards to the Investigation in the GPO.
- This does not comply with the Consent Decree ¶¶ 193-200, which outlines the role of the Office of Professional Standards.

II. REVIEW OF PROPOSED GENERAL POLICE ORDER, USE OF FORCE: DE-ESCALATION (REVISED DATE: 2016-08-30)

The following analysis compares the revised GPO on de-escalation to relevant CPC recommendations.

CPC Recommendation No. 29. Affirm de-escalation as the preferred approach, including verbal warnings, distance and cover, and tactical withdrawal. Use of force should be the last resort. (See also PERF Guiding Principle No. 4 - adopt de-escalation as formal agency policy)

How does Proposed General Police Order, Use of Force: De-Escalation comply?

Mixed Compliance.

- Procedure I(A) mentions that the tactics and techniques are to reduce or eliminate the need to use force, but the GPO does not directly state “*use of force should be the last resort.*”
- Procedure I(B) requires de-escalation tactics “[w]hen *possible and appropriate,*” rather than characterize de-escalation as the “*preferred approach*”. The CPC-proposed language appears more restrictive than the GPO procedure’s wording.
- Procedure I(F) **complies**: De-escalation techniques include: (1) Proactive use of distance, cover, concealment, and time.

CPC Recommendation No. 30. Place a premium on providing immediately the most updated, state-of-the-art training, that focuses on de-escalation, decision-making, and accountability. (PERF 4, Officers must be trained in these principles, and their supervisors should hold them accountable for adhering to them)

How does Proposed General Police Order, Use of Force: De-Escalation, comply?

Mixed Compliance.

- Procedure II of the GPO, states: Officers shall receive integrated, scenario based training at least yearly on de-escalation techniques and tactical ways to handle situations where the use of force can be avoided or the level of force minimized.
- This procedure fails to mention training officers on decision-making and accountability.

CPC Recommendation No. 31. De-escalation should be clearly stated as the “preferred, tactically sound approach” and matched with appropriate content in training, e.g. proportionality standard, issue a verbal warning, using distance and cover, tactical repositioning, and developmentally informed practices, to minimize the need for use of force.

How do Proposed General Police Orders, Use of Force: General and De-Escalation, comply?

Mixed Compliance.

- The Use of Force, General policy states, “Officers shall also take all reasonable measures to de-escalate an incident and reduce the likelihood or level of force. 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.” It appears de-escalation is now required before officers resort to a use of force.
- Principle V(A) of GPO, Use of Force: General, cites to the De-Escalation GPO, which lists specific tactics that officers should use to de-escalate a situation; including, verbal persuasion, creating distance, requesting assistance, and waiting. However, de-escalation is not clearly stated as the “preferred, tactically sound approach.”
- This is also partly responsive to PERF Guiding Principle No. 4 entitled, “Adopt de-escalation as formal agency policy,” which requires that “crisis intervention policies and training must be merged with a new focus on tactics that officers can use to de-escalate situations.

CPC Recommendation No 32. Incorporate the most updated Use of Force Continuum that provides an affirmative statement of de-escalation and situates Use of Force as rare and only to be used in extraordinary circumstances.

How does Proposed General Police Order, Use of Force: General and De-Escalation, comply?

Mixed Compliance.

- There is no Use of Force Continuum provided in the GPO. The National Institute of Justice published an example of a use of force continuum that could serve as a useful guide.²

² National Institute of Justice, “The Use-of-Force Continuum”, published August 4, 2009.

- Procedure V of the GPO, Use of Force: General, states: “officers shall use de-escalation techniques when it is safe and feasible to do so under the totality of the circumstances.”
- Procedures I(F)(3)(c-d) of the De-Escalation GPO, require officers to “advise the subject(s) of the actions that you will take to end the crisis in the best way possible.” And “as a last resort, inform the subject that not following orders may result in the need to use force.”
- De-escalation is simply required when “possible and appropriate.” It is not identified as the “preferred approach.”

CPC Recommendation No. 33. De-escalation should be a core theme. Officers should NOT escalate the situation themselves. (See also PERF Guiding Principle No. 17)

How does Proposed General Police Order, Use of Force: General and De-Escalation, comply?

Compliant.

- There is an entire GPO dedicated to de-escalation. Additionally, de-escalation is one of the four key principles identified in the general use of force GPO.
- Procedure I(F), is dedicated to very specific de-escalation techniques, which reflect many of the recommendations.
 - Techniques such as avoiding physical confrontation, waiting for additional personnel, listening, and interacting in a conversation with the subject, etc.
- Procedure I(C) mentions that, “[o]fficers shall consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comprehend based on, but not limited to []: medical condition, mental impairment, developmental disability, physical or hearing impairment, language barrier, drug and/or alcohol use,” and other factors.
- Additionally, procedure I(G) states: “Officers should avoid taking unnecessary actions that may escalate the need to use force, e.g. aggressive body language, proximity, harsh level of voice and tone, officer’s own stress level or excitement.”

CPC Recommendation No. 34. De-escalation starts with effective communication. Should include basic negotiations and how to communicate in multiple everyday situations in interactions with the public. (*See also* PERF Guiding Principle No.18)

**How does Proposed General Police Order, Use of Force:
De-Escalation comply?**

Compliant.

- The CPC and PERF Guiding Principles recommend that all officers receive training on basic negotiation techniques.
- The GPO Procedure I(F)(3) provides that officers are expected to strategically communicate to de-escalate the situation.
- The GPO procedure I(F)(3)(a) states: “Verbalize to the subject(s), in a calm manner and normal tone of voice, all the options available to them, which you can help with, and which would be best to end subject’s crisis”, and to “[a]sk questions rather than issue orders.”

III. REVIEW OF PROPOSED GENERAL POLICE ORDER, USE OF FORCE: INTERMEDIATE WEAPONS (REVISED DATE: 2016-08-30)

The following analysis first compares the revised GPO on intermediate weapons to relevant CPC recommendations. The remainder of the analysis then uses Consent Decree provisions and PERF guiding principles for purposes of comparison.

CPC Recommendation No. 35. Once someone is detained, force is no longer needed. Use of Force against those already restrained, e.g., in handcuffs, should be strictly prohibited and result in immediate suspension, up to termination.

How does Proposed General Police Order, Use of Force: Intermediate Weapons comply?

Noncompliant

- The proposed GPO I(C)(4) states that “Officers shall not use intermediate weapons on subjects who are handcuffed or otherwise restrained, *unless the subject is displaying aggressive physical resistance and lesser means would be ineffective or have been tried and failed.*” (Emphasis added.) Allowing officers to use force against restrained subjects who are “displaying aggressive physical resistance” does not meet the CPC Recommendation standard.
- Proposed GPO I(C)(4) is fully compliant with Consent Decree ¶ 69, which states that “CEWs will be used on handcuffed or restrained persons only where the subject is displaying aggressive physical resistance and lesser means would be ineffective or have been tried and failed.”
- Proposed GPO I(C)(4) is fully compliant with Consent Decree ¶ 79, which states that “OC Spray will be used on handcuffed or restrained persons only where the subject is displaying aggressive physical resistance and lesser means would be ineffective or have been tried and failed.”

CPC Recommendation No. 36. Train that an ineffective CEW deployment does not mean an officer should immediately resort to a firearm.

How does Proposed General Police Order, Use of Force: Intermediate Weapons comply?

Noncompliant

- The proposed GPO does not incorporate the language that “ineffective CEW deployment does not mean an officer should

immediately resort to a firearm.” However, this recommendation may be more appropriately applied to training for CEW certification rather than rules regarding use of force.

- The proposed GPO also requires officers to “consider each CEW application (i.e., 5 second cycle) as a separate use of force that officers shall individually justify and report as objectively reasonable necessary, and proportional.” GPO IV(A)(2)(f). It also requires officers to reassess and seek to transition to alternative control measures after three CEW applications have failed to make the subject compliant. GPO IV(A)(2)(j). This varies slightly from the Consent Decree ¶ 63, which states that “officers will consider transitioning to alternative control measures if the subject does not respond to CEW applications.” The Consent Decree does not specify the number of CEW applications that must prove ineffective before an officer must consider alternative control measures. In contrast, the proposed GPO requires consideration of alternative control measures only after three applications have failed to make the subject compliant.
- PERF Guiding Principle No. 27 also recommends that an ineffective CEW deployment “does not mean an officer should immediately resort to a firearm.”

Consent Decree ¶ 62. Each standard 5-second Conducted Electrical Weapon (CEW) application is a separate use of force that officers must individually justify as reasonable. After the first CEW, the officer will reevaluate the situation to determine if subsequent cycles are reasonable. In determining whether any additional application is reasonable, officers will consider that a subject may not be able to respond to commands during or immediately following a CEW application. Officers will not employ more than three cycles of a CEW against a subject during a single incident.

How does Proposed General Police Order, Use of Force: Intermediate Weapons comply?

Mixed compliance.

- The Proposed GPO adopts a higher standard for each individual application of the CEW: “Officers **shall**: Consider each CEW application (i.e., 5 second cycle) as a separate use of force that officers shall individually justify and report as objectively reasonable, necessary, and proportional.” (Emphasis in original.) GPO IV(A)(2)(f).
- The Proposed GPO requires that officers reevaluate the situation after each CEW application. GPO IV(A)(2)(i).
- The Consent Decree ¶ 62 expressly prohibits the deployment of more than three cycles of a CEW against a subject during a

single incident. Rather than expressly prohibiting the use of more than three cycles during a single incident with a single individual, the Proposed GPO allows for exceptions when an officer may continue to apply the CEW. See GPO IV(A)(2)(j). “Absent rare and exceptional circumstances, officers shall not exceed three 5-second CEW cycles in total on any one subject during a single incident unless the following apply:

- a. The officer reasonably believes that the initial CEW applications have been effective in gaining the subject’s temporary compliance, but the subject continues to actively or aggressively resist;
 - b. The subject’s continuing non-compliance presents a threat of imminent physical harm to the officer or others;
 - c. No other less lethal technique, tactic or choice consistent with Division policy would be effective; and
 - d. The use of the CEW beyond a third cycle will prevent resorting to deadly force options.” GPO IV(C)(1)
- The Proposed GPO allowing rare and exceptional circumstances under which an officer may exceed three 5-second CEW cycles is generally consistent with the policy of other police departments. *See infra* Section IV (comparing Intermediate Weapons policy with nationwide Use of Force policies).

