

**NEW
ERA
OF
PUBLIC
SAFETY**

A GUIDE TO FAIR, SAFE, AND EFFECTIVE
COMMUNITY POLICING

4

THE USE OF FORCE

Police officers are vested with the authority and power to use force, including lethal force, within constitutional bounds. Misusing this power undermines police legitimacy. Indeed, the use — and misuse — of police force is and has long been the source of distrust and discord between police and communities, especially communities of color.

In most cases, officers use words and gestures to defuse conflict, and, sometimes, their mere presence achieves this goal. In rarer circumstances, they use force, ranging from physical maneuvers (e.g., grabs, holds, punches, and kicks) to physical, chemical, and electrical instruments (e.g., batons, pepper spray, Tasers, and firearms) to protect themselves and the public. Sometimes, however, officers misuse these tools and tactics, as evident in recent beatings, chokeholds, and shootings of unarmed people in the back.¹ The deaths of Eric Garner and Walter Scott, for example, were recorded by members of the public, reported in the news media, and shared widely on social media, continuing a long history of misuse and abuse of police force, particularly against the Black community.



The legal system provides a corrective, but only a modest one. Individuals can press prosecutors to bring criminal charges against officers who misuse force, but the reluctance to do so makes convictions rare. Victims and their families can sue for civil rights violations, but civil litigation is lengthy, expensive, stressful, and unpredictable. What's more, these cases typically pertain to past conduct; they don't address, much less guarantee, broad police reform.

Police departments, of course, take measures to ensure that use of force is minimal and effective (i.e., that it is, at a minimum, a "reasonably objective" response to the threat posed to public and officer safety). But they can, and should, go further. Doing so will reduce misuse of force against members of the public, strengthen relationships between departments and communities, and restore trust and confidence in policing.

To ensure fair, safe, and effective community policing now and in the future, community members and police leaders should work together to create clear and specific guidance and expectations on appropriate uses of force and equip officers to meet these expectations through training on implicit bias, procedural justice, de-escalation, harm-reduction tactics, and other areas. This may seem like a tall order, especially as departments grapple with limited resources and competing priorities, such as responding to the opioid epidemic and other crises. But improving practices and policies around the use of force will give officers tools and tactics they can apply across all policing work and will, ultimately, improve public and officer safety.

The good news is that communities, departments, and the field of law enforcement are working together to develop best practices in this area. At the same time, advances in technology have led to the development of less lethal types of force (e.g., Tasers) and more robust accountability systems (e.g., review of body-worn camera footage) — each of which has its own challenges. These practices, technologies, and tactics are summarized in the following recommendations.

RECOMMENDED BEST PRACTICES

4.1

To protect communities and officers,
departments should:

Commit to respecting
and protecting human
life and ensuring safety
for all.

4.2

Permit the use of force only when necessary to resolve conflict and protect public and officer safety.

4.3

Prohibit and regulate tools and tactics with a high risk of death or injury that are disproportionate to the threat.

4.4

Set clear policies applicable to all force instruments.

4.5

Set clear policies regarding **specific** force instruments.

4.6

Ensure officers consider personal characteristics before using force.

4.7

Require officers to intervene in improper uses of force.

4.8

Require officers to render aid until medical assistance arrives.

4.9

Provide continual, scenario-based training.

4.10

Establish robust processes for reporting and investigating uses of force.

THE LEGAL FRAMEWORK

Broadly defined, the phrase “use of force” refers to the effort officers make to ensure individuals comply with their commands.² Force exists on a spectrum, ranging from nonlethal (e.g., compliance techniques such as wrist grips or takedowns) to less-lethal (e.g., Tasers and pepper spray) to lethal (e.g., firearms and impact strikes to the head). No law or court can prescribe specific rules that apply to every imaginable scenario in which force is or may be used.³ Consequently, officers have little concrete direction to determine when and how to use force — and whether certain uses of force are legal, legitimate, and necessary.

The U.S. Supreme Court laid out the broad principles for use of force in [Graham v. Connor](#), a case in which officers mistakenly believed an innocent man had engaged in criminal activity.⁴ Dethorne Graham was a diabetic who in 1984 asked his friend to drive him to a nearby convenience store so he could buy some orange juice. When he walked in the store, he saw a long line, so he turned around and got back into his friend’s car.

Two officers saw Graham enter and exit the store quickly and suspected him of robbery. They stopped Graham, who ran around his friend’s car twice, sat on the curb, and passed out. The officers handcuffed Graham and pushed him onto the hood of the car. When he regained consciousness, he asked officers to take his diabetic ID card out of his wallet, but they didn’t. Graham struggled as the officers threw him headfirst into their patrol car, leading to additional uses of force that resulted in injuries including a broken foot, cuts, and bruises.⁵ Only later did the officers learn that Graham was in insulin shock.

In assessing the case, the Court focused on what the officers knew or perceived at the time they used force. The relevant constitutional inquiry, the Court explained, was whether the officers’ actions were “objectively reasonable” given the totality of the circumstances.⁶ The “reasonableness” of any use of force, it concluded, must be judged “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”⁷ The



Court offered several factors to define the “reasonableness” standard, including (1) whether the person poses an immediate threat of harm to officers or others; (2) how resistant the person is; and (3) whether he or she is associated with an underlying criminal offense.⁸

This formulation, known as the Graham test, focuses on what officers knew or reasonably perceived at the time force was used. It does not examine the steps leading

up to incidents, such as (1) whether officers could have reduced the likelihood of using force with de-escalation or other reasonably available tactics; or (2) whether their actions unnecessarily contributed to or escalated the situation and thus provoked or triggered a physical confrontation.

The Graham Court did not question whether the officers could or should have kept a safe distance from Graham or explored opportunities to communicate with him.

Instead, it focused on whether the officers had sufficient justification to stop Graham and use force to keep him under control after they decided to make contact. The Graham test is, as a result, ambiguous and difficult to apply in the field. It provides scant guidance on acceptable uses of force or policies, training, and tactics to avoid or minimize the use force.

In short, the Graham test does not guide officers to use less force. Because it does not provide a “holistic, comprehensive approach” to protecting the public and preserving bodily safety, it does not incentivize departments to develop policies or practices to reduce the need to use force.⁹

Other rulings have, however, disincentivized the use of force. The U.S. Court of Appeals for the Ninth Circuit, for example, ruled that officers who unnecessarily create circumstances that lead to use of force may be civilly liable for negligence, even if the force used meets the Graham standard.¹⁰ The state of California, meanwhile, instructs juries that “liability can arise if the [officer’s] earlier tactical conduct and decisions show, as part of the totality of circumstances, that the ultimate use of force was unreasonable.” In this respect, California provides people with greater protections than does the U.S. Constitution.¹¹

Relying on the bare constitutional requirement for uses of force — much like relying on the minimum constitutional protections for stops and searches (as discussed in Chapter 3) — fosters “lawful but awful” practices that disserve police and the public. Many departments recognize this shortcoming and, even though not compelled to do so by courts, have adopted force policies and practices that go beyond Graham’s minimum constitutional requirements.

**RELYING ON THE BARE
CONSTITUTIONAL
REQUIREMENT FOR USES
OF FORCE FOSTERS
“LAWFUL BUT AWFUL”
PRACTICES.**

POLICIES, TRAINING, AND OVERSIGHT

Departments should establish clear guidelines and expectations about the use of force and develop policies that aim to reduce it.¹² The Seattle Police Department,¹³ for example, allows officers to “only use objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law enforcement objective.”¹⁴ It directs officers to recognize that their actions, such as displaying a firearm, could affect the need to use force¹⁵ and to use de-escalation tactics to lessen or avoid force.¹⁶ Under the department’s force policy, moderate-to-high uses of force fell 60 percent between 2014 and 2016 — without increasing crime or officer injuries.¹⁷

Many other departments, however, rely on general, cursory policies that simply recite the Graham standard. And some departments have contracted with outside companies that sell cookie-cutter policies. This is problematic for several reasons: It makes communities vulnerable to potential constitutional violations, exposes jurisdictions to legal liability, and impedes community-police cooperation.

To reduce uses of force, departments should work with communities to develop force policies and should equip officers to adhere to them. If departments require officers to use de-escalation techniques before using force, for example, they should also train officers to do so. Without adequate training, force policies exist on paper but not in practice.

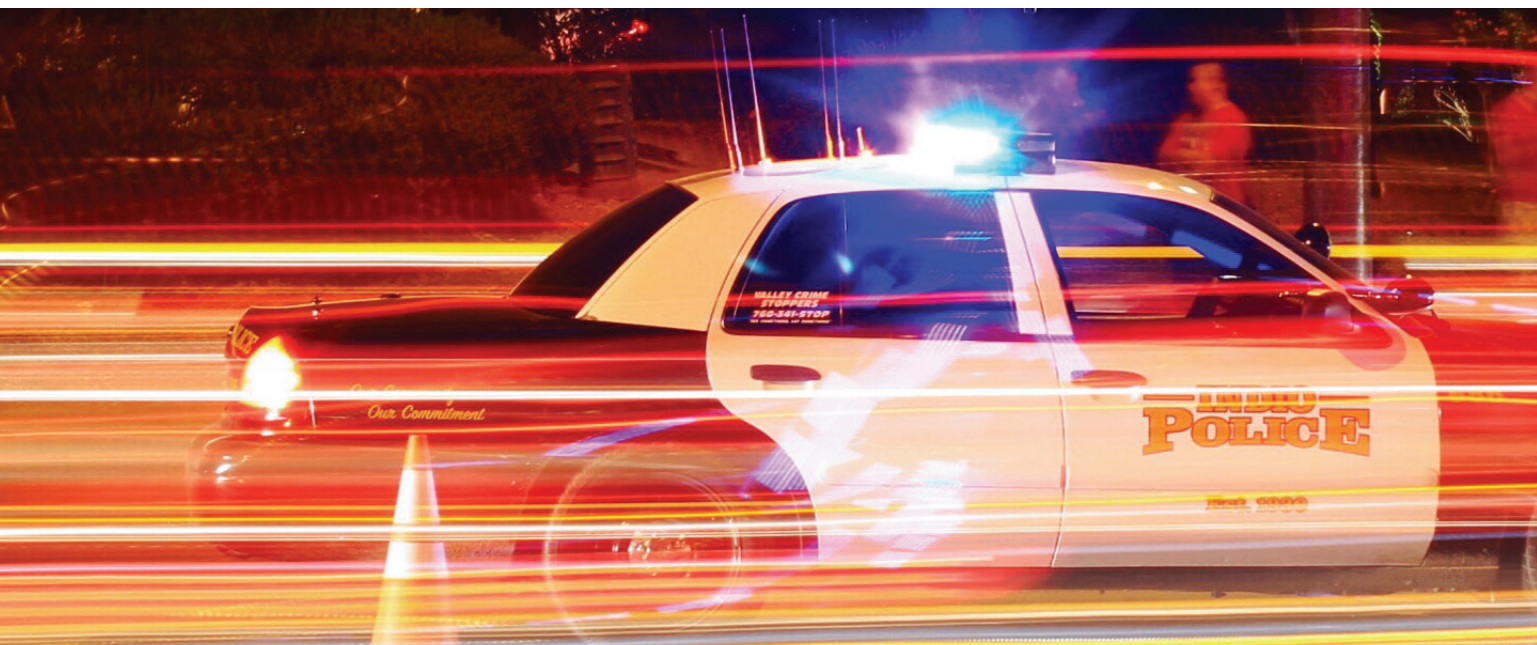
Furthermore, departments need proper review systems to ensure that all officers comply with departmental policies and provide mechanisms to intervene when they don’t. All use-of-force incidents should be reported and reviewed as a matter of course, not because of presumed mismanagement but because the use of force is a serious and potentially harmful event for community members and officers alike. Every review of force should be seen as a learning opportunity that can inform practice and training and thereby enhance public and officer safety.

BEST PRACTICES IN THE USE OF FORCE

Policies that set clear expectations about the use of force, as well as training in how to reduce and mitigate it, improve public safety and strengthen community relationships. Communities that hold departments accountable for meeting expectations set forth in policy will change how departments understand and approach using force — without sacrificing public or officer safety. To protect communities and officers, departments should:

RECOMMENDATION 4.1 **COMMIT TO RESPECTING AND PROTECTING HUMAN LIFE AND ENSURING SAFETY FOR ALL.**

Officers should make respecting and protecting human life and ensuring safety for all their highest priority in all enforcement actions, and departments should affirm this commitment in their use-of-force policies.¹⁸ The Las Vegas Metropolitan Police Department and the New Orleans Police Department, for example, have developed force policies that prioritize respect and value for all lives.¹⁹ Departments should also craft policies that promote officers' roles as guardians of public safety. This principle lays a foundation for policies and practices that permit the use of force only when necessary and when reasonable attempts to de-escalate or resolve situations without force fail.



