

Seattle Community Police Commission – Feedback on Washington State Office of the Attorney General Model Use of Force Policy

Overall

How will this model policy overlay or interact with the policies that police departments already have in place? Is the expectation that police departments will have to come into alignment with this policy – what happens if they are in conflict?

As far as the model policy gives directives on how specific weapons, tools, and less-lethal weapons should be used it should be made clear that those aspects of the policy only apply if the department has authorized the use of those tools and has developed a policy and training on their use.

Purpose

- Appreciate that the calculus of force includes a consideration of the seriousness of the law enforcement objective.

Core Principles

(2) I think we could push for the use of the word “must” in place of shall. It already says “when possible” which leaves room for situations where the situation has advanced beyond employing de-escalation tactics.

De-Escalation

(3) (k) & (l) These principles are very important but, depending on the extent of training around procedural justice, this may require more explanation for an officer to understand the importance of these approaches and how it can positively impact de-escalation attempts.

Duty to Use Reasonable Care

- This section should also contemplate using reasonable care in the event that the person is experiencing mental health crisis. The list includes “signs of mental... disability” which may seem to be expansive enough to cover MHC but is different.

Use of Physical Force Shall be Necessary, Reasonable, Proportional, and For a Lawful Purpose

(4) Use of Physical Force Must Be for a Lawful Purpose (l) Should officers be allowed to use force during welfare checks? It seems as if there is someone attempting to stop officers from doing a welfare check and it comes to the point of requiring force it is likely that this falls under “imminent threat of bodily harm to the officer” (a) which already gives them permission to use force. Just a thought.

Duty to Intervene and Duty to Report Wrongdoing

- Would this also include “report wrongdoing to relevant agencies” vs. just supervisor?

Identification, Warning, and Opportunity to Comply Prior to the Use of Physical Force

Officers should always identify themselves as law enforcement officers. Having it done “when feasible” leaves the door open for situations that may escalate where they would not have if the officers identified themselves (i.e., plain clothes officers could be perceived as potential assailants if they do not identify themselves before engaging in a situation which would lead to different reactions from the people they are interacting with.)

Prohibition on Unreasonable or Excessive Force

- (1) State requirements should supersede collective bargaining agreements. By having the clause “subject to collective bargaining” this seems to cede that power to the CBAs rather than using the power of state mandate to enforce discipline for the use of unreasonable or excessive force.

Levels of Resistance and Force Options

(5) Life Threatening Resistance (c) Using a vehicle as an impact weapon seems a bit too far. If an officer is in a car and the person who is applying “life threatening resistance” is not inside of a car I would question if their life were actually in danger. If an officer is observing the situation from within a car and the person being threatened is outside of the car, then I still question this use because how would the person in the vehicle know what is going on with those outside of the vehicle. If this will remain there needs to be extra reporting requirements post incident that clearly explain how the officer knew the person was in danger, why literally no other attempt could be made, and no actual weapon or tool could be used.

It should be made clear that if department policy forbids the use of vehicles as an improvised/impact weapon this policy should not be construed as allowing for their use in this manner.

Force Options in Detail

- Electronic Control Weapons (Tasers) - There should be a note in this that includes potential new non-lethal weapons - e.g. bola wraps.

Use of Physical Force in Crowd Management Incidents

(5) (b) Having the word “intentionally” in when talking about places where an officers are not allowed to hit a person with a baton leaves it open for officers to claim “accidental” striking in the case of a misconduct allegation stemming from an officer hitting an individual with a baton in the head, neck, throat etc.

(6) (b) Tear Gas and Other Chemical Agents – Tear gas should not be used in any circumstances, including in a crowd control/management capacity.

Use of Force Reporting, Investigation, and Review

(7) Supervisor Responsibilities On-Scene - Should the supervisors be conducting these initial reviews? There is already a sentiment of distrust of officers in situations where they are essentially investigating their colleagues so there is a question of whether this helps or hurts community trust and perceptions of accountability.

(11) Command Review – “Separate and distinct from the criminal investigation of officer involved use of deadly force incidents conducted by the Office of Independent Investigations established by Chapter 43.102 RCW, or the Independent Investigative Team established by WAC 139-12, the involved agency shall conduct a timely administrative investigation and review of deadly force incidents to determine compliance with agency policy and procedures. Upon completion of the administrative investigation, the involved agency should convene a Serious Incident Review Board.” – Is there a way to present this in a way that is less convoluted?

Serious Incident Review Board

- (1) Composition – most, if not all, of the people called out for inclusion on this board are officers/internal to the Department. This brings into question how the board will be perceived in terms of legitimacy by the public. There needs to be some form of community involvement in the board for legitimacy and fairness.
- (2) Scope and responsibilities – while most of the aspects that the board will be looking at for improvement seem like police officers would be the best positioned to review there are real advantages for the inclusion of members of the public in these discussions/assessments. For one it could lead to developments within the department that are made thoughtfully with the community perspective included to ultimately help the departments build up more legitimacy and more public trust which ultimately would work towards improving community-police relations.

Independent Audits of Force Incidents and Force Review Process

AGO should consider adding in a requirement of a minimum number/percentage of cases to be investigated annually by outside investigators.