Consent Decree ¶ 71. Officers will be trained in and follow protocols developed by CDP, in conjunction with the City’s EMS professionals, on the officer’s responsibilities following CEW use, including: restrictions on removing CEW probes.

How does Proposed General Police Order, Use of Force: Intermediate Weapons comply?

Compliant.

- The Proposed GPO states that “[a]fter deployment of the CEW, officers **shall**: . . . Call EMS to the scene without unnecessary delay to evaluate a subject who has been exposed to a CEW shock. EMS personnel or medical personnel at a medical facility shall remove probes penetrating sensitive areas (e.g. head, face, neck, groin, or breast areas). While it is preferred that medical personnel remove penetrating probes, a CEW-qualified officer may remove probes penetrating non-sensitive areas (e.g. buttocks, thighs) if it is reasonable to do so.” (Emphasis in original.) GPO IV(D)(1)(a). The rule places an affirmative duty on EMS personnel to remove probes from sensitive areas. As it is currently written, it does not prohibit CEW-qualified officers from removing probes from sensitive areas. It appears that the rule was written with the intention of saying that only EMS

personnel may remove probes from sensitive areas, and that CEW-qualified may only remove probes when they are both penetrating a non-sensitive area and it is reasonable to do so. The rule should be rewritten to clarify exactly what officer responsibilities are in these types of situations, and what type of medical attention must be left exclusively to EMS personnel.

Consent Decree ¶ 74. Officers who have been issued CEWs will receive *annual CEW certifications*, which will consist of physical competency; weapon retention; CDP policy, including any policy changes; technology changes; and scenario-based training. (Emphasis added.)

How does Proposed General Police Order, Use of Force: Intermediate Weapons comply?

Mixed Compliance.

- The Proposed GPO states that in order to carry CEWs, “[o]fficers are required to successfully complete mandatory training, meet the Division’s proficiency standards, and *requalify* in order to be issued and carry intermediate weapons.” (Emphasis added.) GPO I(A)(2). The Consent Decree is more specific that officers must receive annual training. The Proposed GPO does not specify how often an officer must requalify for certification.

Consent Decree ¶ 77. Officers will apply Oleoresin Capsicum Spray (“OC Spray”) *only*: (1) when such force is reasonable to protect the officer, the subject, or another party from physical harm and lesser means would be ineffective; or (2) for crowd dispersal or protection and other means would be more intrusive or less effective. (Emphasis added.)

How does Proposed General Police Order, Use of Force: Intermediate Weapons comply?

Noncompliant.

- The Proposed GPO states that officers “*are authorized*” to deploy OC Spray in the scenarios described above. GPO III(A)(1). The Consent Decree use of the word “only” restricts the deployment of OC Spray to the above scenarios. The Proposed GPO only prohibits deployment of OC Spray “on subjects with a known respiratory condition unless it is an extreme and articulable situation.”

PERF Guiding Principle No. 26. Agencies should evaluate their current policies and practices on the use of chemical spray, and consider alternatives that

address officers' concerns over cross-contamination and flammability. One alternative that agencies can consider is PAVA spray (pelargonic acid vanillyl imide), which is now widely used in the United Kingdom. Unlike traditional OC Sprays, PAVA has a more concentrated stream that minimizes cross-contamination and is not flammable (meaning it can be used in conjunction with an electronic control weapon).

How does Proposed General Police Order, Use of Force: Intermediate Weapons comply?

Noncompliant.

- The Proposed GPO does not consider the use of other chemical sprays. It appears CPD intends to continue using OC Spray.

IV. COMPARISON BETWEEN GPO REGULATIONS CONCERNING THE USE OF INTERMEDIATE WEAPONS (REVISED DATE: 2016-08-30) AND NATIONWIDE “USE OF FORCE” POLICIES.

This section compares the Cleveland Department of Police’s (CDP) proposed General Police Order (GPO) governing the use of intermediate weapons with guidelines surrounding the use of intermediate weapons at other police departments. The police departments that this section uses for comparison include Albuquerque, Seattle, and Detroit—all of which have entered into consent decrees with the Department of Justice in recent years.

A. General

- GPO defines “intermediate weapons” as including, *but not limited to*, ASP batons, CEWs, OC Spray, and beanbag shotguns. (Emphasis added.)
 - “Less-lethal” police tactics that are not included in the GPO, but are found in other use of force policies include canine deployment, vehicle-related force tactics, hobble restraints, foam projectiles, and rubber pellet rounds. Because GPO maintains separate rules for each intermediate weapon, it is important to ensure that the final use of force policy includes regulations that govern CDP’s entire stockpile of intermediate weapons.
- GPO requires uniformed officers to carry at least two intermediate weapons.
 - This is more restrictive than other police departments.
 - Ex. Seattle police officers are only required to carry one “less lethal tool.”
- GPO requires officers to, when feasible, communicate to the subject and other officers that the use of an intermediate weapon is imminent and allow time for the subject to comply with officer’s orders.
 - This is less restrictive than other police departments, because it does not require officers to communicate with third-parties (i.e., anyone besides the subject and other officers).
 - Ex. Seattle requires officers to issue a verbal warning to the subject, fellow officers and other individuals prior to using intermediate weapons (including CEWs, OC Spray, and beanbag shotguns) and allow a reasonable amount of time for the subject to comply.
- GPO prohibits the use of intermediate weapons to prevent the destruction of evidence.

- This is comparable to other police departments.
 - Ex. Seattle prohibits officers from using less-lethal tools to prevent the destruction of evidence.
- GPO does not prohibit the use of less-lethal tools to awaken unconscious/intoxicated individuals.
 - This is less restrictive than other police departments.
 - Ex. Seattle prohibits officers from using less-lethal tools to prod or jab individuals, or to awaken unconscious or intoxicated individuals.

B. ASP Baton/Riot Baton/Impact Weapons

- GPO prohibits the use of impact weapons (other than ASP Baton), except under extreme circumstances.
 - This is comparable to other police departments.
 - Ex. Detroit prohibits officers from using department-issued equipment that is not designed or authorized to be used as a weapon (e.g., flashlight, handcuffs, etc.) as a weapon, unless deadly force is authorized.
 - Ex. Seattle specifies that officers must not use flashlights as impact weapons, except in exigent circumstances.
- GPO recognizes that strikes to the head and neck constitute deadly force.
 - This is less restrictive than other police departments, which recognize strikes to the spine as a form of deadly force.
 - Ex. Albuquerque recognizes that strikes to the head, neck, and spine are considered deadly force.
- GPO only permits officers to carry weapons that CDP issues.
 - This is more ambiguous than other police departments, which specify which weapons officers may (not) use/carry.
 - Ex. Detroit expressly prohibits the use of brass knuckles, blackjacks, nunchukus, saps, slapjacks, and other sticks/clubs.
- GPO prohibits the use of intermediate weapons—including impact weapons—against subjects who are handcuffed or otherwise restrained (unless there are signs of aggressive physical resistance), passively resisting, or complying with police direction.
 - This is less restrictive than other police departments that more strictly limit when an officer may use intermediate weapons against restrained individuals.
 - Ex. Seattle’s use of force policy provides that the “use of less-lethal tools [when an individual is handcuffed or otherwise restrained] is only permitted in situations

where there is a risk of death, great bodily harm, or serious physical injury to the officer or third parties.” With respect to impact weapons specifically, Seattle’s policy provides that “officers will not use impact weapons on subjects who are restrained and under control, or complying with police direction.” When read together, these provisions indicate that an officer may only use an intermediate weapon against a restrained individual, if the individual poses a risk of death, great bodily harm, or serious physical injury. This is a higher standard than the GPO, which allows the use of impact weapons against restrained individuals who show “signs of aggressive physical resistance.”

C. Oleoresin Capsicum (OC) Spray

- GPO specifies two situations when OC Spray is permitted: (1) when reasonable to protect officer/other from physical harm, and (2) for crowd dispersal.
 - This is less restrictive than some police departments, which require officers to be more selective in their decision to use OC Spray.
 - Ex. Seattle prohibits OC Spray, unless the use of physical force is necessary.
- GPO does not prohibit the use of OC Spray in confined environments.
 - This is less restrictive than comparable police departments, which restrict the environments in which OC Spray may be used.
 - Ex. Albuquerque recommends that officers do not use OC spray in confined or enclosed environments.
- GPO requires officers to make reasonable efforts to relieve the subject’s OC Spray discomfort by washing OC Spray from the subject’s eyes with cool water.
 - This is comparable to other police departments.
 - Ex. Seattle requires officers to assist exposed subjects with decontamination and water-flushing of exposed areas as soon as feasible. And to remove the subject from the contaminated area and into fresh air.
- GPO requires officers to monitor exposed subjects for changes in their condition while in police custody.
 - This is comparable to other police departments.
 - Ex. Albuquerque instructs officers not to leave suspects who are exposed to OC Spray alone.

D. Conducted Electrical Weapon (CEW)

- GPO permits the use of CEWs “where grounds for arrest or detention are present and the subject is actively or aggressively resisting and lesser means would be ineffective.”
 - This is less restrictive than other sources suggest are appropriate.
 - Ex. Stanford Criminal Justice Center suggests that police departments limit use of Tasers to circumstances under which the use of lethal force would also be permitted. “[G]iven the uncertainty about the measurable risk of death or injury posed by tasers, and given the difficulty, if not uncertainty, of police officers on the street discerning whether the target is an especially vulnerable victim,” it is “unwise” to conclude that tasers are less likely than guns to cause death or serious bodily injury. *Use of Tasers by Law Enforcement Agencies: Guidelines and Recommendations*, Stanford Criminal Justice Center Report 13 (2005).
- GPO instructs officers to assume that the CEW is ineffective if the subject is not compliant after three CEW applications.
 - This is comparable to other police departments.
 - Ex. Seattle instructs officers to assume that the CEW is ineffective if the subject continues to aggressively resist after three CEW cycles; the officer is then required to reassess and consider other options. *See supra* Section III (noting Consent Decree ¶ 62 prohibits more than three CEW cycles in a single incident).
- Although GPO prohibits the use of intermediate weapons on subjects who are complying with police direction, it does not recognize that CEW application will make it more difficult for a subject to become compliant.
 - This is less restrictive than comparable police departments, which address the reality that CEW application may make it more difficult for a subject to comply with police orders.
 - Ex. Due to the incapacitating effects of the CEW, Albuquerque instructs officers not to expect an individual under the effects of a CEW to comply with demands.
- GPO instructs officers to limit each CEW cycle to 5 seconds.
 - This is comparable to other police departments.
 - Ex. Seattle recognizes a “standard discharge” of a CEW as 5 seconds for either probe or drive stun mode.