RECOMMENDATION 4.2

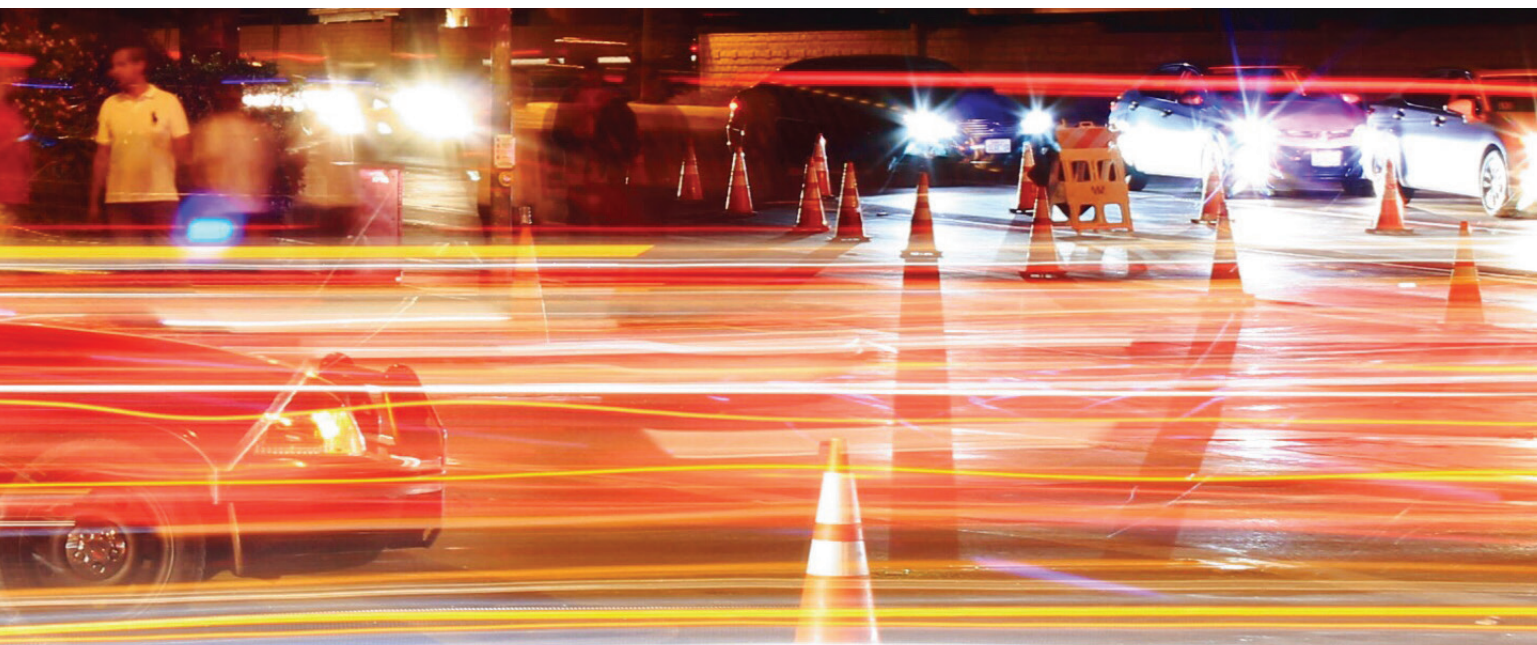
PERMIT THE USE OF FORCE ONLY WHEN NECESSARY TO RESOLVE CONFLICT AND PROTECT PUBLIC AND OFFICER SAFETY.

In 1829, Sir Robert Peel, a pioneer in police reform who established the London Metropolitan Police Department, reportedly articulated nine principles of policing. The sixth recommends that police “use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found to be insufficient.”²⁰ This principle still holds true. To apply it today, departments should:

Provide protections beyond those afforded by the U.S. Constitution. To meet constitutional standards, officers are required to make “objectively reasonable” decisions when using force. But force policies should go beyond this requirement and require “objectively reasonable” decisions not only during uses of force but also in the moments leading up to them. The Los Angeles Police Department (LAPD), for example, considers an officer’s tactical conduct and decisions leading to deadly use of force to determine whether it was reasonable.²¹

Specifically, and in keeping with international standards, force policies should require that officers use only as much force as necessary to address threats.²² They should clearly state that the “objectively reasonable” standard may not compromise public or officer safety²³ and that using the least amount of force necessary builds trust and confidence in police.

Require force to be necessary and proportional. To provide protections that go beyond the “objectively reasonable” standard, departments should require that force be necessary and proportional. These concepts are inextricable; when deciding to use force, officers should consider



not only whether it is necessary under the circumstances but also whether it is proportional to the threat (i.e., it is the minimal amount, level, and severity needed under the circumstances).²⁴ The question becomes not whether the force is reasonable but whether it is avoidable.²⁵ As the Seattle Police Department explains:

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 the level of force that may be proportional, objectively reasonable, and necessary to counter it.²⁶

Proportionality does not prohibit officers from using lethal force when necessary. If someone threatens to shoot an officer or other people, then deadly force would be proportional.²⁷ To teach proportionality, instructors should train officers to assess the surrounding circumstances of encounters, including the severity and immediacy of the threat. Not all threats need to be met with equal levels of force. Officers should use only the force necessary to control the situation; they should not automatically ratchet up the level of force.

This recommendation departs from use-of-force continua that teach officers to use specific tactics or tools depending on the level of an individual's resistance.²⁸ This rigid approach can lead officers to believe that certain forceful responses are required when

facing certain threats, even though lesser options may be equally or more effective. For this reason, departments have begun to train officers to evaluate "the totality of the situation" (i.e., all the facts known to officers at the time) when deciding what type and level of force to use.²⁹

Policies should recognize that the circumstances of each encounter vary, so officers' responses should vary, too. Force should not be used because it is more convenient or expedient, to punish or retaliate, or because it has traditionally been perceived as integral to maintaining public safety. It should only be used when community members or officers or are in danger and no reasonable alternatives exist. As the Seattle Police Department states, "[O]fficers will use physical force only when no reasonably effective alternative appears to exist" to achieve a legitimate and lawful objective.³⁰

Ensure officers use de-escalation tactics and exhaust reasonable alternatives.

To reduce uses of force and lessen the risk of injury or death in force applications, departments should require officers to de-escalate encounters when safe and feasible. De-escalation is defined as "[t]aking action or communicating verbally or nonverbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary."³¹

De-escalation techniques — such as slowing down, maintaining a calm and composed demeanor, creating distance or physical barriers, and attempting verbal persuasion or warnings³² — can reduce the need to use force. These techniques should be incorporated into all basic and in-service training curricula, as is the case in some states. Police officer certification commissions in Georgia and Massachusetts, for example, require annual de-escalation training,³³ and Washington state passed a measure in 2018 requiring de-escalation in basic academy and in-service training.³⁴

Force policies should describe affirmative and proactive tactics, strategies, and approaches that can de-escalate incidents and resolve situations with minimal or no force. These policies should require officers to reasonably exhaust all available approaches to resolve situations, address threats, and achieve required law enforcement objectives (such as apprehending a suspect) without using force or, if force is necessary, with the least amount of force possible.³⁵

Officers should also be required to justify why they didn't use alternative or less lethal uses of force³⁶ and should be prohibited from unnecessarily escalating situations. Many departments require officers to use de-escalation tactics. The Seattle Police Department, for example, requires officers to “take reasonable care that their actions do not precipitate an unnecessary, unreasonable, or disproportionate use of force, by placing themselves or others in jeopardy, or by not following policy or training.”³⁷



The duty to de-escalate should apply not only to officers' specific decision to use force but also to their decision-making process and performance leading up to and during an incident.³⁸ Officers should also be trained to recognize when an individual's resistance wanes and to reduce the level of force accordingly.³⁹ The New Orleans Police Department, for example, states:

When feasible based on the circumstances, officers will use de-escalation techniques[;] disengagement; area containment; surveillance; waiting out a subject; summoning reinforcements; and/or calling in specialized units such as mental health and crisis resources, in order to reduce the need for force, and increase officer and civilian safety. Moreover, the officers shall de-escalate the amount of force used as the resistance decreases.⁴⁰

Ensure officers are trained in communication skills. Critics of de-escalation claim that it promotes “soft” policing because it prioritizes communication skills, which they say risks officers' lives by encouraging them to hesitate during dangerous situations.⁴¹ This approach is sometimes referred to as “hug-a-thug” policing (a term with racist overtones).⁴² In fact, de-escalation protects public and officer safety because it teaches strategic communication skills that enable officers to affirmatively defuse crises and gain voluntary compliance. Basic training should cover de-escalation skills, such as:

- + Allowing people to vent feelings and frustrations.
- + Actively listening to people without attempting to dissuade or argue with them.
- + Showing interest in people through eye contact and attentive body posture.
- + Controlling voice, speech, and tone.
- + Reading body language.
- + Responding calmly and evenly to curses, insults, and nonviolent challenges to authority.⁴³



Ensure officers are trained in repositioning tactics. Policies and training should instruct officers to enlarge the “safety zone” between themselves and people suspected of crime.⁴⁴ Officers who know how to create distance and take cover during potentially dangerous situations have more time to respond and more tactical options to consider if people are noncompliant or threaten officers or bystanders.⁴⁵

The strategic use of distance and cover shows how use-of-force policies have evolved over time. In the 1980s and 1990s, many departments and officers formally embraced the “21-foot rule,” which stated that “it was entirely possible for a suspect armed with an edged weapon to successfully and fatally engage an officer armed with a handgun within a distance of 21 feet.”⁴⁶

Officers trained in this rule often misapplied it; many mistakenly believed they had carte blanche to shoot anyone with a knife who approached within 21 feet, a.k.a. “the kill zone.”⁴⁷ Law enforcement officials claim that fewer departments train officers to follow the rule, but it is still taught informally.⁴⁸ The Police Executive Research Forum, an independent research organization, recommends that departments remove any reference to this outdated guidance from policies and training.⁴⁹

RECOMMENDATION 4.3

PROHIBIT AND REGULATE TOOLS AND TACTICS WITH A HIGH RISK OF DEATH OR INJURY THAT ARE DISPROPORTIONATE TO THE THREAT.

Many officers want specific guidance — or “rules of the road” — about acceptable uses and applications of force. Community members also want a clear sense of how officers should perform. Because courts have not provided much guidance, departments should step in. Policies and training should explicitly prohibit or limit uses of force that carry a high risk of death or injury when they are unwarranted because they are disproportionate to the threat. Clear rules, with clear exceptions, ensure that officers know in advance which force responses, tools, and techniques are prohibited under most or all circumstances. Specifically, departments should:

Prohibit maneuvers that restrict blood or oxygen flow to the brain. Chokeholds, strangleholds, neck restraints, neckholds, and carotid artery restraints are lethal hands-on maneuvers that cut off the supply of blood and oxygen to the brain. There is widespread support for banning these maneuvers, especially in the wake of the death of Eric Garner. In 2014, a New York City officer was recorded wrapping his arm around Garner’s neck and wrestling him to the ground (in violation of department policy) while he pleaded that he could not breathe.⁵⁰

Recognizing the inherent danger of chokeholds and the threat they pose to human life, departments in cities such as New York, Atlanta, and Miami prohibit them. Other states and cities have outlawed them too. Washington, D.C., bans chokeholds (but allows “strangleholds” in some situations), and Illinois prohibits them unless deadly force is justified.⁵¹

Prohibit techniques and modes of transport that risk suffocation. Positional asphyxia (i.e., suffocation) occurs when people are restrained behind their backs and placed on their stomachs. Restraints include the hobble restraint, or “hog-tie,” by which officers tie people’s ankles with a strap and connect it to handcuffs.⁵² Positioning people on their stomachs while they are restrained can make it difficult to breathe and can result in death.⁵³ Officers should be trained to not restrain people who are face-down and lying flat and to get handcuffed or restrained people off of their stomachs as quickly as possible.⁵⁴ Instructors should train officers not to apply pressure to people’s backs while restraining them in face-down positions and handcuffing them, because doing so compresses the airway and risks suffocation.⁵⁵

Prohibit officers from shooting at or from moving vehicles. This policy should apply except when drivers or passengers use or threaten imminent lethal force with weapons other than their vehicles.⁵⁶ The Denver Police Department prohibits shooting at moving vehicles because doing so does not necessarily stop vehicles

and can disable drivers, causing them to lose control and endanger the lives of passengers, bystanders, and officers.⁵⁷ The department also prohibits officers from creating circumstances that might make shooting at a vehicle necessary,⁵⁸ such as entering into or obstructing a vehicle’s path. This practice can be expensive. Some people have sued cities for deaths caused by officers shooting at moving vehicles, and city officials have opted to settle for large sums of money to avoid long and expensive litigation.⁵⁹

Bans on shooting at or from vehicles have been extremely effective. The New York Police Department banned shooting at moving vehicles more than 45 years ago, causing officer shootings to plummet. Within the first year, the number of officer-involved shootings declined by 33 percent.⁶⁰ Officer deaths in the line of duty also decreased during this time, indicating that the policy does not jeopardize officer safety.⁶¹ In short, this policy saves lives and reduces liability for cities and departments.⁶²

Set clear guidelines for vehicle pursuits. High-speed police car chases are inherently dangerous, especially in urban areas and on densely populated streets, where they pose serious risk of injury to other drivers, passengers, and bystanders.⁶³ Indeed, a 2015 analysis of police car chases found that more than 5,000 passengers and bystanders have been killed by them since 1979, and tens of thousands more have been injured.⁶⁴ What’s more, most pursuits involve minor offenses: A report by the

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**- J. SCOTT THOMSON,
CHIEF OF THE CAMDEN COUNTY POLICE
DEPARTMENT AND PRESIDENT OF THE POLICE
EXECUTIVE RESEARCH FORUM.**



International Association of Chiefs of Police (IACP) and the National Institute of Justice found that 92 percent of pursuits were initiated for traffic violations, misdemeanors, or nonviolent felonies.⁶⁵

Departments should provide clear parameters dictating when officers may initiate a vehicle pursuit. For example, the Seattle Police Department prohibits pursuits solely in response to traffic violations, civil infractions, misdemeanor offenses, property crimes, or for the sole reason of eluding an officer (e.g., by increasing speed or refusing to stop).⁶⁶ Officers should also end pursuits when the risk outweighs the need to stop the driver. Factors to consider include the original reason for the pursuit, location, direction of travel, weather conditions, speed (of the eluding driver), and traffic conditions, such as the presence of pedestrians and other vehicles.⁶⁷ Officers should also be required to notify

their supervisors after vehicle pursuits, and departments should not discipline officers who refuse to initiate them.⁶⁸

Set clear guidelines for foot pursuits.

