Use of Force Policy Reform
BPD Use of Force Policy: Reform Recommendations

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BACKGROUND

The Buffalo community, like much of the country, has been grappling for generations with excessive use of force in policing practices, which have disproportionately impacted Black and Brown communities. The topic of policing practices is an issue of public and community health, as well as safety. Policing has, all too often, had a traumatizing impact on individuals and communities. This is true in Buffalo as well. Buffalo has experienced losses of life, as well as serious injuries to civilians, that the Buffalo community continues to call to our attention (Martin Gugino, Myles Carter, Quentin Suttles, Wardel “Meech” Davis, Jose Hernandez Ross, and Rafael “Pito” Rivera). Throughout these tragic incidents, the NY Attorney General and various community members have called for serious modifications to the Buffalo Police Department’s trainings and policies in relation to use of force and de-escalation. Since its inception, our Buffalo Police Advisory Board (BPAB) has implored, through several policy recommendations, that the Buffalo Police improve local policing practices. In this brief, the BPAB calls for amendments to the current BPD Use of Force policy.

Use of Force Policies

The Campaign Zero’s Use of Force Project conducted a sweeping study on use-of-force policies across the country. Campaign Zero’s work found that the majority of police departments analyzed failed to include limits on police use of force in a number of areas, including:

1. fail to require officers to de-escalate situations such as communicating with people, maintaining a certain distance, etc. so that the need to use force is eliminated;
2. instead of de-escalating, policies jumped to describe legal ways of holding the person, such as a choke or strangling;
3. fail to require officers to intervene and stop excessive use of force done by other officers and mandated reporting to their supervisor;
4. fail to restrict officers from shooting at moving vehicles (which is a dangerous tactic and has resulted on many fatalities, especially people who are innocent);
5. fail to develop a force continuum that limits the type of force or weapons that can be used to respond to specific types of resistance;
6. do not require officers to exhaust all other reasonable means before resorting to deadly force;

(7) fail to require officers to give a verbal warning before shooting at a civilian; and/or (8) fail to require officers to report each time they use force or threaten to use force against civilians.

Though limited, additional research has been done as well. Research by law professors Garrett and Stoughton found that existing policies tend to provide minimal guidance to officers.² Nationally, many use of force policies lack stringency and specificity.³ For example, many policies do not (1) go beyond a description of the reasonableness standard, (2) fail to meaningfully explain the level of resistance sufficient to allow for use of force, (3) do not provide a clear articulation of specific alternatives, (4) require exhaustion of alternatives, or (5) specify proportionality of response.⁴

Police departments that adopt policy components that limit use of force had significantly fewer police killings than those police departments that did not have these restrictions in place.⁵ More specifically, police departments that implemented four or more of these policy components were associated with lower rates of police killings.⁶ Even each additional use of force policy component was associated with a 15% reduction in killings for the average police department.⁷ Finally, implementing all 8 use of force restrictions is associated with a 54% reduction in police killings for the average police department.

These statistics suggest that the BPD should adopt more restrictive use of force policies as well as ongoing trainings and accountability measures needed to enforce them.

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BPD Use of Force Policy Reforms Needed

As of now, the Buffalo Police Department does not currently include all eight of force policy components to the extent recommended by Campaign Zero. The Buffalo Police Department does not include, or fully include according to best practices, the other 5 use of force policy recommendations which include: de-escalation requirement, warning before shooting requirement, requirement for another officer to

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³ Id.
⁴ Id at 290.
⁵ Analysis, UseOfForceProject.org, available at http://useofforceproject.org/#analysis
⁶ Id.
⁷ Id.
intervene, mandating a comprehensive report of other police officers’ actions or arrests that included use of force, and ban on chokeholds or strangle holds.\(^8\)

The Buffalo Police Department should amend the department Use of Force policy to address the following five (5) policy components that are missing or in need of revision in the policy: de-escalation, warning before shooting, other officer intervening, comprehensive reporting, and ban on chokeholds and strangleholds.

(1) **De-escalation**: The BPD use of force de-escalation requirement needs to be amended to more stringently require de-escalation in a wider variety of circumstances and with an explicitly clear mandate that this is the prioritized starting point for civilian interactions. In particular, the term “objectively reasonable” needs to be more explicitly defined. The Seattle police department policy is a strong example of a highly detailed definition that may provide more meaningful guidance to officers and prioritize de-escalation.\(^9\)

In other police departments, de-escalation policy details alternatives such as stepping back to a safer position when confronting a person carrying a knife, use of verbal techniques in a wide array of circumstances, having less-lethal device on hand such as a TASER or bean-bag shotgun, placing an object between officer and civilian.\(^10\)

De-escalation also means requiring the use of verbal techniques to address a wide array of interactions (not solely when there is a perceived low level of risk to police commands).\(^11\) The current policy needs to be improved to more clearly and explicitly prioritize and detail the appropriate circumstances in which specific de-escalation techniques should be used. Seattle’s department policy is again, one example of a stronger de-escalation policy within the overarching use of force policy.\(^12\)

Other police departments also require crisis intervention trainings. The BPD could likewise benefit from the expansion of and more consistent training on Crisis Intervention Training techniques (CIT). Currently the BPD partners with Crisis Services to use de-escalation tactics with individuals with mental illness.\(^13\) Patrol officers should be trained in CIT, and these techniques should be required for a broad array of circumstances that officers may face. Trauma-informed policing techniques should be applied to interactions with all civilians; therefore, expansion of CIT, or trainings like CIT, beyond mentally ill populations is necessary.