- GPO permits drive stun mode to supplement probe mode to complete a subject's incapacitation.
 - This is less restrictive than comparable police departments, which discourage the use of drive stun mode.
 - Ex. Albuquerque encourages probe deployments over drive stun mode, because the latter is minimally effective and will likely leave marks on the subject's skin.
- GPO prohibits officers from using CEWs in situations where the subject may fall, lose control of a moving vehicle, or ignite flammable materials.
 - This is comparable to other police departments.
 - Ex. Albuquerque prohibits the use of tasers in any environment where the subject's fall could reasonably result in death (such as water or on an elevated structure) and instructs officers not to use CEWs in an environment where an officer knows of potentially flammable, volatile, or explosive material.
- GPO instructs officers to determine the reasonableness of using a CEW based on all the relevant circumstances, including the subject's apparent age, size, physical, and mental condition.
 - This is less restrictive than outside literature suggests is appropriate, which prohibits the use of CEWs on vulnerable populations generally:
 - Ex. Tasers should never be used on vulnerable populations such as children, pregnant women, the elderly, the mentally ill, and those under the influence of drugs. Stanford Criminal Justice Center Report at 6.
- Outside literature suggests that police departments should not rely on training materials from Taser International, because it downplays the risks associated with taser use, encourages multiple firings in inappropriate circumstances, and misrepresents the health effects of tasers; instead, police departments should solicit assistance and information from law enforcement agencies that have developed their own materials. Stanford Criminal Justice Center Report at 13.

E. Beanbag Shotgun

- GPO prohibits the use of a beanbag shotgun when the subject represents a lethal threat, unless a second officer is prepared to deploy deadly force.
 - This is similar to other police departments.
 - Ex. Albuquerque requires officers to have a lethal cover officer when deploying a beanbag shotgun.

- GPO permits officers to use beanbag shotguns when a subject presents an imminent risk of serious physical harm to an officer or others, de-escalation and other force options have proven ineffective and the subject is within safe range of the beanbag shotgun.
 - This is comparable to other police departments.
 - Ex. Seattle only allows the beanbag shotgun to be used on an individual engaged in active aggression, or to prevent imminent physical harm to the officer or another person.
- GPO does not expressly prohibit using the beanbag shotgun in a crowd of people.
 - This is less restrictive than other police departments, which do not allow officers to use a beanbag shotgun against a large group of people.
 - Ex. Seattle prohibits officers from using beanbag rounds in a crowd.
- GPO only permits the use of the beanbag shotgun when the parties are within a “safe range,” but does not specify the optimal distance or conditions for using the beanbag shot.
 - This is less restrictive than other police departments, which provide specific guidelines concerning the optimal setting to use a beanbag shotgun.
 - Ex. Seattle states that the optimal distance for using a beanbag shotgun is between 21-45 feet and recognizes that the accuracy of using a shotgun after 45 feet decreases significantly.
- GPO only allows qualified supervisor/SWAT officers to deploy the beanbag shotgun.
 - This is comparable to other police departments.
 - Ex. Seattle requires officers to have a special training and certification to use beanbag shotguns.
- GPO requires that beanbag rounds be sufficiently distinguished from live ammunition.
 - This is comparable to other police departments.
 - Ex. Seattle requires all beanbag rounds to be painted in a bright color to distinguish them from live round.
- GPO does not require the regular inspection of beanbag shotguns.
 - This is less restrictive than other police departments, which expressly call for routine inspection of beanbag shotguns.
 - Ex. Seattle requires beanbag shotguns to be inspected on a semiannual basis to ensure that they are operable.

The above analysis was prepared by the Milton A. Kramer Law Clinic.

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EXHIBIT G

USE OF FORCE COMMUNITY FEEDBACK

SUMMARY

As part of the ongoing reform process, the Monitoring Team—working closely with the City of Cleveland, the Cleveland Division of Police (CPD), the Department of Justice, and the Cleveland Community Police Commission—solicited public input on the CPD’s proposed Use of Force (UOF) policies. Between September 9 and September 24, we engaged in a comprehensive feedback process:

- We made the proposed use of force policies—including the UOF General Policy, De-Escalation Policy, and Intermediate Weapons Policy—available online, along with a brief summary of key policy changes.
- We created an online feedback form with questions about the policies and engaged in an extensive outreach campaign to solicit responses.
- We held two community roundtables that gave members of the public an opportunity to discuss the policies with one another and share their feedback in person.

This report summarizes the feedback we received. Although community members generally were supportive of the new policy, they made a number of recommendations, including:

- Additional factors that officers should consider before using force, such as potential trauma to bystanders.
- Additional de-escalation techniques that officers should be trained in, including giving a suspect adequate time to listen and understand officer commands.
- Additional methods to overcome language and speech barriers between officers and community members, such as teaching officers basic sign language commands.

OVERVIEW OF THE PUBLIC COMMENT PROCESS

In order to ensure that the consent decree stakeholders received input from a cross-section of Cleveland residents, we designed a comprehensive process with multiple opportunities for participation.

Here we explain what we did and the volume of input we received.

1. We made the draft policies available on the Monitoring Team website, the CPC's website, and the City's website, along with a brief summary of key policy changes. Organizations and interested individuals were invited to submit written comments. We received three sets of detailed comments—from The Schubert Center for Child Studies at Case Western Reserve University ("Schubert Center"), Strategies for Youth, and the American Civil Liberties Union of Ohio.
2. We created an online feedback form to give residents an opportunity to weigh in without necessarily having to read the policies in full. The feedback form asked residents a series of questions designed to get their views on whether the new policies address their concerns, would improve police-community relations, and would promote officer safety. We received a total of 92 responses to the online feedback form.
3. We hosted two community roundtables to provide an opportunity for direct engagement between the consent decree parties and the community around the proposed policy. These roundtables took place on September 15 at Jerry Sue Thornton Center on the Eastside, and on September 20 at Urban Community School on the Westside. The Chief of Police and United States Attorney for the Northern District of Ohio attended both roundtables. Approximately 200 residents and community leaders attended the two roundtables, including police officers, several members of the clergy, residents and staff of the Cuyahoga Metropolitan Housing Authority, Cleveland city council members, and representatives from The Hispanic Alliance, The Council on American Islamic Relations, and The LGBT Center of Greater Cleveland.

The roundtables included an overview of the UOF policies with a question and answer panel and an opportunity for small group discussions. Representatives from the City, the DOJ, the Monitoring Team, and the CPD led the small group discussions.

The community roundtable started with a 20-minute overview PowerPoint presentation by Monitor, Matthew Barge. Community members then had an opportunity to ask questions about the policies. Some of the participants sought clarification on key policy terms, like "chokehold" and "proportionality." Others asked about training and accountability—for example, inquiring whether "officers have scenario-based training." Many people had a hard time separating the UOF policies from the related issues of training and reporting. Any questions that did not get answered at the roundtables were later addressed on the Monitoring Team's website.

After the question and answer panel, the small groups engaged in a substantive discussion about the UOF policies. We created an agenda to guide the conversations and give residents an opportunity to weigh in without reading the policy in full. Participants were

first asked to reflect on Cleveland community values, and then to apply these values to specific policy questions—such as what factors officers should be required to consider before using force. After a 45-minute discussion, each group nominated a reporter to share two suggestions or ideas with the audience and the consent decree stakeholders.

SUMMARY OF COMMENTS RECEIVED

Community members at both roundtables were generally supportive of the proposed policy, describing the policies as “a good start in the right direction.” Several community members praised the policies for providing greater clarity and for being “very straightforward.”

The tone of the comments submitted through the online questionnaire, however, was quite different. Approximately half of the community members who took the online survey found that the policies did not address their concerns and will negatively affect officer and community safety. From the comments received, it seemed as though many of the respondents did not support the consent decree and expressed concern that the policies would keep officers from “protecting themselves.”

Both at the roundtables and in written comments, community members made a number of suggestions for how to improve the draft policy. Many emphasized the need for greater communication before using force and during de-escalation. Another common concern was that officers receive proper mental health testing and training. Several tables suggested officers learn how to de-escalate themselves when they arrive on a scene.

Finally, many community members expressed their appreciation for having an opportunity to participate in the policy-making process.

The remainder of this report proceeds topic-by-topic, summarizing the proposed policy and the feedback received.

When Officers May Use Force

Proposed policy:

The proposed CPD policy lists several factors officers should consider before using force. These factors include the person’s age, gender, and body size; the relative strength of the person and officer; any apparent medical conditions or drug or alcohol usage; and any other circumstances that may affect the reasonableness of force. Additional factors and circumstances are listed on page 2 of the general policy.

Feedback:

Community members suggested officers should also consider the number of officers present, the amount of time provided for the suspect to reply to a command, information from witnesses, and potential trauma to bystanders. During the community roundtables, at least half the groups emphasized the importance of improved communication between officers and suspects. Groups stressed that officers should consider the subject's ability to speak English and whether the subject understands the officer's commands.

De-Escalation Techniques

Proposed Policy:

The proposed CPD policy provides an extensive list of de-escalation techniques that officers should consider using when appropriate. These techniques include proactive use of distance, cover, concealment, and time; hearing and listening; strategic communication or voice commands to de-escalate the situation; and increase officer presence, if necessary, to increase strategic options.

Feedback:

At the community roundtable, participants suggested additional techniques officers should consider. Several groups suggested officers should also consider the tone and volume of their voice when de-escalating a situation. One group suggested that "officers should approach subjects with a low voice, to avoid subjects from yelling at officers." Several groups felt as though officers should give subjects room to vent and to distinguish venting from violent mannerisms. Another group believed that officers should tailor their de-escalation strategies to specific neighborhoods.

During the roundtables, several groups felt the de-escalation policy should more expressly emphasize the role of officers as "guardians" rather than "warriors." This was articulated in several different ways. One group stressed that "officers should leave the situation better than how they found it," while another group noted that "the responsibility of the officers is not to escalate the situation and this should be more prominent in the policy." One group worried officers might not attempt to de-escalate for a reasonable enough time and urged for clarification on an appropriate "the length of time the officer should attempt de-escalation tactics."