People of color and people who live in high-crime areas may wish to avoid contact with an officer — even if they are not involved in criminal activity. Many factors may motivate an innocent person to flee, such as the fear of police use of force, a natural dislike of authority, past negative interactions with police officers, or fear of wrongful accusation, particularly among Black people because of their difficult history with police.⁶⁹

Officers often respond on foot, which is inherently dangerous and often ends in officer-involved shootings.⁷⁰ Perception problems also occur during foot pursuits; officers may think someone who makes a quick or sudden movement is reaching for a weapon and shoot

them.⁷¹ Officers also often experience fatigue and/or an adrenaline rush when pursuing people, which can compromise their tactical abilities and judgment.⁷² Foot pursuits by solo officers without backup are especially dangerous and often result in injury because officers may have to resort to force.

Departments should provide clear guidance and training about how to safely engage in foot pursuits. Doing so will reduce the incidence of injury and death to the public and officers alike. Policies should specify when foot pursuits are warranted and limit them to when officers have probable cause that someone has committed crime; mere flight, in other words, is not enough.⁷³ In its model policy, the IACP makes a series of recommendations on foot pursuits, including that officers end foot pursuits when they are alone or lose the person; when the person enters a building or other structure; when they lose communication with dispatch; when they know they can apprehend the person at another time; or when they lose their sense of direction or location.⁷⁴

Prohibit water cannons and acoustic weapons and restrict tear gas for crowd-control purposes. Water cannons, fire hoses, and tear gas (along with other uses of force, including dogs, whips, and batons) were used during the civil rights movement not only to control crowds but also to scare, intimidate, and injure demonstrators.⁷⁵ Despite their risk of injury and intimidation, these instruments and tactics, though rare, are still used today.

In 2016, police used water cannons, tear gas, and lead-filled beanbags against peaceful

protestors from the Standing Rock Sioux Tribe in North Dakota, which resulted in mass injuries, including fractured bones and hypothermia.⁷⁶ Acoustic weapons are also used to control crowds, as was the case in Ferguson, Missouri, where officers used them against people who were protesting the fatal police shooting of Michael Brown, an unarmed Black teen, by delivering painful blasts of noise, which can cause permanent damage and potential hearing loss.⁷⁷ More recently, the U.S. Border Patrol fired tear gas at a group of migrants, including young children, who were attempting to cross the U.S.-Mexico border.⁷⁸

While these weapons are rarely used by police officers in the United States, they fuel outrage when they are. They induce fear, turn police encounters into war-like scenarios, and carry a high risk of injury and, therefore, should not be used to control crowds, including against people engaging in lawful protests and other activities protected by the First Amendment. (For more detail, see Chapter 6.)

Water cannons shoot pressurized water (sometimes mixed with chemical agents or dyes) through hoses that are connected to in-ground water supplies or to “bladders” mounted on top of vehicles. They can cause internal injuries and hypothermia (when used in colder climates) and other injuries from slipping and falling or exposure to chemicals and dyes.⁷⁹ Departments should ban their use for crowd-control purposes, as they are ineffective and cause injury. Indeed, in 2015, England banned them because they haven’t proven to be a safe or effective crowd control tool.⁸⁰

Tear gas is a chemical that irritates eyes, causes skin pain, interferes with breathing, and disorients and agitates people.⁸¹ It can be sprayed at people or thrown grenade-like into crowds, where it “explodes” with gas.⁸² Like pepper spray, tear gas cannot be targeted when sprayed; as such, it carries a high risk of affecting unintended targets or bystanders.⁸³ When tear gas canisters explode, the gas disperses widely to surrounding areas.⁸⁴ For these reasons, departments should restrict the use of tear gas to situations in which crowds engage in violent acts, such as riots, that risk death or serious injury and all other options have been exhausted. The use of tear gas should require approval from the highest level of the department (i.e., from the chief or commissioner).

Like tear gas, acoustic weapons are indiscriminate; they can’t be targeted at specific individuals and can harm bystanders and other officers.⁸⁵ They’re primarily “pain compliance” tools that can cause lasting physical impairment. Departments should ban their use, as they have not been proven to be an effective method of crowd control.⁸⁶



Limit acquisition of military equipment and militarized police responses. Since 1990, the U.S. Department of Defense has transferred some \$6 billion worth of excess military equipment to law enforcement agencies through its 1033 Program, so named for a section of the National Defense Authorization Act.⁸⁷ Under the program, local police departments can acquire armored vehicles, including Humvees and Mine Resistant Ambush Protected (MRAP) vehicles, which were designed to withstand explosive ambushes in combat zones. They can also acquire military grade weapons, such as high-caliber assault weapons, grenade launchers, and other equipment.

This program has been in effect for decades but only recently attracted national scrutiny. In 2014, the Ferguson (Missouri) Police Department used this type of equipment in response to widespread protests following the fatal shooting of Michael Brown.⁸⁸ Images of officers in MRAPs, body armor, and gas masks confronting protesters and of snipers perched on top of tactical vehicles⁸⁹ spread around the world — and recalled images of excessive uses of force against protesters during the civil rights movement.

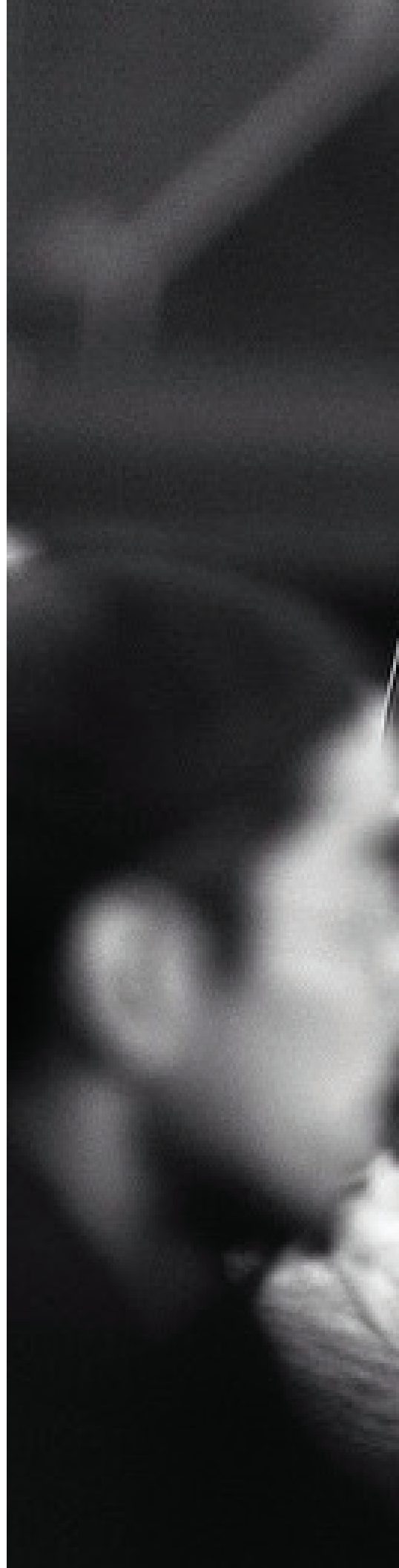


The U.S. Department of Justice (DOJ) launched an investigation into the Ferguson Police Department's response to the protests, and President Obama issued an executive order directing a working group to review programs that supply military equipment to police.⁹⁰ In 2015, the DOJ concluded that the heavily armed, militarized response was disproportionate to the threat posed by the protestors and deployed in a manner that intimidated the community.⁹¹

The working group subsequently recommended prohibiting acquisition of military equipment including tracked armored and weaponized vehicles, bayonets, grenade launchers, and high-caliber firearms and ammunition.⁹² In 2017, the Trump administration revoked the order and disavowed the recommendations,⁹³ yet they nonetheless serve as a guide and confirm that the significant risk of misusing or overusing military weapons, which undermines community trust, warrants their prohibition.⁹⁴

Indeed, evidence shows that militarization influences police behavior. One study found a correlation between military equipment and the number of police-involved killings.⁹⁵ Access to military equipment also increases officers' tendency to use military tactics (i.e., force) to resolve conflicts.⁹⁶ The massive transfer of such equipment to local departments is tantamount to arming officers for war against communities.

That said, while military-grade equipment should not be used against members of the public, especially when engaging in lawful protests, it may be appropriate in limited, high-risk situations, such as hostage rescues, special operations, terrorist attacks, active shooters, and fugitive apprehension. These situations may require heavy riot gear and powerful weapons to protect public and officer safety.⁹⁷





Limit the use of SWAT teams. Departments historically used Special Weapons and Tactics (SWAT) teams to handle hostage rescues, active shooters, and terrorist attacks. Today, SWAT teams are routinely used to execute search warrants, often for drug searches.⁹⁸ Officers on SWAT teams receive military-style training and use weapons, such as battering rams and flashbang grenades (which can blind or deafen people), to break into homes.⁹⁹

Some search warrants for drugs are high-risk and may warrant the use of SWAT teams. Yet the shift from their original use calls for careful evaluation of SWAT programs to determine whether they are being used appropriately after careful threat assessments. SWAT teams should be used for warrant service only when officers can show the existence of an imminent threat of serious bodily injury or harm, such that officers would be unable to execute a warrant safely without SWAT assistance. Department leaders should provide guidance on the types of warrant searches that justify the SWAT deployment and reasonable tactics when serving high-risk warrants.¹⁰⁰ When executing a warrant, each action taken (e.g., using a battering ram to enter after a knock-and-announce fails) or use of force should be justified. SWAT teams, and officers in other units who also execute warrants, need ongoing specialized training to reduce use of force.¹⁰¹

No-knock warrants are an especially high-risk tactic and should be the exception not the rule. Only when a threat exists that officers can specifically articulate should they be used.

Prohibit retaliatory and punitive uses of force. Though typically used in response to a legitimate threat of serious injury or death, force is sometimes used as a punitive measure. Officers might use retaliatory force when someone appears confrontational or records an officer with a cell phone video camera (which is generally permissible under the First Amendment).¹⁰² Departments should explicitly prohibit retaliatory and punitive force,¹⁰³ especially against people who are handcuffed or restrained and therefore pose no threat.



SWAT

RECOMMENDATION 4.4 SET CLEAR POLICIES APPLICABLE TO ALL FORCE INSTRUMENTS.

The rules and trainings that departments put in place regarding the use of force should ensure it is reasonable, necessary, and proportional, regardless of the instrument or technique used. This recommendation explores basic parameters around use of force that apply to all instruments and that should be covered in policy and training.

Departments should ensure that officers:

- + Use only department-issued or department-approved instruments.¹⁰⁴
- + Complete required training and certification in each instrument and are recertified on a regular basis.¹⁰⁵
- + Consider their surroundings before use to avoid unnecessary risk to bystanders, victims, and other officers.¹⁰⁶
- + Identify themselves as officers,¹⁰⁷ consider de-escalation tactics (including verbal de-escalation techniques),¹⁰⁸ and give verbal warnings before use.¹⁰⁹
- + Determine whether people are in mental health or substance use crisis and, if so, use crisis intervention techniques.
- + Limit the use of force against vulnerable people, such as pregnant women, youth, older people, people with disabilities, people in mental health or other crisis, and people who are under the influences of drugs or alcohol.
- + Consider whether they can't effectively communicate with targeted people because of their limited English proficiency; mental health, developmental, or physical disabilities; or substance use disorders. (For more detail, see Recommendation 4.6.)
- + Use instruments only when reasonable, necessary, and proportional to threat posed.¹¹⁰
- + Render medical aid and request medical assistance if necessary.¹¹¹ (For more detail, see Recommendation 4.8.)
- + File a report immediately after each use of force and justify each separate use of force (i.e., each firearm discharge, Taser shock, baton strike, etc.).¹¹² Shooting someone once may be justified; shooting someone more than once may not.

RECOMMENDATION 4.5 SET CLEAR POLICIES REGARDING SPECIFIC FORCE INSTRUMENTS.

Different instruments introduce specific considerations and risks. Pepper spray requires different knowledge and precautions than tear gas, and handguns require different approaches than Tasers. Yet many departments lack specific policies regarding the use of each instrument.¹¹³ Without such policies, and training to adhere to them, supervisors can't adequately hold officers accountable when officers misuse instruments. Specifically, departments should:

Set clear policies regarding firearms. Firearms, such as handguns, shotguns, and rifles, are among the most lethal weapons at officers' disposal, and their use impacts not only officers and individuals but entire departments and communities.¹¹⁴ Some departments address the use of firearms in general policies, while others provide specific, stand-alone guidance. Either way, firearms merit special attention, and their proper use should be a major component of departments' policies regarding the use of force.¹¹⁵ Force policies should clearly address all topics related to firearm use, including training and certification, holstering and discharge, and reports, investigations, and discipline.