\(^13\) Police/Mental Health Coordination Project, Crisis Services, available at http://crisisservices.org/police-mental-health/
(2) **Warning before shooting requirement:** The BPD policy does not currently include this, and the BPAB recommends strongly this be explicitly incorporated into the Use of Force policy. Campaign Zero’s model Use of Force policy offers language for this policy component: “The law enforcement officer shall issue a verbal warning, when feasible, and have a reasonable basis for believing that the warning was heard and understood by the individual to whom the warning is directed prior to using deadly force against the individual.”

(3) **Requiring other present officers to intervene:** The BPD policy does contain a “duty to intervene” that other officers present should intervene, but the BPAB urges the department strengthen this requirement to link with stronger accountability mechanisms. The policy should require the intervening officer to report to their direct supervisor about the incident (as is the case with the Las Vegas police department). The direct supervisor and administration must then track incidents in a database. The administration must then incorporate this data into officers’ performance evaluations. Currently, though the policy does require supervisors to receive and review use of force reports from officers, it must be clearly stated that these reports will be taken into consideration during performance evaluations. The BPAB has previously called for the institution of annual performance evaluations, a strong accountability and continuous improvement mechanism, and these should be linked carefully in policy.

(4) **Mandating a comprehensive report of officers’ actions or arrests that included use of force:** BPD administration should compile reports for evaluation on a regular (possibly quarterly) basis for assessment of department practice trends and needs of officers (as is the case in Seattle and Indianapolis). Campaign Zero’s Model Use of Force policy defines “reportable use of force as “any use of force involving physical controls when the subject is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold,” and Campaign Zero recommends data collection, analysis, and reporting for all levels of reportable uses of force. Currently, the BPD requires individual reporting to officer supervisors for all levels of use of force; however, the BPD policy only requires a member of the department to prepare an “Intra-Departmental Memorandum” when the incident involved the discharge of the officer’s firearm for reasons other than training or recreational purposes or when an officer “takes any law enforcement action that results in, or is alleged to have resulted in, serious physical injury or death to another person.” The BPAB recommends broadening the reporting requirements in line with the Campaign Zero model policy to collect more detailed data for tracking and evaluation purposes, and the BPAB recommends reports of all data collected be compiled on a routine, possibly quarterly, basis.

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14 Campaign Zero Model Use of Force Policy, available at [https://static1.squarespace.com/static/55ad38b1e4b0185f0285195f/t/5deffeb7e827c13873eaf07c/1576009400070/Campaign+Zero+Model+Use+of+Force+Policy.pdf](https://static1.squarespace.com/static/55ad38b1e4b0185f0285195f/t/5deffeb7e827c13873eaf07c/1576009400070/Campaign+Zero+Model+Use+of+Force+Policy.pdf)


17 Campaign Zero Model Use of Force Policy, available at [https://static1.squarespace.com/static/55ad38b1e4b0185f0285195f/t/5deffeb7e827c13873eaf07c/1576009400070/Campaign+Zero+Model+Use+of+Force+Policy.pdf](https://static1.squarespace.com/static/55ad38b1e4b0185f0285195f/t/5deffeb7e827c13873eaf07c/1576009400070/Campaign+Zero+Model+Use+of+Force+Policy.pdf)

Additionally, a monitoring system should be in place to evaluate individual officers’ use of force. The National Institute of Justice\textsuperscript{19} and Campaign Zero both offer best practices that include the creation of a clear monitoring system policy that tracks and reviews officers interactions and complaints and ties this monitoring to both department-wide data assessment and individual performance evaluation.\textsuperscript{20} Though BPD policy does require both intervening officers and other present officers to file use of force reports to their supervisor when physical force of any kind is used, there is no discussion of administrative tracking, compilation, and evaluation of data for department-wide and individual-officer continuous evaluation. Finally, though the policy does note that the Training Academy Commander should access these individual use of force reports to assess training needs, no further details are provided in the policy. Greater detail is needed to ensure internal accountability to multiple aspects of policing and administrative practices.

(5) \textit{Ban on chokeholds or strangle holds:} Mayor Brown called on the BPD, on June 4, 2020, to ban the use of chokeholds, and write this into policy.\textsuperscript{21} The BPAB demands that this be incorporated in conjunction with these other recommendations. Additionally, the BPAB recommends the BPD provide trainings that teach officers to avoid the use of chokeholds, and provide regular, continual trainings on alternative approaches (such as de-escalation and CIT).

\textbf{Conclusion:}

Community health and safety, as well as officer safety, are equally and simultaneously important. Policing is a public health consideration, and practices can result in physical and mental harm to individuals and communities. The BPAB calls on the BPD to amend the department Use of Force policy to incorporate these recommendations using clear, specific, and detailed meaningful guidance for officers. Additionally, the BPAB calls on the Common Council to pass local legislation that mandates use of force policies in accordance with best practices for public health, accountability, and transparency.


\textsuperscript{20} Campaign Zero, \textit{Limit Use of Force, Solutions}, available at \url{https://www.joincampaignzero.org/force}