Several groups highlighted the information problem officers face. These groups discussed how "de-escalation is only possible if officers are properly informed." One group urged the department to work on clarifying communication from the caller to the dispatcher and then again from the dispatcher to the officer.

Youth

Proposed Policy:

The proposed Intermediate Weapons policy instructs officers to consider a number of factors before using intermediate weapons on children and juveniles, including: body mass, physical build, perceived age, and emotional condition. The proposed De-escalation policy likewise instructs officers to consider the “perceived age of a child” when deliberating whether a subject’s lack of compliance is an attempt to resist or an inability to comprehend.

Feedback:

At the community roundtables, at least four groups suggested the policies need to better address communicating and de-escalating with children. One group suggested a youth-specific policy.

The Schubert Center and Strategies for Youth both noted the proposed policies seem interchangeably to use “child(ren),” “small children,” and “juveniles,” without providing a definition of “child.” The Schubert Center expressed concern for the use of “small child,” stating it is especially ambiguous—“does it refer to age or a physical stature of the child”? Both organizations recommended that the policies clearly define these terms. Strategies for Youth expressed concern about the complete omission of the term “youth” in light of the Department of Justice’s finding of “extreme, objectively unreasonable use of force on youth aged 14 and 16.”

Lastly, the Schubert Center suggested the following definitions be added to the policy:

Adolescence: [The] developmental period when [a] child matures from puberty to adulthood with distinct physical, cognitive and social-emotional attributes.

Age-appropriate/developmentally-informed: Terms used interchangeably to reflect a general understanding of child and adolescent development in terms of the social, emotional, physical, neurological, behavioral and moral aspects of development in an individual under 18 years of age.

Both organizations noted that although the draft policy instructs officers to use “appropriate responses” with children and juveniles, it fails to provide sufficient guidance as to the meaning of the phrase. They noted that Conducted Electrical Weapons (CEW) pose more “serious health risks” to children. According to Strategies for Youth, “their bodies respond to the electrical discharge by going into ventricle fibrillation (e.g. heart attacks) as well as ‘flatboarding’ which appears to lead to traumatic brain injuries.” Both groups suggest that using CEW on children should be prohibited except for “extreme, exigent circumstances” or “where deadly force is authorized.” In the context of OC Sprays, both groups noted exposure to OC Spray presents unique risks for serious injury when used on children. According to Strategies for Youth, “poor youth and youth of color have very high asthma rates in America’s urban centers, including

Cleveland.” Both groups suggested limiting the use of OC Spray in confined areas or on a child in restraints.

The Schubert Center argued that the use of “perceived age,” and “apparent age” throughout the policies creates confusion and allows for too much subjectivity. They also noted that “perceived age” appears to be inconsistent with the language of the Settlement Agreement, which states “age” as one of the categories requiring further protection. The Schubert Center recommended replacing “perceived age” and “apparent age” with “age.”

Lastly, the Schubert Center argued that there should be a prohibition or at least a limitation on canine apprehension where children and youth are involved.

Mental Health

Proposed policy:

The proposed CPD policy requires officers take mental disabilities into account when considering if, when, and how to use force. Additionally, when determining what de-escalation techniques to use, officers are required to call a specialized CIT Officer if he or she determines the subject is in a mental health or behavioral crisis.

Feedback:

At the community roundtables, several groups expressed concern that the proposed policies fail to emphasize how officers should interact with community residents with mental disabilities. One group suggested that “each police district have a specific number of CIT trained officers and CIT trained supervisors on duty during each shift.” Another group urged for CPD to keep a database of neighborhoods or streets where mentally disabled community members reside.

Many groups also noted the importance of mental health training and testing for individual officers. At least three groups suggested that officers be trained in stress and anger management and learn to “de-escalate themselves” before entering a scene. One group noted that anger-management training will help officers develop a “thick skin.” Several groups urged for periodic psychological screening for CPD officers.

Communication

Proposed Policy:

The proposed CPD policy emphasizes the importance of strategic communication in the De-Escalation Policy. Officers are encouraged to speak to subjects in a calm manner and normal tone of voice and ask questions rather than issue orders.

Feedback:

Although the De-Escalation policy emphasizes the importance of communication, community members expressed concern that the proposed policy fails to sufficiently reinforce the importance of overcoming language and speech barriers. Over half of the groups at both roundtables suggested that officers be provided with more training on communicating with non-English speakers. One group suggested that each officer carry a mini “cheat sheet of common Spanish phrases.” Another common communication concern was the interaction between officers and deaf citizens. Several groups suggested officers receive more training on identifying deaf individuals and communicating basic commands.

Strategies for Youth found the use of phrases like “when feasible,” “shall attempt,” and “make an attempt” in relation to an officer’s obligation to identify himself or herself and warn a subject prior to using force (General Policy under Procedures I.A. and B.) to be concerning. They suggested officers should instead be required to identify himself or herself in order to avoid the risk of confusion.

Cleveland Community Values

During the roundtables and in the written comments, several participants expressed concern that Cleveland community values were missing from the proposed policies. Several groups suggested the policies include statements such as “reverence for life” and “respect for all individuals.”

Feedback About Topics Not in the Use Of Force Policies

Community members provided input on several topics not covered in the proposed policies. These topics included training, reporting, accountability in the review of excessive use of force, and community policing.

Training

During the roundtables over half of the groups offered suggestions on how training should be conducted and what additional topics should be covered. Several groups reiterated the importance of scenario-based training and role-playing. One group stated these policies include “too much writing” and urged the CPD to use videos, examples, and illustrations instead of classic classroom instruction. Several groups noted the influence of race and poverty on CPD’s policing practices. Two groups suggested training should address implicit biases and cultural competency. One group noted that because many medical conditions might not be readily apparent, officers should learn how to identify several common medical conditions.

Lastly, two groups provided input on what should happen after training. One group suggested, officers should be tested to make sure they know the policies, while another group recommended that the policies should be reviewed and revised in order to reflect the realities of Cleveland.

Reporting

During the roundtables, over half of the groups either had a question about reporting or suggested specific reporting procedures. Two groups asked for more transparency in the process. One of these groups suggested the creation of a CPD database where use of force data is tracked and open to the public. Another group urged the police department to post a sample Use of Force Reporting form on their website. One group recommended that the initial reporting of a use of force incident be completed before the officer's shift ends. Another group expressed concern about officers reporting each other. That group urged the CPD to allow for anonymous reporting in order to protect officers from retaliation.

Review Process and Accountability

Many groups expressed concern about the review process. These groups noted that although these policies may appear sound on paper, consequences and accountability will be of the utmost importance. Several groups noted that the current review structure is inadequate. Two groups suggested review by independent third parties, rather than individuals connected to the police department. Two groups expressed concern about the unofficial "no snitching policy," they recommended the department find ways to combat the "blue wall of silence" culture. Additionally, community members suggested adding more emphasis on the responsibilities of officers who witness excessive use of force. Lastly, one group recommended immediate isolation for officers who have been involved in a use of deadly force.

Community Policing

At the community roundtables, several groups commended the parties for including the community in this policy-making process. Many groups emphasized the need for more community engagement. One group said they would like more opportunities and venues to learn how officers implement the use of force policies.

A few groups suggested officers become more familiar with the areas they patrol. One group noted that community policing principles are integral to these policies. This group stressed that officers should learn more about quality of life challenges in their patrolling communities as that often influences how residents respond. Another group suggested CPD create an officer database consisting of each officer's name, picture, and some brief information about the officer, such as—the officer's patrol area, education, and qualifications.

Many groups discussed the influence of race and poverty in CPD's policing practices. Several groups provided suggestions on additional training topics, such as cultural competency and implicit bias. Other groups expressed concern about officer's perceptions of minority communities. These groups suggested that CPD adopt stronger community policing practices and more community engagement.

EXHIBIT H



GENERAL POLICE ORDER CLEVELAND DIVISION OF POLICE



ORIGINAL EFFECTIVE DATE : March 1, 2002	REVISED DATE: August 8, 2014	NO. PAGES: 1 of 15	NUMBER: 2.1.01
SUBJECT: USE OF FORCE			
ASSOCIATED MANUAL: INSPECTION, INTERNAL AFFAIRS, EMPLOYEE ASSISTANCE UNITS		RELATED ORDERS: 1.1.22, 2.1.02, 2.1.03, 2.1.04, 2.1.06, and 4.1.10	
CHIEF OF POLICE: <i>Calvin D. Williams, Chief</i>			

Substantive changes are italicized

PURPOSE: To establish guidelines for members of the Cleveland Division of Police relative to the use of force. To provide direction and clarity in those instances when a person’s actions require an appropriate use of force response.

POLICY: A respect for human life shall guide members in the use of force. Division members shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the life of the member or others. **Excessive force is strictly prohibited.**

A member’s responsibility is the protection of the public. Standards for the use of force are the same on-duty and off-duty. Members shall not use force that may injure bystanders or hostages, except to preserve life or prevent serious bodily injury. **Deadly force is never justified solely to protect property.** The use of force is not left to the unregulated discretion of the involved member. Use of force decisions are dictated by the actions of the resistant or combative person, *Division policy, proper tactics, and training.* Justification for the use of force is limited to the facts actually known or reasonably perceived by the member at the moment that force is used. Deadly force shall not be used to effect an arrest or prevent the escape of a person unless that person presents an imminent threat of death or serious bodily injury to members or others.

DEFINITIONS:

Force means the following actions by a member: any physical strike or instrumental contact with a person, or any significant physical contact that restricts movement of a person. The term includes, but is not limited to, the use of firearms, conducted electrical weapon (CEW - e.g. Taser), ASP, chemical spray, or hard empty hands, the taking of a person to the ground, or the deployment of a canine. The term does not include escorting or handcuffing a person, with no or minimal resistance.