Departments should ensure that officers follow the general guidelines relating to use of force listed in Recommendation 4.4.

In addition, departments should ensure that officers:

- + Understand that "use of force" includes pointing a firearm at people, which is considered a "seizure" under the Fourth Amendment.¹¹⁶
- + Unholster, draw, and exhibit firearms only when they reasonably believe the situation may rise to a level where lethal force would be authorized.¹¹⁷
- + Understand that unsuccessful use of less-lethal weapons does not automatically authorize an officer to use a firearm.¹¹⁸
- + Determine whether the person is experiencing a mental health or substance use crisis and, if so, use crisis intervention techniques.¹¹⁹

- + File a force report whenever a firearm is unholstered and pointed at someone.¹²⁰
- + File a report even after unintentional discharge and even if no injury or death results. All discharges should be immediately investigated.¹²¹

Departments should prohibit officers from:

- x Firing warning shots (so as not to harm others in the area).¹²²
- x Shooting through doors, windows, or when targets are not clearly in view.¹²³
- x Firing at moving vehicles (except in limited situations).¹²⁴

Set clear policies regarding Tasers. Tasers — also referred to as electronic control weapons (ECWs), conducted electrical weapon (CEWs), and conducted energy devices (CEDs) — are increasingly used by law enforcement agencies as a less-lethal alternative to firearms.¹²⁵ Tasers fire two barbed wires that pierce the skin and deliver high voltage electric shocks to stun and disable people.¹²⁶ Tasers can also be used in "drive-stun" mode, which does not affect motor functions but causes significant pain.¹²⁷



Though most Taser shocks do not inflict serious injury, some do. The shock induces muscle contraction, which can cause people to fall and sometimes break bones, hit their heads, and even die.¹²⁸ On the other hand, Tasers are less injurious to members of the public and officers than other applications of force, such as punches, kicks, batons, and flashlights, research shows.¹²⁹

Community and advocacy groups have questioned the safety of Tasers and raised concerns about their use (and abuse). Indeed, studies show that some officers use Tasers with impunity because supervisors don't scrutinize Taser use as closely as firearm use.¹³⁰ One study found that officers deployed Tasers without appropriate justification in nearly 60 percent of reported Taser incidents and sometimes shocked people who were "merely passively or verbally noncompliant" or were already handcuffed or restrained.¹³¹ A study of the Chicago Police Department found that expanded use of Tasers did not reduce the use of firearms or the number of people injured by the department's officers.¹³²

For these reasons, departments should develop and implement specific policies to maximize safety and restrict the unnecessary or improper use of Tasers and should train officers to comply with these policies. In general, departments should consider Tasers a "weapon of need, not a tool of convenience."¹³³ And supervisors should respond to the scene whenever one is used.¹³⁴

Departments should ensure that officers follow the general guidelines relating to use of force listed in Recommendation 4.4.

In addition, departments should ensure that officers:

- + Carry Tasers in "weak-side holsters" (i.e., on the side of their nondominant hand) to reduce accidental discharge.¹³⁵
- + Consider the severity of the crime before determining what mode to use them in.¹³⁶
- + Stop using them after one standard (five-second) cycle to determine whether more than one cycle is necessary.¹³⁷

Departments should prohibit officers from:

- x Using Tasers against high-risk groups, such as pregnant women, older people, young children, or people who are visibly frail, have known heart conditions, are in a medical or mental health crisis, are

under the influence of drugs (prescription and illegal) or alcohol, or who have slight builds.¹³⁸

- x Using them on vulnerable body parts, such as the head, neck, chest, or groin.¹³⁹
- x Using more than one Taser against one person at one time.¹⁴⁰
- x Using a Taser on someone more than three standard (five-second) cycles.¹⁴¹
- x Using "drive-stun" mode, which causes pain but not loss of muscle control¹⁴² and can escalate encounters by causing rage in response to pain.¹⁴³
- x Using them for the sole reason of preventing flight.¹⁴⁴

Set clear policies regarding batons. Batons, including straight batons, espantoons, and expandable batons, are impact weapons that can cause serious injury and sometimes death. Batons are inherently fraught with risk because they are less lethal if used properly but lethal if used improperly. For example, strikes to the head, neck, throat, spine, heart, and kidneys are lethal force; strikes to other body parts aren't.¹⁴⁵ Thus, force policies should clearly state that batons are a low-risk option but are capable of lethal force depending on how they are used.¹⁴⁶

Departments should ensure that officers follow the general guidelines relating to use of force listed in Recommendation 4.4.

In addition, departments should ensure that officers:

- + Understand that strikes to vulnerable body parts are considered lethal force because of their high risk of serious injury and death.¹⁴⁷

Departments should prohibit officers from:

- x Using flashlights or other hard objects in place of batons (because flashlights are potentially more injurious).¹⁴⁸
- x Striking the head or other vulnerable body parts, such as the neck, chest, spine, groin, or kidneys.
- x Using batons against people who are restrained, even if they are noncompliant, unless they pose an imminent threat to officers or others.¹⁴⁹



Set clear policies regarding pepper spray.

Oleoresin capsicum (OC) spray, commonly known as pepper spray, is an inflammatory agent that burns the skin, eyes, and throat and, in some cases, causes temporary blindness and restricts breathing. Officers often use pepper spray to disperse crowds and force people to comply with orders. While pepper spray is a valuable alternative to lethal force, it still risks serious harm. It is not very accurate, especially in windy conditions, and it can hit people other than intended targets, including other officers.¹⁵⁰ And, because it is flammable, it can't be used in combination with Tasers or other ECWs.¹⁵¹

Departments should ensure that officers follow the general guidelines relating to use of force listed in Recommendation 4.4.

In addition, departments should prohibit officers from:

- x Using pepper spray on passive resisters or to disperse crowds.¹⁵²
- x Using pepper spray on people who are handcuffed or otherwise restrained unless they pose a threat to public or officer safety.¹⁵³

Set clear policies regarding canines. Police canine (K-9) teams serve many important purposes: they detect evidence, bombs, and narcotics; find people who are suspected of criminal activity; and search fields and wooded areas for missing people, with much more precision than officers.

Without proper policies and training, however, police dogs can be traumatizing

and physically threatening. One study found that the use of canine force resulted in a higher proportion of hospital visitations than Tasers, batons, and "bean bag" projectiles (fabric bags filled with lead pellets that are fired from a shotgun). The study also concluded that injuries inflicted by canines are more likely to require medical attention than those caused by less-lethal weapons.¹⁵⁴

A 2011 DOJ investigation of the New Orleans Police Department found that police dogs were so uncontrollable that they bit people (including officers) more than twice as often as properly trained dogs in well-run canine units.¹⁵⁵ The department was ordered to suspend the program until it developed appropriate training.¹⁵⁶

More recently, the St. Paul Police Department in Minnesota stiffened restrictions on canine use after two high-profile incidents involving the misuse of canine force (one man was bitten after he was mistaken for a suspect and a woman was bitten while taking out the trash).¹⁵⁷ The new policy limits the use of dogs to apprehend people suspected of felony crimes of violence (e.g., murder, manslaughter, aggravated robbery, kidnapping, criminal sexual misconduct, and drive-by shootings) and prohibits them in other felonies (e.g., theft, fleeing in a vehicle, drug sales, and burglary of vacant buildings).¹⁵⁸

To some, the mere presence of dogs is threatening, in part due to misuse of canine force in the past, and particularly during the civil rights movement. To alleviate

concerns about the use of canine force, departments should implement policies and training to ensure that canine teams, police dog handlers, and police dogs operate safely and effectively. Some states require departments to do so. New Jersey, for example, enforces training standards and qualification requirements for all state and local law enforcement agencies with canine units.¹⁵⁹

Departments should ensure that officers follow the general guidelines relating to use of force listed in Recommendation 4.4.

In addition, departments should ensure that dog handlers:

- + Complete a certification program with a qualified trainer in obedience, agility, scent work, criminal apprehension, handler protection, record-keeping, and other areas.¹⁶⁰
- + Train dogs to “find and bark” rather than “find and bite.”¹⁶¹
- + Obtain supervisory approval before deploying dogs,¹⁶² especially when off-leash.¹⁶³
- + Use dogs on-leash primarily to locate people suspected of being armed or committing a violent felony or a person who is fleeing and presents a serious risk of injury to others.¹⁶⁴
- + Keep dogs within visual or auditory range.¹⁶⁵
- + Deploy dogs off-leash only when people are suspected of being armed or of committing a violent felony.¹⁶⁶
- + Determine whether the person has limited proficiency in English. If so, determine whether they can understand the phrase “canine warning;” if not, obtain language assistance.¹⁶⁷
- + Call off the dog immediately if it bites

someone.¹⁶⁸

- + Consider whether people may not be able to cooperate because of behavioral health problems or developmental or physical disabilities.¹⁶⁹
- + Document the use of dogs, including in training, incident reports, and canine health reports.¹⁷⁰
- + Submit a force report when a dog apprehends someone (even if no bite occurs).¹⁷¹

Departments should prohibit dog handlers from:

- x Using dogs for crowd control.¹⁷²
- x Using dogs for force or intimidation.¹⁷³
- x Using dogs when people don’t pose an imminent danger or when a lower level of force can secure them.¹⁷⁴
- x Using dogs to apprehend children and adolescents or people suspected of being under the influence of drugs or alcohol, who are in mental health crisis, or have developmental disabilities.¹⁷⁵
- x Releasing dogs trained to “bite and hold” people without first issuing verbal warnings and offering an opportunity for peaceful resolution with the suspect.¹⁷⁶

RECOMMENDATION 4.6 ENSURE OFFICERS CONSIDER PERSONAL CHARACTERISTICS BEFORE USING FORCE.

Officers should be trained to remember that individuals may have specific characteristics affecting how they respond to police.

Mental health or developmental disabilities, substance use disorders, physical disabilities, deafness, blindness, primary language, cultural background, and age influence communication and how officers are able to effectively convey orders or instructions.

In California, the Santa Ana Police Department cites the “[s]ubject’s mental state or capacity” as a factor to determine whether use of force is reasonable.¹⁷⁷ The Las Vegas Metropolitan Police Department similarly describes “[t]he influence of drugs/alcohol or the mental capacity of the subject” as a factor for consideration in the use of force ‘reasonableness inquiry.’¹⁷⁸

Officers and individuals sometimes miscommunicate due to language barriers and/or cultural differences. Departments should therefore incorporate cultural competency training into their overall training programs. (For more detail, see Chapters 1, 2, and 11.) Cultural competency programs equip officers to respond effectively to different communities’ public safety needs and reduce the use of unnecessary force.¹⁷⁹ They also help build trust and understanding between officers and the communities they

serve. The science of cognitive psychology increasingly recognizes differences in young people’s decision-making capacities, so departments should require officers to “employ developmentally appropriate” responses to youth.¹⁸⁰

RECOMMENDATION 4.7 REQUIRE OFFICERS TO INTERVENE IN IMPROPER USES OF FORCE.

Officers who don’t intervene to prevent or stop improper uses of force may be liable for harm caused by their colleagues.¹⁸¹

The vast majority of officers (84 percent) agree that officers should be required to intervene to prevent other officers from using excessive force, according to a survey by the Pew Research Center.¹⁸² And for good reason: One study found that departments that implemented “duty to intervene” policies had 9 percent fewer officer-involved deaths.¹⁸³

The Police Executive Research Forum recommends that departments train officers to safely intervene when a fellow officer is using unnecessary or excessive force or is engaging in other misconduct and to detect warning signs that an officer may be likely to use excessive force.¹⁸⁴ Witness officers should also report uses of excessive force to supervisors.¹⁸⁵

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Intervention by fellow officers during applications of unreasonable force protects the public and officers alike.¹⁸⁶ The New Orleans Police Department's force policy trains officers on various intervention techniques, including verbal and physical intervention, notifying supervisors, and issuing direct orders to stop unreasonable uses of force.¹⁸⁷

RECOMMENDATION 4.8

REQUIRE OFFICERS TO RENDER AID UNTIL MEDICAL ASSISTANCE ARRIVES.

To carry out their mission to preserve public safety, departments should require officers to render first aid to people who have been injured and to request medical assistance promptly.¹⁸⁸ The New Orleans Police Department requires officers to immediately check people for injuries following the use of force and to render aid consistent with their skills and training until medical assistance arrives.¹⁸⁹ Departments should train all officers to render first aid and provide them with the tools to do so, such as first-aid kits.¹⁹⁰ First-aid kits greatly reduce the risk of death from blood loss,¹⁹¹ and first-aid training helps save the lives of community members and officers.

RECOMMENDATION 4.9

PROVIDE CONTINUAL, SCENARIO-BASED TRAINING.

Departments devote significant time to training in firearms (58 hours) and defensive tactics (49 hours), according to a 2015 survey of Police Executive Research Forum members.¹⁹² But they spend much less time (about 8 hours) training officers in de-escalation and crisis intervention tactics and in uses of less-lethal force,¹⁹³ and few officers receive ongoing in-service training on these topics.