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Deadly Force is any action likely to cause death or serious physical injury. It may involve firearms, but also includes any force or instrument of force (e.g. vehicle, edged weapon) capable of causing death or serious injury. Deadly force includes firing at or in the direction of a person, head strikes with any hard object, *and any action that restricts the blood or oxygen flow through the neck.*

Less Lethal Force is any use of force other than that which is considered deadly force. Less Lethal force includes any affirmative physical action taken by a member to control a person. In addition to the less lethal force associated with the use of pepper spray, Taser (CEW) and the ASP baton, less lethal force **includes** the following:

1. Use of a member's body part(s) to strike a person;
2. Use of Division-issued intermediate weapons (See Section IV) deployed on approved body target areas (e.g. large muscle groups, not to include head strikes);
3. Use of joint manipulation and/or pressure point techniques;
4. Striking a person with an object (other than a firearm) that may be used as a weapon (i.e. portable radio or flashlight) on approved body target areas;
5. Wrestling with a person;
6. Actively holding/pinning a person against the ground or other fixed object;
7. Any deliberate force which causes injury to a person or causes a person to fall or collide with an object;
8. Use of a police canine that results in a dog bite; Purposeful physical contact by a police horse that results in injury;
9. Any other less lethal physical action required to control a resistant, combative, or violent person.

Objectively Reasonable Force is that level of force that is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same circumstances as the officer who actually used force. Objective reasonableness is not analyzed with hindsight, but will take into account, where appropriate, the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations. This policy guideline applies to all uses of force, not only the use of deadly force. Reference U.S. Supreme Court case *Graham v. Conner* (1989).

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Intermediate Weapons are authorized instruments or devices approved and issued by the Division. These instruments or devices include, but are not limited to, the following: OC pepper-spray, the ASP baton, the Taser, and the Beanbag Shotgun.

Deadly Active (Category 1): A Deadly Active person is one who is presenting a deadly threat with a firearm, edged weapon, deadly ordnance, Taser/Conducted Electrical Weapon (reference GPO 2.1.06 Taser – Conducted Electrical Weapon), or any other instrument or substance capable of causing death or serious physical injury. Also included is an attempt to disarm the member, incapacitate the member or a life-threatening weaponless assault. The member objectively and reasonably perceives an imminent threat of death or serious physical injury to self or innocent others.

Actively Resistant/Self-Destructive Behavior (Category 2): An Actively Resistant person is one who takes an offensive or a physically resistant action. These actions can take the form of the person standing at the ready and menacing with an object, device, or material capable of inflicting serious injury; the person using bodily force such as punching, striking, scratching, grabbing/holding; the person using active physical resistance to custody or presenting an imminent biohazard threat such as spitting or throwing a biohazard at the member or attempt of same. Also in this category: evading custody (escape), destroying evidence, or attempting to harm self (ingesting narcotics, suicide attempt), making explicit verbal threats to cause injury to the member or others present and which the member reasonably believes the person will carry out that threat. The member objectively and reasonably perceives an actual or imminent threat to self, others or evidence. In the interest of officer safety, members shall be particularly vigilant of persons presenting physical cues of an imminent attack (yawning with outstretched arms, glancing around assessing the environment, staring at the officer's duty belt, balling fists, shifting their body into a fighting stance ...).

Passively Resistant (Category 3): A Passively Resistant person is one who fails to follow voice commands. A Passively Resistant person may be verbally abusive using non-threatening language. A Passively Resistant person is also any person who resists arrest simply by passively refusing to comply as directed (dead weight). The police member does not objectively and reasonably perceive an imminent physical threat.

PROCEDURES:

- I. Members who are present at the scene of a police-involved use of force are not relieved of the obligation to ensure that the use of force complies with the requirements of the law; and, in the instance of a Cleveland police officer, adherence to Divisional rules, policy, and training. Members of the Division of Police have a duty to act if the use of force against a person by any law enforcement officer clearly becomes excessive or objectively unreasonable.

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A. Members shall factor into their response their ability to deescalate the use of force. The witnessing member's response may range from physical intervention, to voice commands, to appropriate after-action notification. If reasonably able to do so, the member shall intervene physically to deescalate the application of force. The member shall also:

1. If reasonably able to do so, take *protective* custody of the person *being subjected to* the objectively unreasonable force.
2. Ensure that medical care is provided as needed.
3. In all cases, report witnessed suspected excessive use of force to the next non-involved supervisor in their chain of command before reporting off duty, and documenting same in their daily duty report and a Form-1 to the next non-involved supervisor in their chain of command.

B. Supervisors shall investigate all reports of alleged excessive force brought to their attention and take action as appropriate. Supervisors shall in all such instances promptly make their superior aware of the allegation and proposed action. The supervisor investigating the allegation of excessive force shall contact the *Commander of the Bureau of Integrity Control* and advise same of the allegation. At this point, the *Commander of the Bureau of Integrity Control* may at his/her discretion take over the investigation of the allegation.

II. Officers shall be trained and tested yearly on the law and Division policy regarding the use of force, appropriate methods to effect arrests, and the apprehension of fleeing persons. The Division mandates strict knowledge and compliance with this order. Immediate supervisors are responsible for clarifying misunderstandings associated with this order.

III. Force Level

A. Members shall first attempt verbal persuasion tactics and warnings to gain *the person's* cooperation. If verbal persuasion and warnings do not gain compliance, *members* shall obtain assistance to gain the *person's* cooperation through a show of force. If a show of force does not gain compliance, the *member* shall use physical holds.

B. Members shall determine the level of force necessary to protect themselves or others, or gain compliance from combative, resistant, or violent persons. Members shall consider alternative tactics to the use of force, which include, but are not limited to:

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1. Concealment and/or cover.
2. Voice commands and other verbal attempts to deescalate the situation.
3. *Use of a Crisis Intervention Team (CIT) officer, if available.*
4. Show of force (i.e. multiple officers, display of weapons).
5. *Judiciously allow time and/or opportunity for a person to regain self-control or cease struggling/resisting, when their actions do not immediately threaten the safety of themselves or others.*

C. Action-Response

1. Members are prepared with knowledge of laws, proper training in use of force decision-making, proper training and accountability to high ethical standards, and an understanding of Division directives. The member's response shall be judged strictly on what objectively reasonable is based on the totality of circumstances and all facts known or reasonably perceived by the member at the moment that a force response is employed.
2. Members shall be guided by the person's actions as they fall into three general categories: **Deadly Active (Category 1)**, **Actively Resistant/Self-Destructive Behavior (Category 2)**, and **Passively Resistant (Category 3)**. Members shall refer to their training and the Use of Force *policy (GPOs and attachments)* for guidance in tailoring the appropriate response as prompted by the person's actions.

D. Members shall consider the following member/person factors when choosing an Action-Response:

1. Age
2. Gender
3. Body size
4. Skill level
5. Number of persons and number of members
6. Relative strength of the person and member
7. Known or apparent medical condition

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8. Known or apparent drug/alcohol usage

E. Special circumstances unique to each situation involving use of force:

1. Weapon proximity

2. Injury or exhaustion

3. Position (e.g., being on the ground)

4. Distance from the person

5. Special knowledge or training

6. Availability of other options

7. Environmental conditions

8. The person presents threat of a bio-hazard (saliva, blood, other body fluids) by way of spitting or throwing the bio-hazard at a member.

9. Degree to which the person is already restrained (handcuffed, physically controlled by others, or whose mobility has been otherwise severely compromised).

IV. Intermediate Weapons

A. Members who successfully complete mandated training and meet the Division's proficiency standards are issued and required to carry intermediate weapons on duty and while engaged in secondary employment. Members who are Taser, ASP, and OC Spray qualified shall carry the Taser and at least one other intermediate weapon as so qualified. If not Taser qualified, members *shall* carry both the ASP and OC Spray as so qualified.

B. Members shall carry and use only those intermediate weapon holsters/carriers furnished by the Division or specifically authorized by the Chief of Police.

C. *Intermediate weapons shall not be used on passively resistant persons.*

D. Members may draw, display, point or threaten to use intermediate weapons if they fear for their safety or the safety of others, or to gain compliance from a resistant, combative, or violent person.

E. Batons/Hard Objects Used as a Weapon.

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1. The Division authorizes a member to use an *ASP* baton while on duty or working secondary employment. Absent exigent circumstances, the Division prohibits the use of non-traditional weapons/hard objects to gain compliance from resistant, combative, or violent person(s).
2. The “Riot Baton” is authorized only during field force deployment.
3. When a member uses the *ASP* baton, Riot Baton, or any hard object/non-traditional weapon, medical personnel shall examine the person (i.e. EMS, Emergency Room).
4. Photographs of the area struck by an *ASP* baton, Riot Baton, or any hard object/non-traditional weapon shall be taken and be made part of the investigative packet.

F. Oleoresin Capsicum “OC” Spray

1. If feasible, members shall provide a loud verbal warning before OC spray is used.
2. Members shall not use OC spray on women known or believed to be pregnant.
3. *Members shall not use OC spray on persons with a known respiratory condition unless it is an extreme and articulable situation.*
4. If OC spray is used on a juvenile, elderly, pregnant, physically disabled person, or a suspected mentally ill person, they shall be transported to the nearest hospital for treatment.
5. Members shall assist bystanders who come into contact with OC discharges. If an injury occurs or medical attention is required, the member shall complete an Injury to Person/Accidental/OC Spray Record Management System (RMS) report and ensure that a copy of it is forwarded through the chain of command to the Inspection Unit.
6. If a person does not comply after two one-second bursts of OC that successfully reach the target, members shall discontinue use.
7. When control is established at the scene, the member shall make a reasonable effort to relieve the person’s OC discomfort. Members shall wash OC from the person’s eyes as soon as possible at the scene, the booking location, or a hospital.

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8. Immediately transport persons for emergency medical care if:
 - a. Symptoms, other than mild, last beyond 45 minutes.
 - b. The person has difficulty breathing or loses consciousness.
 - c. The member believes that the person needs medical attention, regardless if the person requests it or not.
 - d. The member becomes aware of a medical condition (bronchitis, heart ailment, emphysema, etc.) that OC spray may aggravate.
9. Members shall carefully handle a person's clothing that has come in contact with OC spray to avoid OC contact themselves.
10. The use of OC on a person attempting to swallow evidence or contraband is permitted when all the following criteria have been met:
 - a. There is a clear indication that the object or substance in the person's mouth is contraband.
 - b. There are exigent circumstances such as the imminent destruction of evidence or medical emergency.
 - c. The person has refused to comply with the member's verbal command to spit out any contraband.
 - d. OC use is not prohibited by another section of this order.