Departments should require officers to receive scenario-based training in uses of force at regular intervals.¹⁹⁴ Officers should practice, in interactive environments, de-escalation techniques and threat assessment strategies that account for implicit bias in decision-making.¹⁹⁵ (For more detail, see Chapter 2.) In addition to lecture-based review of written policies, training should be immersive, interactive, and reflect contemporary approaches to adult learning.

Departments should also develop training scenarios for officers that replicate real encounters and require supplemental training even for veteran officers with extensive field experience.¹⁹⁶ And supervisors should receive additional training on investigations into uses of force, strategies to direct officers to minimize uses of force, and managing force incidents.¹⁹⁷

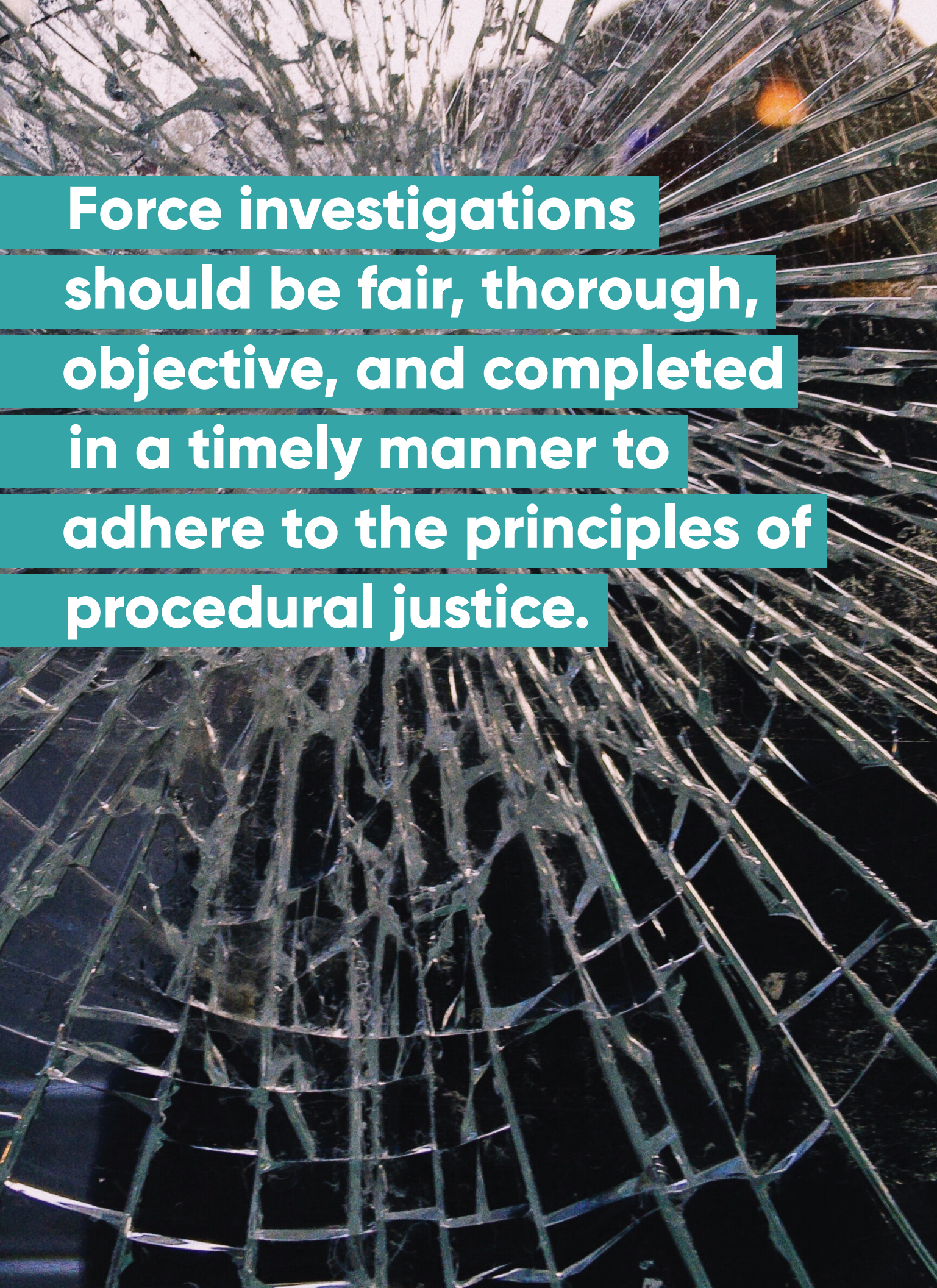


RECOMMENDATION 4.10

ESTABLISH ROBUST PROCESSES FOR REPORTING AND INVESTIGATING USES OF FORCE.

Developing a comprehensive force policy is the first step toward reducing excessive uses of force. Departmental policies should also provide clear guidance for officers to report uses of force and for supervisors to review and investigate them.¹⁹⁸ Uses of force that go beyond “hand controls” and “escort techniques,” which are used to handcuff unresisting individuals and generally do not cause pain or injury, should be reported and investigated.¹⁹⁹ Specifically, departments should:

Provide clear guidance on reporting, reviewing, and investigating force. After using force, officers and witness officers should orally notify supervisors of the incident.²⁰⁰ Instead of requiring officers to merely note uses of force on arrest reports, departments should maintain separate files for use-of-force reports so they can track each incident. Officers should file force reports before the end of the shift during which the incident occurred.



**Force investigations
should be fair, thorough,
objective, and completed
in a timely manner to
adhere to the principles of
procedural justice.**



All involved officers should provide detailed narratives of the facts leading to the use of force.²⁰¹ Without accurate and timely reporting, even the most comprehensive use-of-force policies will fail. Incomplete, vague, or boilerplate language in use-of-force reports allows violations to go unchecked and cripples misconduct investigations, so this type of language should be prohibited. Officers who fail to report uses of force, or who falsify reports, should be disciplined (up to and including termination).²⁰²

Departmental policies should require the review and investigation of all reported uses of force. Supervisors should respond to the scene of all incidents involving anything beyond lower-level uses of force, such as pressure point compliance and joint manipulation (which generally do not cause injury or significant pain).²⁰³ While nonreportable and lower-level uses of force do not require a supervisor response, supervisors can, upon notification, opt to respond to the scene; they may conclude that the force used was excessive even if minimal.

If they do not respond to the scene, supervisors should review force reports for lower-level uses of force by the end of the shift during which the force occurred.²⁰⁴ Additionally, supervisors should visit the scene and investigate nonreportable and lower-level uses of force upon complaint of pain or injury. Departments should require officers to file use-of-force reports for non-reportable uses of force when there has been an injury or complaint of injury.²⁰⁵

Force investigations should be fair, thorough, objective, and completed in a timely manner to adhere to the principles of procedural justice. Transparent policies that detail the investigation process give both the public and officers clear expectations. Specific factors for determining reasonable uses of force reduce the appearance and occurrence of bias and arbitrariness in decisions. And timely investigations build legitimacy, give community members a sense of closure, and allow officers who did not violate policy to return to work quickly.



In determining the reasonableness of force, department leaders should consider officers' tactical conduct and decision-making before and during the incident.²⁰⁶ In the shooting death of Dontre Hamilton, for example, internal affairs investigators at the Milwaukee Police Department found that the involved officer was within his rights at the time he used deadly force.²⁰⁷ However, they also found that his decisions and actions leading up to the incident created the need to use force. Because he did not apply his training in crisis intervention leading up to the use of force, and because he identified Hamilton as in a mental health crisis, he was fired.²⁰⁸

Some departments employ dedicated squads of specialized force investigators who conduct investigations of mid-level and serious force incidents.²⁰⁹ The New Orleans Police Department's Force Investigation Team investigates all serious and potentially criminal uses of force, all uses of force by officers ranked higher than sergeant, and all in-custody deaths.²¹⁰

Respond fairly and appropriately to policy violations. When force investigations find that officers have violated policy, supervisors should impose discipline and interventions that comport with policies and procedures. Departments should commit to fairly and impartially enforcing their use-of-force policies. Lax accountability, or cultures where written policies aren't respected or followed, render even the best-written policies powerless.²¹¹

Departments should integrate use-of-force expectations into disciplinary measures and establish clear, fair penalties for policy violations. They should also publish disciplinary rules in conjunction with use-of-force policies. When policy is violated, departments should publicly disclose final disciplinary actions. The LAPD releases abridged summaries of use-of-force incidents on its website, including summaries of the incident and administrative findings.²¹²

Departments can strengthen accountability by maintaining publicly accessible electronic tracking systems for force data.²¹³ To reevaluate and continuously improve policies and training, departments should track and analyze incidents that identify systemic patterns of harmful or excessive force (e.g., incidents where no force was necessary but an officer nonetheless used a Taser or other weapon).²¹⁴



Departments should also aggregate use-of-force data and integrate it into nondisciplinary early intervention systems to identify problematic trends in other areas (e.g., stop-and-search practices and wellness indicators) to provide professional and personal development and to prevent crises. (For more detail, see Chapters 7 and 8).

Publicly release information about serious and lethal uses of force as soon as possible.

Departments should release basic or preliminary information soon after officer-involved shootings or other serious use-of-force incidents occur and should regularly update the public as new information becomes available (to the extent permitted by concurrent criminal investigations).²¹⁵ The Las Vegas Metropolitan Police Department, for example, releases the name, rank, tenure, and age of the involved officer to the public within 48 hours and conducts a media briefing within 72 hours.²¹⁶ These and other practices illustrate how to quickly give the public information about uses of force even during internal or criminal investigations. Such transparency enhances community trust in police and in its internal investigative processes.

Make use-of-force policies publicly available. Although not yet standard, many departments have begun to implement publicly accessible policies and systems.²¹⁷ Enabling the public to read police policies, especially those governing the use of force, increases people's ability to understand and offer input on departmental practices.²¹⁸ To promote transparency and accountability, departments should make policies available upon request and publish policies online in standard as well as alternative and accessible formats.

Engage communities in developing and revising use-of-force policies. As with virtually every other aspect of democratic government, police policies should be formulated with public participation and deliberation. Communities should participate directly in developing the policies and practices that police departments use to preserve public safety, including, and especially, those regarding the use of force. As discussed elsewhere in this report, community participation in policing improves transparency, accountability, legitimacy, and trust — and protects communities and officers.²¹⁹

Chapter 4

¹ See, e.g., Christian Sheckler & Ken Armstrong, *Elkhart Cops to Be Charged After Video Shows Them Beating Handcuffed Man*, *South Bend Tribune* (Nov. 2, 2018) (officers were caught on station house video punching a man who was sitting handcuffed), https://www.southbendtribune.com/news/publicsafety/elkhartjustice/elkhart-cops-to-be-charged-after-video-shows-them-beating/article_401f6756-613b-53b0-91ad-b15b6276489a.html; Tim Elfrink, 'It's Still a Blast Beating People': St. Louis Police Indicted in Assault of Undercover Officer Posing as Protester (Nov. 30, 2018) (officer beat and kicked an unarmed undercover detective posing as a protestor even as he complied with their instructions), https://www.washingtonpost.com/nation/2018/11/30/its-still-blast-beating-people-st-louis-police-indicted-assault-undercover-officer-posing-protester/?utm_term=.ed48da7935de; Joseph Goldstein & Nate Schweber, *Man's Death After Chokehold Raises Old Issue for the Police*, *N.Y. Times* (July 18, 2014) (Eric Garner died when an officer put him in a chokehold), <https://www.nytimes.com/2014/07/19/nyregion/staten-island-man-dies-after-he-is-put-in-chokehold-during-arrest.html>; Alan Blinder, Michael Slager, *Officer in Walter Scott Shooting, Gets 20-Year Sentence*, *N.Y. Times* (Dec. 7, 2017) (Walter Scott was unarmed and shot in the back eight times by an officer), <https://www.nytimes.com/2017/12/07/us/michael-slager-sentence-walter-scott.html>.

² Int'l Ass'n of Chiefs of Police, *Police Use of Force in America 1* (2001), <https://www.theiacp.org/sites/default/files/2018-08/2001useofforce.pdf>.

³ Karen M. Hess et al., *Police Operations: Theory and Practice at 23* ("Police use discretion because no set of policies and procedures can prescribe what to do in every circumstance."), https://books.google.com/books?id=zN6-7kt9F_cC&pg=PA23&lpg=PA23&dq=Police+use+discretion+because+no+set+of+policies+and+procedures+can+prescribe+what+to+do+in+every+circumstance&source=bl&ots=qwHyQjCOSD&sig=iRvQI3_Fm_cOKloBeOp3j0DDNG8&hl=en&sa=X&ved=2ahUKewiph-zzjenfAhWEMd8KHxOVCDUQ6AEwAXoECAgQAQ#v=onepage&q=police%20use%20discretion&f=false.

⁴ *Graham v. Connor*, 490 U.S. 386, 388-90 (1989).

⁵ *Id.* at 389-90.

⁶ *Id.* at 396.

⁷ *Id.*

⁸ *Id.* ("... proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight").

⁹ *Police Exec. Res. Forum, Guiding Principles on Use of Force 94* (2016) [hereinafter *PERF Guiding Principles on Use of Force*], <http://www.policeforum.org/assets/30%20guiding%20principles.pdf>.

¹⁰ See, e.g., *Han v. City of Folsom*, 551 Fed. Appx. 923, 926 (9th Cir. 2014) (asserting that although "officers' alleged pre-shooting negligence does not establish a constitutional violation, it may establish common-law negligence under [state] law.>").

¹¹ Judicial Council of Calif., *Civil Jury Instructions, CACI No. 440: Unreasonable Force by Law Enforcement Officer in Arrest or Other Seizure — Essential Factual Elements 311* (2016) (citing *Hayes v. County of San Diego*, 57 Cal. 4th 622 (2013)), <https://www.justia.com/documents/trials-litigation-caci.pdf>. In *Hayes*, the California Supreme Court drew upon earlier case law recognizing that officers may unnecessarily create circumstances leading to the use of force:

Instructive here is our decision in *Grudt v. City of Los Angeles*, (1970), 2 Cal.3d 575. In *Grudt*, a police officer in plain clothes, carrying a double-barreled shotgun, approached a car, possibly causing the driver to think he was being robbed or attacked. The driver accelerated the car toward a second plainclothes officer, and then both officers opened fire on the driver, killing him. This court held that the trial court erred in barring a claim of negligence against the officers. Significantly, the shooting in *Grudt* appeared justified if examined in isolation, because the driver was accelerating his car toward one of the officers just before the shooting. Nevertheless, we concluded that the totality of the circumstances, including the preshooting conduct of the officers, might persuade a jury to find the shooting negligent. In other words, preshooting circumstances might show that an otherwise reasonable use of deadly force was in fact unreasonable.

Hayes, 57 Cal. 4th at 629.

¹² See, e.g., Samuel Sinyangwe, *Examining the Use of Force Policies in Ending Police Violence 4* (2016) (finding that policies "requiring officers to exhaust all other means before using deadly force were associated with the largest reductions in police-involved killings"), <https://static1.squarespace.com/static/56996151cbced68b170389f4t/57e17531725e25ec2e648650/1474393399581/Use+of+Force+Study.pdf>.

¹³ *Seattle Police Monitor, Ninth Systemic Assessment: Use of Force 14* (2017), <https://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/58e6a753ff7c50ebbad126f8/1491511130661/>.

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- ³⁸ Seattle P.D. Manual § 8.000, *supra* note 15. Seattle enacted a stand-alone de-escalation policy in 2015 requiring that officers "attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution" "[w]hen safe and feasible under the totality of circumstances." Seattle P.D. Manual § 8.100, *supra* note 16. The policy clarified that officers will be accountable for failing to attempt de-escalation where appropriate during the sequence of events leading to use of force. Seattle P.D. Manual § 8.000, *supra* note 15.

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¹⁰⁴ See, e.g., New Orleans Police Dep't, Operations Manual: Authorized Firearms 2 (2015) (department-authorized firearm), <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-4-Authorized-Firearms.pdf>; Carmen Best, Chief of Police, Seattle Police Dep't Manual, § 9.060 – Firearms (Nov. 20, 2013) (department-approved firearms), <https://www.seattle.gov/police-manual/title-9---equipment-and-uniforms/9060---firearms>; New Orleans Police Dep't, Operations Manual: Conducted Electrical Weapon (CEW) 3-4 (2018) [hereinafter New Orleans CEW] (department-issued Tasers), <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-7-1-CEW-EFFECTIVE-4-01-18.pdf>; Consent Decree, *United States v. Police Dep't of Baltimore*, No. 1:17-CV-99-JKB, ¶ 149 (D. Md. 2017)] [hereinafter Baltimore Consent Decree] (department-approved batons, department-issued or department-approved pepper spray), <https://www.justice.gov/opa/file/925056/download>; Seattle P.D. Manual § 8.300, *supra* note 52 (department-issued or -approved pepper spray); Police Exec. Res. Forum, Use-of-Force Policy and Practice Review of the Fairfax County Police Department: Final Report 52 (2015), <https://www.fairfaxcounty.gov/police/sites/police/files/assets/images/chief/policies/fairfax-county-police-dept-final-report-june19.pdf>.

¹⁰⁵ See Police Exec. Res. Forum, *supra* note 104, at 52; see

also Seattle P.D. Manual § 8.300, *supra* note 104, at ¶ 149 (pepper spray); N.J. Office of the Att’y Gen., Div. of Crim. Just., K-9 Training Standards and Qualification Requirements for New Jersey Law Enforcement (2002) [hereinafter New Orleans Police Dep’t, Canine], https://www.state.nj.us/lps/dcj/agguide/k9_policy_2002.pdf; New Orleans Police Dep’t, Operations Manual: Canine (2015), <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-41-22-Canine.pdf>; Amended and Restated Consent Decree Regarding the New Orleans Police Department, *United States v. City of New Orleans*, No. 12-CV-01924, ¶¶ 48-50 (E.D. La. 2018) [New Orleans Amended and Restated Consent Decree] (dog handlers must receive in-service classroom instruction at least annually and be reevaluated semi-annually), <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/NOPD-Consent-Decree-2018-10-2.pdf>.

¹⁰⁶ See, e.g., Settlement Agreement, *United States v. City of Cleveland*, No. 1:15-CV-01046-SO, ¶ 58 (firearms) (N.D. Ohio June 12, 2015) [hereinafter Cleveland Settlement Agreement], <https://www.justice.gov/crt/case-document/file/908536/download>; Seattle P.D. Manual § 8.300, *supra* note 52.

¹⁰⁷ International Association of Chiefs of Police National Consensus Policy, *supra* note 43, at 4 (“Where feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use deadly force.”).

¹⁰⁸ Police. Exec. Res. Forum & Office of Cmty. Oriented Policing Servs., Electronic Control Weapon Guidelines 12 (2011) [hereinafter ECW Guidelines] (“ECWs should not be used in situations where alternative options, including other types of force or verbal de-escalation techniques, are more appropriate.”), https://www.policeforum.org/assets/docs/Free_Online_Documents/Use_of_Force/electronic%20control%20weapon%20guidelines%202011.pdf; Seattle P.D. Manual § 8.300, *supra* note 52; Settlement Agreement, *United States v. City of Portland*, No. 3:12-CV-02265-SI, ¶ 68 (D. Or. 2012), <https://www.portlandoregon.gov/police/article/506328>.

¹⁰⁹ See International Association of Chiefs of Police National Consensus Policy, *supra* note 43, at 4 (“Where feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use deadly force.”); Consent Decree, *United States v. City of Ferguson*, No. 4:16-CV-00180-CDP, ¶ 136, 152 (E.D. Mo. Mar. 17, 2016) [hereinafter Ferguson Consent Decree], available at <https://www.justice.gov/opa/file/833431/download>; ECW Guidelines, *supra* note 108, at 20 (Tasers); Seattle P.D. Manual § 8.300, *supra* note 52 (Tasers); Baltimore Consent Decree, *supra* note 104, at ¶ 155; Settlement Agreement, *United States v. City of Seattle*, No. 12-CV-1282, ¶ 84 (W.D. Wash. July 27, 2012) [hereinafter Seattle Settlement Agreement], <https://www.justice.gov/sites/default/files/usao-wdwa/legacy/2012/07/27/SPD%20Settlement%20Agreement.pdf>.

¹¹⁰ PERF Guiding Principles on Use of Force, *supra* note 9, at 21 (“Proportionality requires officers to consider if they are using only the level of force necessary to mitigate the threat, and whether there is another, less injurious option available that will safely and effectively achieve the same objective.”); see also Chicago Findings Report, *supra* note 72, at 151 (Tasers); Seattle P.D. Manual § 8.300, *supra* note 52 (Tasers).

¹¹¹ See, e.g., Seattle P.D. Manual § 8.300, *supra* note 52; Mark G. Peters & Philip K. Eure, N.Y.C. Dep’t of Investigation, Off. of the

Inspector Gen. for the NYPD, Police Use of Force in New York City: Findings and Recommendations on NYPD’s Policies and Practices, A app. Proc. No. 212-95, at 1 (2013), http://www.nyc.gov/html/oignypd/assets/downloads/pdf/oig_nypd_use_of_force_report_-_oct_1_2015.pdf (stating that “pepper spray may be used when a member reasonably believes it is necessary to effect an arrest of a resisting suspect, for self-defense or defense of another from unlawful force, or to take a resisting emotionally disturbed person into custody.”); Baltimore Consent Decree, *supra* note 104, at ¶ 154 (pepper spray).

¹¹² Ferguson Consent Decree, *supra* note 109, at ¶¶ 141 (firearms), 148 (batons), 151 (pepper spray); ECW Guidelines, *supra* note 108, at 20 (more than one standard-cycle Taser). Seattle P.D. Manual § 8.300, *supra* note 52 (batons); Seattle Settlement Agreement, *supra* note 109, at ¶ 84 (pepper spray).

¹¹³ Brandon Garrett & Seth Stoughton, A Tactical Fourth Amendment, 103 VA. L. Rev. 211, 278 (2017).

¹¹⁴ Office of Cmty. Oriented Policing Servs., U.S. Dep’t of Justice, Officer-Involved Shootings: A Guide for Law Enforcement Leaders 1, 7 (2016), https://www.theiacp.org/sites/default/files/2018-08/e051602754_Officer_Involved_v8.pdf.

¹¹⁵ U.S. Dep’t of Justice, Civ. Rights Div., Investigation of the Puerto Rico Police Department 35 (2011) [hereinafter Puerto Rico Findings Report], https://www.justice.gov/sites/default/files/crt/legacy/2011/09/08/prpd_letter.pdf.

¹¹⁶ See *Robinson v. Solano Cty.*, 278 F.3d 1007, 1013 (9th Cir. 2002) (concluding that police conducted a seizure when they pointed a gun at and handcuffed a suspect); *Couden v. Duffy*, 446 F.3d 483, 493, 496–98 (3d Cir. 2006) (concluding that police were not entitled to qualified immunity when they pointed gun at plaintiff in excessive use of force that constituted an unconstitutional seizure); *Jacobs v. City of Chicago*, 215 F.3d 758, 774 (7th Cir. 2000) (asserting that the law was “established that holding the gun to a person’s head and threatening to pull the trigger is a use of deadly force” and declining to extend qualified immunity to officers who committed such actions); *Baker v. Monroe Twp.*, 50 F.3d 1186, 1193 (3d Cir.1995) (finding officers liable for excessive force when they pointed guns at and handcuffed family members without sufficient justification); *McDonald by McDonald v. Haskins*, 966 F.2d 292, 294–95 (7th Cir. 1992) (finding that police were not entitled to qualified immunity in claim alleging unconstitutional seizure and excessive use of force after officer pointed a gun at the head of a 9-year-old boy who did not pose a danger or risk of flight); see also Seattle P.D. Manual § 8.300, *supra* note 52 (“Pointing a Firearm at a Person is Type I Reportable Force”); New Orleans Policy Manual, *supra* note 39, at 98 (use of force includes pointing a firearm at a person).

¹¹⁷ Puerto Rico Findings Report, *supra* note 115, at 88; Cleveland Settlement Agreement, *supra* note 106, at ¶ 55; Ferguson Consent Decree, *supra* note 109, at ¶ 82.

¹¹⁸ See, e.g., PERF Guiding Principles on Use of Force, *supra* note 9, at 67.

¹¹⁹ See Liza Lucas, Changing the Way Police Respond to

Mental Illness, CNN (Sept. 28, 2016) (“Traditional training teaches police to control situations by demanding compliance, and the unpredictable nature of a person with a psychiatric condition can be misinterpreted as a threat and quickly escalate to violence. CIT training is meant to prevent that.”), <http://www.cnn.com/2015/07/06/health/police-mental-health-training/index.html>.

¹²⁰ See, e.g., Seattle P.D. Manual § 8.300, *supra* note 52 (requiring police to “document all incidents where they point a firearm at a person”); PERF Guiding Principles on Use of Force, *supra* note 9, at 48; see also Ferguson Consent Decree, *supra* note 109, at ¶ 173.

¹²¹ See, e.g., Carmen Best, Chief of Police, Seattle Police Dep’t Manual, § 8.400 – Use of Force Reporting and Investigation, Seattle.gov (Sept. 1, 2015) [hereinafter Seattle P.D. Manual § 8.400], <https://www.seattle.gov/police-manual/title-8---use-of-force/8400---use-of-force-reporting-and-investigation>; Denver Police Dep’t, *supra* note 56, at 105-16; U.S. Comm’n on Civil Civ. Rights, Who Is Guarding the Guardians: A Report on Police Practices: A Report 156 (1981), <https://babel.hathitrust.org/cgi/pt?id=uc1.32106015219253;view=1up;seq=172>.

¹²² PERF Guiding Principles on Use of Force, *supra* note 9, at 50-51; Seattle P.D. Manual § 8.300, *supra* note 52; Ferguson Consent Decree, *supra* note 109, at ¶ 143.

¹²³ See, e.g., Ferguson Consent Decree, *supra* note 109, at ¶ 143.

¹²⁴ PERF Guiding Principles on Use of Force, *supra* note 9, at 44; Denver Police Dep’t, *supra* note 56, at 105-20; Agreement for Effective and Constitutional Policing, United States v. Town of East Haven & East Haven Bd. of Police Comm’rs, No. 3:12-CV-01652-AWT, ¶ 84 (D. Conn. Dec. 21, 2012), <https://www.clearinghouse.net/chDocs/public/PN-CT-0001-0004.pdf>.