G. *Taser*

1. *Taser use shall comply with General Police Order 2.1.06 Taser.*
2. *When the Taser is used a Taser download shall be completed by a supervisor or a Bureau of Integrity Control investigator.*

V. *Use of Less Lethal Force (ULLF)*

- A. When force is used, whether or not an injury occurs (whether on-duty, off-duty, or secondary employment) members shall promptly request a supervisor to respond to the scene. Members shall obtain necessary medical assistance for persons appearing to be injured or complaining of injury. An on-duty superior officer from the district in which the incident occurs shall investigate off-duty/secondary employment members' use of force. Supervisors who

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observe, participate in, authorize, or are otherwise involved in the use of force shall not assume investigative responsibilities of the incident.

- B. In cases where members assigned to multi-agency units or task forces are involved in a *ULLF* incident, the supervisor who is next in the chain of command that did **not** observe, participate in, authorize, or otherwise was involved shall assume investigative responsibilities of the *ULLF*.
- C. When less lethal force is used, members shall complete a RMS report with “Police Intervention” in the title. One such titled report is sufficient to cover all members involved in a single incident of ULLF as long as that report contains all the information in the narrative section that accounts for each member’s ULLF actions.
 - 1. The member completing the RMS report shall include the notation “Use of Less Lethal Force report completed” in that narrative.
 - 2. The member completing the RMS report shall identify within it all members who used force during the incident *and identifiable witnesses; including civilians, members of other agencies, and members of the Division.*
- D. The member completing the RMS report shall complete the ULLF report (Attachment A) and the additional members involved (Attachment B) as necessary. *One ULLF report (4 pages) shall be completed for each person force was used against.* The reporting member shall ensure that all the involved members’ actions are noted on the ULLF report.
 - 1. Failed attempts at force, such as the missed thrust of a punch, the missed swing of an ASP, or a failed takedown attempt, also need to be documented in the ULLF report as they are indicative of the officer’s intentions. Officers shall ensure that these failed attempts at force are clearly described in the narrative of the RMS report.
 - 2. When completing the Action Response section (page 2) of the ULLF report, members shall check all boxes in all categories indicating all person and member actions as appropriate. It is possible that a use of force event may require that multiple boxes be checked in all three categories for both the person and the member.
 - 3. Before reporting off duty, the member completing the RMS report shall:

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- a. Submit the original RMS and ULLF reports to the investigating supervisor. The supervisor shall sign the reports after having checked them for accuracy and completeness.
 - b. Fax the supervisor-signed Police Intervention RMS and ULLF reports (*all 4 pages*) to the Record Intake/Review Unit and to the Inspection Unit.
 - c. Forward the original supervisor-signed RMS report *and a copy of the ULLF report* to the district/bureau Commander's Office for later forwarding to Record Intake/Review Unit.
4. The member shall return a copy of the RMS report and the original ULLF report and other documents to the investigating supervisor for the completion of the investigation and additional endorsements in the chain of command and for final forwarding to the Chief's Office.
- E. Supervisors notified of the ULLF shall immediately respond to the scene and conduct an objective, impartial, complete investigation to include a review of all known relevant video and audio evidence.
1. Supervisors shall ensure that medical care has been provided for as needed. If EMS is not conveying the prisoner, the supervisor shall judiciously consider if it is appropriate to have members who were involved in that use of force to also handle the transport of that prisoner to a medical facility. Given the totality of the circumstances of the use of force and available staffing, the supervisor may assign the prisoner transport to other non-involved members.
 2. *The supervisor handling the ULLF investigation shall require all members that were on scene just prior to, during, or immediately after the ULLF to complete a Form-1 that details any actions of the member and what the member observed and heard. When determining if a member should complete a Form-1, the supervisor shall take into account that it is better to complete a Form-1 than not.*
 3. The supervisor handling the initial ULLF investigation shall prepare an investigative packet. *One packet shall be created for each person that force was used against. Each packet shall include:*
 - a. *A supervisor's investigative Form-1. When there are multiple persons involved in a single incident, one supervisor's*

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investigative Form-1 shall be completed and a copy included with each investigative packet. The Form-1 shall include:

1. A Synopsis of the incident and an evaluation of the ULLF *addressing* whether or not the force was appropriate and in compliance with Division rules and procedures.
 2. *The use of proper names instead of pronouns (e.g. he, she, they) or RMS report type references (e.g. offender, suspect, victim).*
 3. *Interviews of the person and all available witnesses.*
 4. *No blanket statements such as “all officers/witnesses agree.” Instead, supervisors shall reference individual statements from the RMS report, ULLF report, or interviews and attribute them to the source.*
- b. Copies of associated RMS and accident reports.
 - c. The member’s original ULLF report (*4 pages*) containing the supervisor’s appropriate endorsements/comments and other completed sections.
 - d. *Form-1s from all members that were on scene just prior to, during, and immediately after the ULLF.*
 - e. Photographs *of the person and* any injuries to members or witnesses; as well as photos of areas on the person’s body where an officer applied force, regardless if there is visible injury or not. The head and face area shall be included even though these areas will be photographed during booking.
 - f. Copies of any records of medical treatment.
 - g. *Hard copies of Taser download data labeled with the involved officer’s name and badge number.*
 - h. Copy of any photographic or video evidence available. A non-exhaustive list of sources of such evidence include the Bureau of Homeland Services (Jail and Division of Police buildings), the Aviation Unit, in-car mobile video recording (MVR) video, video or still photographs from an officer’s personal electronic

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device, and private source video such as security system recordings utilized by businesses and residences. *The supervisor's Form-1 should note the location (e.g. time, counter, or frame) of the pertinent ULLF action.*

- i. If the ULLF is the result of a secondary employment action, determine if the member had approval to work said secondary employment. The investigating supervisor shall contact the Personnel Unit to determine the member's secondary employment status, or if unable to do so during normal business hours, request that the day shift administrative supervisor handle this task. This task may be handled via e-mail.
 - j. *For tracking purposes, the person's name and the RMS number shall be on all documents, photos, and/or videos in the packet.*
4. The investigating supervisor shall within 7 calendar days of the incident forward the packet through their chain of command. Supervisors in the chain of command shall each have 7 calendar days to review and assess the force used to determine if it is in compliance with Division rules and procedures. If an investigative review cannot be completed within the 7 day period, the investigative supervisor shall complete a Form-1 stating the reason for the delay and request an additional 7 days, and forward same through the chain of command. Each subsequent delay requires a new Form-1.
- F. The commander's office shall ensure that the investigative packet is complete and accurate, placed in an envelope marked Use of Less Lethal Force (separate from the daily inter-office mail), and forwarded through the chain of the command to the Deputy Chief in that investigating supervisor's chain of command.
 - G. After review and endorsement, the Deputy Chief shall forward the investigative packet (with their recommendation) to the Chief of Police.
 - H. *ULLF investigation packets shall not be separated during the review and endorsement process. If a portion of the packet needs correction or clarification the entire investigative packet shall be returned.*
 - I. The Inspection Unit shall collect all ULLF reports that are faxed to them and *enter them* into a database for tracking purposes and statistical analysis.

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- J. *Officers involved in an off-duty police action involving a ULLF outside the City of Cleveland shall:*
1. *When safely able to do so, immediately notify Communications Control Section (CCS) of the incident and when the member is scheduled or expected to return to duty. CCS shall notify the member's commander.*
 2. *Upon return to duty, the member shall:*
 - a. *Notify their immediate supervisor of the incident.*
 - b. *Complete an RMS report titled: "Police Intervention / Outside Cleveland." The "INCIDENT" box shall be checked. **Do not** check the "OFFENSE" box and **do not** list any of the offenses or code numbers. The RMS report shall contain the following information about the incident: date, time, location, and jurisdiction. No details of the incident are to be included in the RMS report. The RMS report and number are for **tracking and documentation only**.*
 - c. *Complete a ULLF report (Attachment A) as described in this order.*
 - d. *Complete a Form-1 describing the incident in detail similar to a ULLF RMS report for an incident occurring inside Cleveland.*
 - e. *Obtain a copy of the incident report from the reporting agency.*
 3. *Provide all the materials described here to their immediate supervisor to complete a ULLF investigation as described in this order.*

VI. Use of Deadly Force/Firearms

- A. Officers who meet the Division's requirements and demonstrate proper proficiency shall be allowed to carry firearms.
- B. Officers shall carry and use only those weapons, holsters, and ammunition furnished by the City of Cleveland or authorized by the Chief of Police.
- C. Officers may draw, display, or point a weapon if they fear for their own safety or the safety of others.

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- D. *Officers **shall not** discharge any firearm at or from a moving vehicle unless deadly force is being used against the police officer or another person present by means **other than the moving vehicle**.*
- E. Officers shall not fire warning shots.

VII. Investigation of Deadly Force

A. Officers shall:

1. Immediately notify their superior.
2. Obtain necessary medical assistance for persons who appear to be injured or complain of injury.
3. Always maintain their firearm immediately ready for use (fully loaded and functional), especially while still engaged in an evolving, unresolved, or threatening situation.
4. Be reminded that their firearm is evidence after a use of deadly force incident, and therefore shall not unnecessarily manipulate, handle or clean their firearm prior to turning over custody of same to the UDFIT OIC or UDFIT OIC's designee. This directive shall never prevent an officer from clearing a malfunction or reloading while still engaged in an evolving, unresolved, or threatening situation. For safety reasons, officers shall make the UDFIT OIC or designee aware of their firearm's condition if it is in any condition other than fully functional.
5. Be immediately removed from street duty, and assigned temporarily to non-sensitive work, if they cause death or injury.
6. Complete a post-traumatic stress incident debriefing program if they cause death or injury, and not return to street duty until so ordered by the Chief of Police.

B. Sector Supervisors shall:

1. Immediately respond to the scene and take control.
2. Advise the CCS to notify UDFIT immediately upon learning there has been a use of deadly force incident by a police officer or any use of force by a Cleveland police officer resulting in serious injury to another person or the officer. The supervisor shall direct the CCS to first notify UDFIT before any other notifications are made (i.e. Labor

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Unions of involved members, Employee Assistance Unit, and Office of Professional Standards). These units perform a support function to UDFIT.

3. Ensure that medical care has been provided for as needed.
 4. Ensure that witnesses have been identified and separated.
 5. Ensure that involved officers have been identified and separated. Due care shall be taken that each separated officer is NOT isolated and is in the company of a non-involved person at all times.
 6. Take a firearm into custody when the officer involved has suffered an injury or other trauma/incapacitation up until such time that it can be transferred to the custody of UDFIT.
 7. Ensure that the crime scene is secure and that an officer is assigned responsibility for maintaining the crime scene and the Crime Scene Entry Log.
 8. Confer with the OIC of UDFIT and ensure that all related RMS reports are generated as required.
- C. A Crime Scene and Records Unit detective shall identify, photograph, collect, log, and secure all evidence at a Use of Deadly Force scene.
- D. Immediately following the initial on-scene investigation, the involved officer(s) shall appear at the Homicide Unit. UDFIT may direct the involved officer(s) to transfer to the Homicide Unit custody of their body armor, uniform, leather gear, equipment, or other items as needed.
- E. Uses of Less Lethal Force that are immediately related to or occur concurrently with a Use of Deadly Force shall be handled by UDFIT. This is applicable in incidents when an officer employed both less lethal and deadly force, as well as to officers who employed only less lethal force during the same deadly force incident.

EXHIBIT I

ANALYSIS OF PROPOSED GENERAL POLICE ORDER, USE OF FORCE REPORTING

The following sets forth how the proposed General Police Order (GPO) on Use of Force Reporting, [released October 4, 2016] comports and does not comport with Cleveland Community Police Commission (CPC) Recommendations of March 31, 2016. Reference also will be made to Police Executive Research Forum (PERF) Guiding Principles on Use of Force, the Consent Decree, and other municipal police department policies.

I. COMPARISON WITH CPC RECOMMENDATIONS AND PERF GUIDING PRINCIPLES.

CPC Recommendation No. 1. Use of Force Reports need to be consistently evaluated for departmental values and integrity of reporting of the facts of the case.

How does General Police Order, Use of Force Reporting, comply?

Noncompliant.

- The proposed GPO does not mention review or consistent evaluations of Use of Force Reports.

CPC Recommendation No. 2. Use of Force needs to be reported out to the community by the Cleveland Division of Police (CDP) and the CPC on a monthly or quarterly basis.

How does General Police Order, Use of Force Reporting, comply?

Noncompliant.

- The proposed GPO does not mention a requirement to disclose the reported use of force to the community or the CPC.
- Future proposed GPOs may address such publication.

CPC Recommendation No. 3. Use of force reports should include narrative reporting to give context. The officer should not be required to solely “check the box.”

How does General Police Order, Use of Force Reporting, comply?

Compliant.

- The reporting requirements in the proposed GPO outline that officers must provide a detailed narrative of the use of force incident.
- The report must include—among other things—the reason for the initial police presence, a description of the acts that preceded the use of force, and a complete and accurate description of every type of force used or observed.

CPC Recommendation No. 4. Gender needs to be added to the Blue Team Worksheet. It is different than sex.

How does General Police Order, Use of Force Reporting, comply?

Noncompliant.

- The proposed GPO mentions reporting through a Blue Team worksheet; however, details about gender are not provided.

CPC Recommendation No. 5. Police should minimize police jargon in their reporting, e.g., unfamiliar acronyms or verbiage. Statements should be clear and detailed.

How does General Police Order, Use of Force Reporting, comply?

Mixed compliance.

- The proposed GPO main policy explicitly states: “officers shall clearly, thoroughly, and properly report use of force incidents.”
- Officers are required to document the necessity for each application of force, identify the uniqueness of each situation, and justify every force response.
- No reference is made to jargon.

CPC Recommendation No. 6. Officers indicated that reports are all looking the same, “no variations,” with “run of the mill” language. This needs to change to improve the integrity and quality of reporting.

How does General Police Order, Use of Force Reporting, comply?

Compliant.

- Procedure II(C) prohibits “boilerplate” and “canned” language.
- Procedure III(A)(1) requires officers to provide a detailed entry about the incident from the officer’s perspective.

CPC Recommendation No. 7. Officers indicated that at one time officers were instructed to use boilerplate language in their narrative writing of reports. This is not best practice and is still used by older officers, who are often resistant to change.

How does General Police Order, Use of Force Reporting, comply?

Compliant.

- Pursuant to procedure II(C) of the proposed GPO, officers are prohibited from using conclusory statements, including “boilerplate” or “canned” language. The reports require well-articulated details of each incident.

CPC Recommendation No. 8. Officers indicated a need for better training in report writing. This could enhance investigations by providing greater clarity and detail in order to follow how the scenario unfolded.

How does General Police Order, Use of Force Reporting, comply?

Noncompliant.

- The proposed GPO outlines numerous requirements and provides specific elements that every report should cover. Nonetheless, training is not mentioned in the proposed GPO.

CPC Recommendation No. 9. There needs to be better reporting detection of mental health involvement in civilian encounters with the police.

How does General Police Order, Use of Force Reporting, comply?

Noncompliant.

- The proposed GPO does not mention reporting detection of mental health involvement in civilian encounters with the police.

Police Executive Research Forum Principle (PERF) No. 10. Document use-of-force incidents, and review data and enforcement practices to ensure that they are fair and non-discriminatory.

How does General Police Order, Use of Force Reporting, comply?

Compliant.

- Procedure II of the proposed GPO complies with this Principle. Though the specific language of “fair and non-discriminatory” is not included, the specific procedures outlined are in place to achieve this result.

PERF Principle No. 11. To build understanding and trust, agencies should issue regular reports to the public on use of force.

How does General Police Order, Use of Force Reporting, comply?

Noncompliant.

- The proposed GPO does not mention any public reporting requirement; however, this publication may follow in another GPO or policy in the future.

II. COMPARISON WITH THE CONSENT DECREE

Consent Decree ¶ 56. Un-holstering a firearm and pointing it at a subject constitutes a Level 1 reportable use of force and will be reported and investigated as such. The following exceptions to this reporting requirement will apply: (a) SWAT Team Officers will not be required to report the pointing of a firearm at a subject as a use of force during the execution of SWAT Team duties; (b) officers who are deputized and assigned to a Federal Task Force will not be required to report the pointing of a firearm at a subject as a use of force when conducting federal task force operations during which a supervisor is present. Reports or forms regarding any such incidents that are otherwise prepared by a Task Force supervisor will be provided to CDP; (c) officers assigned to the Gang Impact, Narcotics, Homicide, Sex Crimes, Domestic Violence, and Financial Crimes Units will not be required to report the pointing of a firearm at a subject as a use of force if done solely while entering and securing a building in connection with the execution of an arrest or search warrant and a supervisor prepares a report detailing the incident.

How does General Police Order, Use of Force Reporting, comply?

Compliant.

- Procedure V(C)(2)(i-iii) of the proposed GPO is compliant with the consent decree.
- The only distinction is that the proposed GPO includes Procedure V(C)(2)(iv), stating that these exceptions apply only to uniformed officers assigned to the above duties while performing duties assigned by the supervisor during the execution of warrants.

Consent Decree ¶ 73. In addition to the force reporting requirements outlined in paragraph 88, officers will clearly articulate and justify the following regarding their ECW use in a written narrative: (a) each and every ECW cycle used on a subject or attempted against a subject; (b) use of the ECW in drive stun mode; (c) ECW application for more than 15 seconds; (d) continuous cycling of an ECW; (e) ECW application on a fleeing person; and (f) ECW application by more than one officer.

How does General Police Order, Use of Force Reporting, comply?

Compliant.

- Procedure V(A)(1)(a-g) of the proposed GPO is fully compliant with the consent decree.

Consent Decree ¶ 87. CDP will develop and implement a single, uniform, reporting system pursuant to a Use of Force Reporting Policy. CDP use of force will

be divided into three levels. The three levels for the reporting, investigation, and review of use of force correspond to the amount of force used and/or the outcome of the force.

How does General Police Order, Use of Force Reporting, comply?

Compliant.

- The proposed GPO is exclusively about the Use of Force Reporting policies.
- The three levels of force defined in the consent decree are practically identical to the three levels of force in the proposed GPO.
- The only distinction in the definitions is that, under Level 1 Use of Force, the consent decree allows for exceptions when un-holstering a firearm, whereas the GPO Procedure II(D)(1) does not.

Consent Decree ¶ 88. All officers using or observing force will report, in writing, before the end of their shift, the use of force in a Use of Force Report. The Use of Force Report will include: (1) a detailed account of incident from the officer's perspective; (2) the reason for the initial police presence; (3) a specific description of the acts that led to the use of force; (4) the level of resistance encountered; (5) a complete and accurate description of every type of force used or observed. The use of force reporting policy will explicitly prohibit the use of conclusory statements, "boilerplate" or "canned" language (e.g., "furtive movement" or "fighting stance") without supporting detail.

How does General Police Order, Use of Force Reporting, comply?

Mixed Compliance.

- Procedure II(A) of the proposed GPO states: "Officers shall report uses of force, **except** for de minimis force."
- As for the specific details required to be in a Use of Force Report, the proposed GPO divides the requirements based on the level of force used.
 - Procedure III(A) states that officers using Level 1 and Level 2 Force shall by the end of their tour duty complete an individual Blue Team Use of Force entry providing a detailed report, essentially including the same factors (1-5) described above in the consent decree.
 - Procedure IV (A) requires officers witnessing force or present during a use of force to complete an officer/witness narrative statement, by the end of their tour duty. The statement essentially requires the same factors (1-5) described in the consent decree.

- Officers using and witnessing Level 3 Force shall comply with all additional directives from the Officer-in charge of FIT. (Refers to FIT GPO.)
- Procedure II(C) of the GPO fully complies with the consent decree with regard to the prohibition of using conclusory language.

Consent Decree ¶ 89. Officers **will** be subject to disciplinary process for material omissions or misrepresentations in their Use of Force Reports.

How does General Police Order, Use of Force Reporting, comply?

Compliant.

- Procedure VI(A) of the proposed GPO is fully compliant with the consent decree.

Consent Decree ¶ 90. Officers who use or observe force and fail to report it **will** be subject to the disciplinary process, up to and including termination, regardless of whether the force was objectively reasonable, necessary, and proportional.

How does General Police Order, Use of Force Reporting, comply?

Compliant.

- Procedure VI(B) of the proposed GPO is fully compliant with the consent decree.

Consent Decree ¶ 91. Officers who use or observe force will notify their supervisors, or ensure that their supervisors have been notified, as soon as practical following **any** use of force. An officer who becomes aware of an allegation of unreasonable or unreported force, by another officer must immediately notify his or her supervisor of that allegation.