¹²⁵ Nat’l Inst. of Justice, U.S. Dep’t of Justice, Police Use of Force, Tasers and Other Less-Lethal Weapons 1 (2011) [hereinafter Nat’l Inst. of Justice, Tasers] (reporting that as of 2011, more than 15,000 law enforcement agencies used Tasers), <https://www.ncjrs.gov/pdffiles1/nij/232215.pdf>; New Orleans CEW, *supra* note 104, at 1.

¹²⁶ Nat’l Inst. of Justice, Tasers, *supra* note 125, at 2.

¹²⁷ See Seattle P.D. Manual § 8.300, *supra* note 52.

¹²⁸ Nat’l Inst. of Justice, Tasers, *supra* note 125, at 2.

¹²⁹ Nat’l Inst. of Justice, Tasers, *supra* note 125, at ii; see also

Bruce Taylor et al., Comparing Safety Outcomes in Police Use-of-Force Cases for Law Enforcement Agencies That Have Deployed Conducted Energy Devices and a Matched Comparison Group That Have Not 1, 12-13, 66-68 (2009) (finding that rates of suspect and officer injuries were lower among agencies using Tasers than among agencies using more traditional methods of force), http://www.policeforum.org/assets/docs/Free_Online_Documents/Use_of_Force/conducted%20energy%20devices%20matched%20agency%20study%202009.pdf; 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, 2269, 2272-73 (2009) (concluding that the rates of injury to members of the public and officers were lower when police used conductive energy devices like Tasers than when they inflicted physical force via punches, kicks, high-impact weapons, and other more traditional methods), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2775771/pdf/2268.pdf>.

¹³⁰ See, e.g., Dan Hinkel & Jennifer Smith Richards, Chicago Cops Get More Tasers, but Red Flags Remain, Chicago Trib. (Aug. 28, 2017), <https://www.chicagotribune.com/news/local/breaking/ct-chicago-police-tasers-met-20170825-story.html>.

¹³¹ N.Y. Civ. Liberties Union, Taking Tasers Seriously: The Need for Better Regulation of Stun Guns in New York 2 (2011), https://www.nyclu.org/sites/default/files/publications/nyclu_TaserFinal.pdf.

¹³² Bocar Ba & Jeffrey Grogger, The Introduction of Tasers and Police Use of Force: Evidence from the Chicago Police Department, Nat’l Bureau of Econ. Res. (2018), <https://www.nber.org/papers/w24202>.

¹³³ ECW Guidelines, *supra* note 108, at 11; see also PERF Guiding Principles on Use of Force, *supra* note 9, at 67.

¹³⁴ See, e.g., ECW Guidelines, *supra* note 108, at 22.

¹³⁵ See, e.g., ECW Guidelines, *supra* note 108, at 17; New Orleans CEW, *supra* note 104, at 4; Ferguson Consent Decree, *supra* note 109, ¶ 146.

¹³⁶ ECW Guidelines, *supra* note 108, at 20.

¹³⁷ ECW Guidelines, *supra* note 108, at 20; see also Cleveland Settlement Agreement, *supra* note 106, at ¶ 62.

¹³⁸ See, e.g., ECW Guidelines, *supra* note 108, at 14; Seattle P.D. Manual § 8.300, *supra* note 52.

¹³⁹ See, e.g., ECW Guidelines, *supra* note 108, at 20; Seattle P.D. Manual § 8.300, *supra* note 52.

¹⁴⁰ See, e.g., ECW Guidelines, *supra* note 108, at 20.

¹⁴¹ See, e.g., ECW Guidelines, *supra* note 108, at 18 (“multiple applications or continuous cycling of an ECW resulting in an exposure longer than 15 seconds (whether continuous or cumulative) may increase the risk of serious injury or death and should be avoided”).

¹⁴² See, e.g., Seattle P.D. Manual § 8.300, *supra* note 52; Cleveland Settlement Agreement, *supra* note 106, at ¶ 64.

¹⁴³ ECW Guidelines, *supra* note 108, at 14.

¹⁴⁴ ECW Guidelines, *supra* note 108, at 14; see also New

Orleans CEW, *supra* note 104, at 1; Ferguson Consent Decree, *supra* note 109, at ¶ 146; Baltimore Consent Decree, *supra* note 104, at ¶ 146.

¹⁴⁵ See New Orleans Police Dep't, Operations Manual: Control Devices and Techniques 4 (2018), <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-1-2-Control-Devices-and-Techniques-EFFECTIVE-4-01-18.pdf>.

¹⁴⁶ See U.S. Dep't of Justice, Civ. Rights Div., Investigation of the New Orleans Police Department 1 (2011) [hereinafter New Orleans Finding Report], https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/hopd_report.pdf.

¹⁴⁷ Seattle P.D. Manual § 8.300, *supra* note 52 (noting that batons can deliver lethal blows, and explicitly prohibiting strikes to the head unless deadly force is justified).

¹⁴⁸ See, e.g., Seattle P.D. Manual § 8.300, *supra* note 52; Denise Rodriguez et al., Office of Cmty. Oriented Policing Servs., U.S. Dep't of Justice, Collaborative Reform Initiative: Assessment Report on Fayetteville Police Department 30 (2015) (recommending that the Fayetteville Police Department reconcile inconsistent guidance on the use of flashlights as impact weapons by stating "that while a flashlight can be used as an impact weapon, it should not be 'used to strike any person in the head, spine, neck, kidney[,] or groin unless circumstances justify the use of deadly force'"), <https://ric-zai-inc.com/Publications/cops-w0790-pub.pdf>.

¹⁴⁹ Baltimore Consent Decree, *supra* note 104, at ¶ 152; see also Richard Winton, How the Rodney King Beating 'Banished' the Baton from the LAPD, L.A. Times (Mar. 2, 2016), <https://www.latimes.com/local/california/la-me-rodney-king-baton-20160303-story.html>.

¹⁵⁰ PERF Guiding Principles on Use of Force, *supra* note 9, at 66-67.

¹⁵¹ PERF Guiding Principles on Use of Force, *supra* note 9, at 66-67.

¹⁵² See Baltimore Consent Decree, *supra* note 104, at ¶ 154; Ferguson Consent Decree, *supra* note 109, at ¶

¹⁵³ See Seattle P.D. Manual § 8.300, *supra* note 52; Baltimore Consent Decree, *supra* note 104, at ¶ 157.

¹⁵⁴ R. Paul McCauley et al., The Police Canine Bite: Force, Injury, and Liability 27, Ctr. for Res. in Criminology (2008), <http://www.iup.edu/criminology/research/policek9/>.

¹⁵⁵ New Orleans Finding Report, *supra* note 146, at 7.

¹⁵⁶ The Times-Picayune, NOPD Suspends Use of Dogs to Catch Suspects, NOLA.com (Oct. 10, 2010), https://www.nola.com/crime/index.ssf/2010/10/hopd_suspends_use_of_dogs_to_c.html.

¹⁵⁷ Mara H. Gottfried, St. Paul Police Tighten Policy After 2 High-Profile K-9 Bites, Twin Cities Pioneer Press (June 1, 2018), <https://www.twincities.com/2018/06/01/st-paul-police-tighten-policy-after-2-high-profile-k-9-bites-they-say-reviews-are-always-underway/>.

¹⁵⁸ St. Paul Police Dep't, 462.00 Canine Unit (K-9 Team) 1-2

(2018), https://www.stpaul.gov/sites/default/files/Media%20Root/Police/462.00%20Canine%20Unit%20%28K-9%29_redacted%205%2022%20%202018.pdf.

¹⁵⁹ N.J. Office of the Att'y Gen., *supra* note 105.

¹⁶⁰ N.J. Office of the Att'y Gen., *supra* note 105, at 6-8.

¹⁶¹ U.S. Dep't of Just., Examples of Promising Police Practices and Policies (2001), <https://www.ncjrs.gov/pdffiles1/ojp/186189.pdf>

¹⁶² U.S. Dep't of Justice, Civ. Rights Div., Investigation of the Ferguson Police Department 93 (2015), available at <https://www.courts.mo.gov/file.jsp?id=95274> [hereinafter Ferguson Findings Report]; Amended and Restated New Orleans Consent Decree, *supra* note 105, at ¶ 41; Ferguson Consent Decree, *supra* note 109, at ¶ 160 (requiring "verbal supervisory approval" before any canine deployment).

¹⁶³ Seattle P.D. Manual § 8.300, *supra* note 52 (requiring "canine officers to have approval from an immediate supervisor before the canine can be deployed off-leash").

¹⁶⁴ New Orleans Police Dep't, Canine, *supra* note 105, at 1; see also St. Paul Police Dep't, *supra* note 158, at 2.

¹⁶⁵ Ferguson Consent Decree, *supra* note 109, at ¶ 159; Amended and Restated New Orleans Consent Decree, *supra* note 105, at ¶ 40.

¹⁶⁶ Amended and Restated New Orleans Consent Decree, *supra* note 105, at ¶ 39; Seattle P.D. Manual § 8.300, *supra* note 52 (requiring canines to be leashed except under limited circumstances, including searches for armed suspects or those wanted for serious or violent crimes, or when a clear risk of death or serious physical injury to an officer or member of the public exists); Ferguson Consent Decree, *supra* note 109, at ¶ 163.

¹⁶⁷ New Orleans Police Dep't, Canine, *supra* note 105, at 5.

¹⁶⁸ Ferguson Consent Decree, *supra* note 109, at ¶ 165; Amended and Restated New Orleans Consent Decree, *supra* note 105, at ¶ 44.

¹⁶⁹ See, e.g., St. Paul Police Dep't, *supra* note 158, at 2.

¹⁷⁰ N.J. Office of the Att'y Gen., *supra* note 105, at 19.

¹⁷¹ Ferguson Findings Report, *supra* note 162, at 94; Amended and Restated New Orleans Consent Decree, *supra* note 105, at ¶¶ 46-47; Settlement Agreement, United States v. City of Albuquerque, No. 1:14-CV-01025-RB-SMV, ¶¶ 102-03 (D.N.M. Nov. 14, 2014) [hereinafter Albuquerque Settlement Agreement], https://www.justice.gov/sites/default/files/crt/legacy/2014/12/19/apd_settlement_11-14-14.pdf.

¹⁷² See, e.g., Blake Norton et al., Office of Cmty. Oriented Policing Servs., U.S. Dep't of Justice, Collaborative Reform Initiative: An Assessment of the St. Louis County Police Department 56 (2015), <https://ric-zai-inc.com/Publications/cops-p316-pub.pdf>; Puerto Rico Findings Report, *supra* note 115, at 90; Seattle P.D. Manual § 8.300, *supra* note 52; Ferguson Consent Decree, *supra* note 108, at ¶ 167; Albuquerque Settlement Agreement, *supra* note 171, at ¶ 39.

¹⁷³ New Orleans Police Dep't, Canine, *supra* note 105, at 4.

¹⁷⁴ See, e.g., Seattle P.D. Manual § 8.300, *supra* note 52; Ferguson Consent Decree, *supra* note 108, at ¶ 163; 21st Century Task Force, *supra* note 36, at 4-5; Amended and Restated New Orleans Consent Decree, *supra* note 105, at ¶ 43.

¹⁷⁵ See, e.g., Ferguson Consent Decree, *supra* note 108, at ¶¶ 164, 166; Cf. Seattle P.D. Manual § 8.300, *supra* note 52 (“In the case of known or suspected juvenile suspects, special consideration should be given to the suspect’s age and propensity for violence, and officers shall explore alternatives to the deployment of a canine”); New Orleans Police Dep’t, Canine, *supra* note 104.

¹⁷⁶ Ferguson Findings Report, *supra* note 161, at 32 (citing *Kuha v. City of Minnetonka*, 365 F.3d 590, 598 (8th Cir. 2004), abrogated on other grounds by *Szabla v. City of Brooklyn Park, Minn.*, 486 F.3d 385, 391 (8th Cir. 2007) (en banc) (holding that “a jury could find it objectively unreasonable to use a police dog trained in the bite and hold method without first giving the suspect a warning and opportunity for peaceful surrender”) (emphasis added)).

¹⁷⁷ Santa Ana Police Dep’t, Use of Force Policy No. 300, § 300.3.2(e) (2015), <https://www.santa-ana.360-biz.com/sites/default/files/Documents/Policy300.pdf>.

¹⁷⁸ Las Vegas Metro Use of Force Policy, *supra* note 19, at 4.

¹⁷⁹ See generally Office of Cmty. Oriented Policing Servs. & Vera Inst. of Just., *Police Perspectives: How to Serve Diverse Communities 1-2* (2016), https://storage.googleapis.com/vera-web-assets/downloads/Publications/police-perspectives-guidebook-series-building-trust-in-a-diverse-nation/legacy_downloads/police-perspectives-guide-series-building-trust-diverse-nation-diverse-communities_1.pdf.

¹⁸⁰ Baltimore Consent Decree, *supra* note 104, at ¶ 131.

¹⁸¹ See *Jones v. City of Hartford*, 285 F. Supp. 2d 174, 182 (D. Conn. 2003) (“Police officers ‘have an affirmative duty to intercede on the behalf of a citizen whose constitutional rights are being violated in their presence by other officers.’” (citing *O’Neill v. Krzeminski*, 839 F.2d 9, 11 (2d Cir. 1988))).