How does General Police Order, Use of Force Reporting, comply?

Mixed Compliance.

- Procedure I(A) requires officers to request that their supervisor report to the scene as soon as practical; however, it provides an exception for de minimis force.
- The consent decree, on the other hand, only requires officers to notify their supervisors—rather than request them to respond to the scene—as soon as practical, following **any** use of force.

Consent Decree ¶ 97. For all Level 2 uses of force, the direct supervisor will:
... f. ensure that a canvass for civilian witnesses is conducted and interview all civilian witnesses. Supervisors will either record the interview or encourage civilian witnesses to provide and sign a written statement in their own words.

How does General Police Order, Use of Force Reporting, comply?

Mixed Compliance.

- The proposed GPO, Procedure IV(C)(1) establishes that civilian witnesses are interviewed and information collected from them. There does not appear to be a requirement that witnesses be canvassed as the Consent Decree requires.
- The proposed GPO states that the interview will be in the form of a written statement or witness narrative if the witness does not agree to a video recording in Procedure IV(C)(1).
- The proposed GPO does not appear to distinguish between the uses of force in laying out reporting requirements for witnesses.

Consent Decree ¶ 97. For all Level 2 uses of force, the direct supervisor will: . . . g. ensure that all officers witnessing a use of force incident by another officer complete a Use of Force Report. Supervisors will ensure that all Use of Force Reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred;

How does General Police Order, Use of Force Reporting, comply?

Compliant.

- The proposed GPO, Procedure IV(A)(1) requires that officer witnesses complete a detailed and specific witness narrative statement.
- The proposed GPO does not distinguish reporting requirements for level 2 uses of force. There is however, a specific requirement for level 3 uses of force.

Consent Decree ¶ 97. For all Level 2 uses of force, the direct supervisor will: . . . ensure that involved officers are interviewed separately from one another. Group interviews will be prohibited. Supervisors will not ask officers or other witnesses leading questions that suggest legal justifications for the officers' conduct, where such questions are contrary to appropriate law enforcement techniques;

How does General Police Order, Use of Force Reporting, comply?

Noncompliant.

- The proposed GPO does not mention any specific interview processes for officer witnesses related to any level of use of force.

Consent Decree ¶ 97. For all Level 2 uses of force . . . : i. each investigating supervisor will provide a brief written synopsis to their immediate supervisor, which will be forwarded through the chain of command to the District Commander by the end of the shift on which the force occurred, documenting the supervisor's preliminary determination of the appropriateness of the use of force.

How does General Police Order, Use of Force Reporting, comply?

Noncompliant.

- The proposed GPO does not lay out guidelines on how or when the reports will travel up the chain of command.
- The proposed GPO also does not mention a supervisor's preliminary determination of appropriateness of Use of Force.
- Procedure IV(A)(2) does require that officer/witness statements be submitted to the reviewing supervisor or Officer-in-Charge of FIT for review/signature.

Consent Decree ¶ 118. FIT will: . . . b. ensure that a canvass for, and interview of, civilian witnesses is conducted by FIT team members. FIT members will either record the interview or encourage civilian witnesses to provide and sign written statements in their own words, but will take information from civilian witnesses who have pertinent information even if they refuse to be recorded or refuse to complete or sign a formal statement.

How does General Police Order, Use of Force Reporting, comply?

Mixed Compliance.

- The proposed GPO, Procedure IV(C)(1) states that civilian witnesses may make written statements if they are unable or unwilling to make a video recorded statement.
- The only distinction is that the proposed GPO expresses a preference for video-recorded statements, and the Consent Decree does not.

Consent Decree ¶ 118. FIT will: . . . h. consistent with applicable law, interview all officers who witness or are otherwise involved in the incident. To the extent possible, officers will be separated until interviewed. Group interviews will be prohibited. FIT will not ask officers or other witnesses leading questions that suggest legal justifications for the officers' conduct, when such questions are contrary to appropriate law enforcement techniques. FIT will record all interviews. FIT will ensure that all FIT investigation reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred.

How does General Police Order, Use of Force Reporting, comply?

Mixed Compliance.

- The proposed GPO, Procedure IV(c)(1) refers to an Attachment A, which is a detailed narrative statement that must be completed by witnessing officers and includes the information specified in the Consent Decree. This attachment does not appear to be available as of yet.
- The proposed GPO does not, however, mention interviewing officer witnesses or methods of interviewing officer witnesses.

III. COMPARISON WITH NATIONWIDE “USE OF FORCE REPORTING” POLICIES

This section compares the Cleveland Department of Police’s (CDP) proposed General Police Order (GPO) governing the use of force reporting with guidelines surrounding the use of force reporting at other police departments. The police departments that this section uses for comparison include Seattle and New Orleans—both of which have entered into consent decrees with the Department of Justice in recent years.

A. Use of Force Notification Guidelines

- GPO requires officers who use or witness force to contact the Communication Control Section and request that their supervisor respond to the scene as soon as practical following any use of force, except for de minimis force.
- This policy seems comparable to other departments.
 - Ex. Seattle requires an officer using force or a witnessing officer to *verbally* notify a supervisor immediately after Use of Force, unless it is not practical; the exception applies for de minimis force.¹
 - Both the proposed GPO and Seattle’s Policy define “de minimis force” similarly.
 - Seattle’s Policy defines it as the physical interactions meant to separate, guide, and/or control that does not cause pain or injury.
 - CDP defines it as “the physical interactions meant to guide and/or control a subject that do not constitute reportable force (e.g., use of control holds or joint manipulation techniques that do not cause pain and are not reasonably likely to cause pain; using hands or equipment to stop, push back, separate, or escort a person in a manner that does not cause pain, and are not reasonable likely to cause any pain).”

B. Use of Force Reporting General Guidelines

- Every application of force by an officer is classified according to the following levels:

¹ SEATTLE POLICE DEP’T MANUAL, CH. 8.400: USE OF FORCE REPORTING AND INVESTIGATION (Sept 1, 2015), available at <http://www.seattle.gov/police-manual/title-8---use-of-force/8400---use-of-force-reporting-and-investigation>(last accessed 10/22/16).

- Level 1 Use of Force: Force that is reasonably likely to cause only transient pain and/or disorientation during its application as a means of gaining compliance . . . does not result in a complaint of injury.
- Level 2 Use of Force: Force that causes an injury, could reasonably be expected to cause an injury, or results in a complaint of an injury, but does not rise to the level of a Level 3 use of force. Includes CEW, OC Spray application, and weaponless defense techniques.
- Level 3 Use of Force: Force that includes uses of deadly force, uses of force resulting in death or serious physical harm, uses of force resulting in hospital admission, all neck holds, . . . etc.
- Although the levels of Use of Force comply with the consent decree, there are notable differences in other departments.
 - Ex. In Seattle, the GPO states that a sergeant will review the incident and classify it as Type I-III Use of Force. Whereas, the proposed GPO fails to identify who will classify the Level of Force used.²
 - Types I-III in Seattle are equivalent to Cleveland's Levels 1-3 of force.
 - Ex. In New Orleans, there are four levels of Use of Force rather than three. The additional level of force is particularly for strikes to the head and/or the destruction of an animal. New Orleans Level 4 is comparable to Cleveland's Level 3 Use of Force.³

C. Witness Reporting

The Proposed GPO requires officers who witness uses of force to complete a detailed narrative for review by their supervisor, and to gather from civilians or non-division officers who witness force a video recorded statement or written statement/narrative for review by the supervising officer.

- This policy seems comparable to other departments.
 - Ex. New Orleans requires a detailed Use of Force report to be filled out by witnessing officers as well. There are no requirements for civilian witnesses in their policy⁴.
 - Ex. Seattle has stringent requirements for witness officers to report their observations in incidents involving force that is

² Id.

³ NEW ORLEANS POLICE DEPARTMENT OPS. MANUAL, CH. 1.3.6, 9-10 (Dec. 6, 2015), available at <http://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-6-Reporting-Use-of-Force.pdf/> (last accessed Oct. 22, 2016).

⁴ Id. at 2.

Type II or greater. They also require officers to gather information from civilian witnesses⁵.

D. Additional Reporting Requirements

- The Proposed GPO includes additional reporting requirements relating to ECW's, canine deployment, and exceptions to reporting the un-holstering of firearms.
- This policy seems comparable to other departments.
 - Ex. New Orleans classifies specific uses of ECW's under different Levels of Force, depending on how it was used. There is no similar canine-related or un-holstering of firearms policy.⁶
 - Ex. Seattle does not have specific reporting policies for ECW's or canine-related force. Both of these uses of force fall under Type II and follow the reporting requirements for that type.⁷

E. Failure to Report Use of Force

- The Proposed GPO emphasizes that officers that misrepresent, omit, or fail to report information related to use of force are subject to the disciplinary process up to termination regardless of the level and appropriateness of the force used.
- This policy seems comparable to other departments.
 - Ex. New Orleans uses the same language as the Cleveland GPO.⁸
 - Ex. Seattle mandates and emphasizes the duty to report different types of use of force, but there is no mention of repercussions such as the disciplinary process (up to termination) related to a failure to report.⁹

F. Heightened Responsibilities for Reporting Exceptional Uses of Force

- The proposed GPO requires officers report in specific detail uses of exceptional or rare force that is against Division Policies, and states that failure to document and explain the facts in these cases carries possible civil and criminal liability.
- This policy is comparable to other departments.

⁵ SEATTLE POLICE DEP'T MANUAL, *supra* note 1.

⁶ NEW ORLEANS POLICE DEP'T OPS. MANUAL, *supra* note 3 at 4-5.

⁷ SEATTLE POLICE DEP'T MANUAL, *supra* note 1.

⁸ NEW ORLEANS POLICE DEP'T OPS. MANUAL, *supra* note 3 at 1.

⁹ SEATTLE POLICE DEP'T MANUAL, *supra* note 1.

[October 24, 2016]

- Ex. In New Orleans, the GPO has specific guidelines for investigation and reporting of these types of Use of Force.¹⁰
- Ex. Seattle does not have a comparable policy.

The above analysis was prepared by the Milton A. Kramer Law Clinic.

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¹⁰ NEW ORLEANS POLICE DEP'T OPS. MANUAL, *supra* note 3 at 9-10.