¹⁸² Rich Morin et al., Pew Res. Ctr., *Behind the Badge: Amid Protests and Calls for Reform, How Police View Their Jobs, Key Issues and Recent Fatal Encounters Between Blacks and Police 13* (2017), http://assets.pewresearch.org/wp-content/uploads/sites/3/2017/01/06171402/Police-Report_FINAL_web.pdf.

¹⁸³ Campaign Zero, *Police Use of Force Policy Analysis 8* (2016), <https://static1.squarespace.com/static/56996151cbced68b170389f4t/57e1b5cc2994ca4ac1d97700/1474409936835/Police+Use+of+Force+Report.pdf>.

¹⁸⁴ PERF Guiding Principles on Use of Force, *supra* note 9, at 41; see also Ferguson Consent Decree, *supra* note 109, at ¶ 128; Baltimore Consent Decree, *supra* note 104, at ¶ 141.

¹⁸⁵ See, e.g., Las Vegas Metro Use of Force Policy, *supra* note

19, at 6; Anaheim Police Dep’t, Anaheim PD Policy Manual, Use of Force Policy 300, at § 300.2.1 (2017), <https://www.anaheim.net/DocumentCenter/View/18938/Policy-300--Use-of-Force>; Corpus Christi Police Dep’t, Policy Manual: Use of Force Policy 200, at § 200.2.1 (2014), <https://static1.squarespace.com/static/56996151cbced68b170389f4t/569ad5383b0be35eb45271e0/1452987707478/Corpus+Christi+Use+of+Force+Policy.pdf>.

¹⁸⁶ See, e.g., Campaign Zero, *supra* note 183, at 10; Phoenix Police Dep’t, Operations Order 1.5 — Use of Force, at § 3.C (2018), https://www.phoenix.gov/policesite/Documents/operations_orders.pdf (“All sworn employees will intervene, if a reasonable opportunity exists, when they know or should know another employee is using unreasonable force.”); Ferguson Consent Decree, *supra* note 109, at ¶¶ 128, 131.

¹⁸⁷ New Orleans Use of Force Policy, *supra* note 19, at 10.

¹⁸⁸ See, e.g., PERF Guiding Principles on Use of Force, *supra* note 9, at 36; Consent Decree, *United States v. City of Newark*, No. 2:16-CV-01731-MCA-MAH, ¶¶ 67, 69 (D.N.J. 2016), <https://www.justice.gov/crt/file/868131/download> [hereinafter Newark Consent Decree].

¹⁸⁹ New Orleans Use of Force Policy, *supra* note 19, at 6.

¹⁹⁰ President’s Task Force Report, *supra* note 36, at 66, 97 (recommending that Congress authorize funding for emergency first-aid kits); see also Balt. Police Dep’t, Policy 811: Individual First Aid Kit (IFAK), <https://www.powerdms.com/public/BALTIMOREEMD/documents/353296>.

¹⁹¹ President’s Task Force Report, *supra* note 36, at 66.

¹⁹² See PERF Guiding Principles on Use of Force, *supra* note 9, at 9.

¹⁹³ *Id.*

¹⁹⁴ Ferguson Consent Decree, *supra* note 109, at ¶¶ 52-53, 310, 312.

¹⁹⁵ *Id.* at ¶¶ 66, 307, 310.

¹⁹⁶ See Seth Stoughton, *How Police Training Contributes to Avoidable Deaths*, *The Atlantic* (Dec. 12, 2014) (pointing out that although officers are frequently well trained, they lack training on “unconscious racial biases” and that “training should also emphasize de-escalation and flexible tactics in a way that minimizes the need to rely on force, particularly lethal force.”), <https://www.theatlantic.com/national/archive/2014/12/police-gun-shooting-training-ferguson/383681/>; Garrett & Stoughton, *supra* note 113, at 273-78 (discussing appropriate training on use of force).

¹⁹⁷ Albuquerque Settlement Agreement, *supra* note 171, at ¶¶ 86-88; Baltimore Consent Decree, *supra* note 104, at ¶¶ 166, 168; Ferguson Consent Decree, *supra* note 109, at ¶ 130; Consent Decree, *United States v. City of Los Angeles*, No. 2:00-CV-11769-GAF-RC, ¶ 55 (C.D. Calif. June 15, 2001), <https://www.justice.gov/crt/file/826956/download>.

¹⁹⁸ See Sinyangwe, *supra* note 12, at 2-3 (finding that a

policy requiring officers to report both uses of force and threats/ attempted uses of force led to a 25 percent reduction in the number of police-involved killings per population); Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 *Geo. Wash. L. Rev.* 453, 529–30 (2004); Kami Chavis Simmons, *New Governance and the “New Paradigm” of Police Accountability: A Democratic Approach to Police Reform*, 59 *Cath. U. L. Rev.* 373, 395–98 (2010); *see also* Data, Information, and Video Footage, *supra* Chapter 8.

¹⁹⁹ *See, e.g.*, New Orleans Use of Force Policy, *supra* note 19, at 3–4 (describing hand controls and escort techniques as non-reportable uses of force).

²⁰⁰ *See, e.g.*, Seattle P.D. Manual § 8.400, *supra* note 121.

²⁰¹ Baltimore Consent Decree, *supra* note 104, at ¶ 173 (requiring a detailed narrative that includes a specific description of the acts that led to the use of force and the force options that were available to the officers).

²⁰² Ferguson Consent Decree, *supra* note 109, at ¶ 177; Baltimore Consent Decree, *supra* note 104, at ¶ 138.

²⁰³ *See* Ferguson Consent Decree, *supra* note 109, at ¶ 180, 183; Amended and Restated New Orleans Consent Decree, *supra* note 105, at ¶ 84.

²⁰⁴ *See* Amended and Restated New Orleans Consent Decree, *supra* note 105, at ¶ 83.

²⁰⁵ New Orleans Police Dep’t, Operations Manual: Reporting Use Of Force, 4 (2015, revised 2018), <https://nola.gov/getattachment/NOPD/Policies/Chapter-1-3-6-Reporting-Use-of-Force-EFFECTIVE-4-01-18.pdf/>.

²⁰⁶ *See, e.g.*, L.A. Police Dep’t, Vol. 1 Policies on the Use of Force, § 556.10 (“The reasonableness of an Officer’s use of deadly force includes consideration of the officer’s tactical conduct and decisions leading up to the use of deadly force.”), http://www.lapdonline.org/lapd_manual/volume_1.htm#556.

²⁰⁷ PERF Guiding Principles on Use of Force, *supra* note 9, at 37–38.

²⁰⁸ *Id.*

²⁰⁹ New Orleans Use of Force Policy, *supra* note 19, at 3 (Force Investigation Teams investigate all serious uses of force, all potentially criminal force, all uses of force by officers above the rank of sergeant, and all in-custody deaths); *see also* Las Vegas Metro Use of Force Policy, *supra* note 19, at 31–32 (listing different Force Investigation Team and Critical Incident Review Team responsibilities); Albuquerque Police Dep’t, Prof. Accountability Bureau, SOP 7-3, at § 7-3-5 (2016) (providing overview of the relationship between the Force Investigation Team and Critical Investigation Review Team), <http://documents.cabq.gov/police/standard-operating-procedures/7-03-force-investigation-team-fit.pdf>.

²¹⁰ New Orleans Use of Force Policy, *supra* note 19, at 3.

²¹¹ Samuel Walker, *Institutionalizing Police Accountability*

Reforms: The Problem of Making Police Reforms Endure, 32 *St. Louis U. Pub. L. Rev.* 57, 66–67 (2012) (pointing out that “[a] written policy (e.g., on less-than-lethal force), no matter how well crafted, is nothing more than a piece of paper and will have no meaningful impact on police conduct if it is not properly enforced through a reporting requirement, thorough investigations, and the imposition of appropriate discipline where it is warranted.”); Wesley G. Skogan, *Why Reforms Fail*, 18 *Policing & Soc’y* 23, 26–30 (2008), <https://www.tandfonline.com/doi/abs/10.1080/10439460701718534>; Michael D. White, *Controlling Police Decisions to Use Deadly Force: Reexamining the Importance of Administrative Policy*, 47 *Crime & Delinq.* 131, 146 (2001) (noting that “absent meaningful enforcement, administrative policies that purport to control officers’ discretion are mere homilies rather than guides to action”), <https://journals.sagepub.com/doi/pdf/10.1177/0011128701047001006>.

²¹² L.A. Police Dep’t, *Categorical Use of Force*, http://www.lapdonline.org/categorical_use_of_force (last visited Jan. 10, 2019).

²¹³ *See, e.g.*, Baltimore Consent Decree, *supra* note 104, at ¶¶ 212–15; Amended and Restated New Orleans Consent Decree *supra* note 105, at ¶¶ 67, 427–29 (requiring the New Orleans Police Department to conduct “audits of ECW deployment data” and “collect and maintain all data and records necessary to facilitate and ensure transparency and wide public access to information related to NOPD decision making and activities, as permitted by law.”); Newark Consent Decree, *supra* note 188, at ¶ 75 (mandating Newark police to “adopt a use of force reporting system”).

²¹⁴ *See* Simmons, *supra* note 198, at 395–98 (recommending that departments implement “early warning tracking systems” to collect and analyze data regarding use of force and to investigate incidents of use of force); David A. Harris, *How Accountability-Based Policing Can Reinforce — Or Replace — The Fourth Amendment Exclusionary Rule*, 7 *Ohio S.J. of Crim. Law* 149, 166–71 (2009) (discussing implementation of “early intervention systems” to identify officers’ behavioral patterns), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1411650; Philip M. Stinson, Sr. et al., *Police Integrity Lost: A Study of Law Enforcement Officers Arrested 1–2* (2016), <https://www.ncjrs.gov/pdffiles1/nij/grants/249850.pdf>; Rachel Moran, *In Police We Trust*, 62 *Vill. L. Rev.* 953, 996–97 (2017) (recommending the mandatory implementation of “early intervention systems”), <https://ssrn.com/abstract=2843769>.

²¹⁵ PERF Guiding Principles on Use of Force, *supra* note 9, at 52.

²¹⁶ *See* Las Vegas Metro Use of Force Policy, *supra* note 19, at 33; Interdepartmental Correspondence from Inspector Gen., L.A. Police Comm’n, to Honorable Bd. of Police Comm’rs, *Comparative Review of Selected Agency Policies, Investigations, and Training on the Use of Force: OIG Final Report 11* (Oct. 6, 2016) (“The LVMPD stands out among the selected agencies because, as soon as it is feasible, this agency posts a video statement about every incident on YouTube. Approximately 48 hours after an [officer-involved shooting] incident, the LVMPD releases the name, rank, tenure, and age of the involved officer. Then, following an internal briefing approximately 72 hours later, the Undersheriff conducts a comprehensive media briefing.”), http://www.lapdpolicecom.lacity.org/101116/BPC_16-0119A.pdf.

²¹⁷ *See, e.g.*, Seattle P.D. Manual § 8.000, *supra* note 15

(requiring officers to explain use of force actions “to subjects or members of the public” and including subsections that describe policies on use of force); New Orleans Use of Force Policy, *supra* note 19 at 4-6 (outlining policies on use of force); Las Vegas Metro Use of Force Policy, *supra* note 19 (describing policies on use of force).

²¹⁸ The idea that police policies should be subjected to traditional rulemaking procedures, including public dissemination, has been floated for a half century. See, e.g., Herman Goldstein, Police Policy Formulation: A Proposal for Improving Police Performance, 65 Mich. L. Rev. 1123, 1145-46 (1967), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2536598; see also Office of Cmty. Oriented Policing Servs., U.S. Dep’t of Justice, The State of Policing in the United States 46 (2016), <https://ric-zai-inc.com/Publications/cops-w0815-pub.pdf>.

²¹⁹ Eric. J. Miller, Challenging Police Discretion, 58 How. L.J. 521, 523, 525 (2015) (lamenting that “community members lack the ability to participate in — and especially, to challenge — police policy at the front-end during the equivalent of the drafting and comment process” and advocating a “more republican, inclusive form of public participation in law-enforcement decision-making” in order “to give local communities and disadvantaged individuals a more meaningful voice in evaluating and checking local police policy”); Kami Chavis Simmons, The Politics of Policing: Ensuring Stakeholder Collaboration in the Federal Reform of Local Law Enforcement Agencies, 98 J. Crim. L. & Crim’y 489, 494, 519-41 (2008), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7289&context=jclc>; see also Drew Diamond & Deirdre Mead Weiss, Office of Cmty. Oriented Policing Servs., U.S. Dep’t of Justice, Advancing Community Policing Through Community Governance: A Framework Document (2009), <https://www.masc.sc/SiteCollectionDocuments/Public%20Safety/advancing%20community%20policing.pdf>; Office of Cmty. Oriented Policing Servs., U.S. Dep’t of Justice, Community Policing Defined (2014), <https://cops.usdoj.gov/pdf/vets-to-cops/e030917193-cp-defined.pdf>; Int’l Ass’n of Chiefs of Police, IACP National Policy Summit on Community-Police Relations: Advancing a Culture of Cohesion and Community Trust 19-20 (2015), https://www.theiacp.org/sites/default/files/2018-09/CommunityPoliceRelationsSummitReport_web.pdf.



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