



INFORMATIONAL MEMORANDUM

TO: **Tukwila Community Oriented Policing Citizen Advisory Board**
FROM: **Bruce Linton, Chief of Police**
BY: **Bruce Linton, Chief of Police**
CC: **Mayor Ekberg**
DATE: **06/19/2020**

SUBJECT: **Tukwila Police Use-Of-Force Policy Review**

ISSUE

The #8CantWait police use-of-force reform proposal and campaign has been communicated and shared across the country at the speed of social media in the 21st century. Many agencies are scrambling to adopt significant changes to their use-of-force policies to meet the demands of their respective communities, while agencies with foresight have been making minor adjustments to fully address the rapidly evolving movement towards change. If you are an agency that embraced 21st Century Policing five years ago, you are way ahead in the race to effect change in the six pillars of 21st Century Policing.

Who initiated this doctrine and when did you begin working on it?

I intend to work in parallel with the Community Services and Safety Committee as I review and (when necessary) adjust the current Tukwila Use-of-Force Policies in consideration of the communicated reform proposals. A copy of the Tukwila Police Department Policy is attached absent the recent directive suspending the use of the Vascular Neck Restraint (VNR) except when an officer is faced with a deadly force situation.

Was the rethinking of using this technique in direct relation to the incident that happened nationally?

The Tukwila Police Department uses the Lexipol policy for the State of Washington. Lexipol provides fully developed, state-specific law enforcement policies researched and written by subject matter experts and vetted by attorneys. Policies are based on nationwide standards and are the leading content, policy and training platform for public safety and local government, enabling first responders and leaders to better protect their communities and reduce risk. (Policy Attached)

During the use-of-force policy review, I intend to review and consider recommendations from the 2017 National Consensus Policy and Discussion Paper on Use of Force. (Attached).

BACKGROUND

President Obama's Task Force on 21st Century Policing report features 6 pillars:

1. Building Trust & Legitimacy
2. Policy and Oversight
3. Technology & Social Media
4. Community Policing & Crime Reduction
5. Training & Education
6. Officer Wellness & Safety

Since 2016, The Tukwila Police Department have embraced this philosophy that essentially is foundational to today's discussion on police reform. If you look at the police department goals during the last three years of my tenure, you will notice a common theme where each year at least several pillars were representative of the goals selected.

Surveying the environment, anticipating change, and setting a course to navigate that change has been our strategic roadmap. As we examine our policies and practices, balanced against the #8CantWait police reform proposal, I can report that we are on the right path. I will not stop moving forward because I believe there is always room for improvement.

THE #8CantWait police reform proposal calls for:

1. The banning of chokeholds and strangleholds.
2. Required de-escalation using communication, distance, and eliminating the need to use force.
3. Required verbal warning before shooting at a civilian.

Why was this not a policy before?

4. Requirement to exhaust all other reasonable means before resorting to deadly force.

What are some examples of alternative means to deadly force?

5. Required intervention by officers to stop excessive use of force and required reporting of these incidents to a supervisor.
6. Banned shooting at moving vehicles, which can be a dangerous and ineffective tactic.

We have seen officers in other cities shoot at suspects through their patrol vehicle windshield, what is the policy for TPD?

7. Required use of force continuum that limits the types of force/weapons that can be used to respond to specific types of resistance.

What other weapons are you referring to? Is there a guide for officers on when to use certain weapons at their disposal?

8. Required comprehensive reporting when force is used against civilians.

An analysis grounded in the 21st Century pillars will show that The Tukwila Police Department Policies on the use-of-force are balanced and addresses each of the #8CantWait reform proposals.

ANALYSIS:

GUIDING PRINCIPLES OF THE TUKWILA USE-OF-FORCE POLICY:

As stated in our policy manual, the department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

The Tukwila Police Department use-of-force policy guidelines provide a basis for officers to make professional, moral, and legal decisions based on a reasonable standard set by the U.S. Supreme court.

The constitutional requirement for the use-of-force by an officer calls for an objective reasonableness standard. Proper and reasonable use of force is measured by the leading case on use of force which is the 1989 Supreme Court decision in *Graham v. Connor*. The Court held, "...that all claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other seizure of a free citizen should be analyzed under the Fourth Amendment and its objective reasonableness standard..." This standard is evaluated by a three-pronged test.

Officers are sworn to protect and uphold the Constitution, what steps are being taken to ensure officers protect the Constitutional rights of the citizenry when performing their duties serving the public? Is there training to make sure officers understand when they potentially could be in violation of the Constitution? Is there punishment to those who woefully violate the Constitution rights of citizens?

1. The severity of the crime at issue
2. Whether the suspect poses an immediate threat to the safety of the officers or others

3. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight

Other factors used to determine the reasonableness of force is listed in the Tukwila policy manual under 300.3.2.

The #8CantWait police reform proposals, along with other important topics are addressed in the following paragraphs:

USE-OF-FORCE CONTINUUMS:

The National Consensus Policy on Use of Force clearly communicate the pitfalls of use-of-force continuums beginning with the use of the term “continuum.” It is often interpreted to mean that an officer must begin at one end of a range of use-of-force options and then systematically work his or her way through the types of force that follow on the continuum, such as less-lethal force options, before finally resorting to deadly force. To maintain the safety of both the officer and others, an officer might need to transition from one point on the continuum to another, without considering the options in between in a linear order. For instance, when faced with a deadly threat, it is not prudent to expect an officer to first employ compliance techniques, followed by an electronic control weapon, and only then use his or her firearm. For this reason, the use of a continuum is strongly discouraged. Instead, force models are preferred that allow officers to choose a level of force that is based on legal principles, to include the option of immediately resorting to deadly force where reasonable and necessary. The Tukwila Police Department does not use or recommend a use-of-force continuum. The constitutional requirement for the use-of-force by an officer calls for an objective reasonableness standard.

Officers spend quite a bit of time training with their service weapon, if TPD wants to instill alternate forms of subduing suspects what is TPD stance on spending equal amounts of training that involves de-escalation and non-lethal weapons?

BODY-WORN CAMERAS:

The Tukwila Police Department led the way for the full implementation of the bodycam in 2017 after we partnered with Axon to complete a national pilot program which integrated in-car video, bodycams and taser deployments. We led the way in the state of WA with full implementation because it was important to the agency to maintain a level of transparency with our diverse community with the focus on building trust.

What happens when officers turn off their body cameras while in the presence of suspects? What's to ensure that apprehension of suspects and carrying out of their duties are captured on camera? Are searches of suspects and suspects property done while cameras are on?

USE-OF-FORCE TRACKING & STATISTICS:

We believe that after the bodycam implementation in 2017, we saw a 50% reduction in the use-of-force. Careful monitoring over the years provides for the basis of training and adjustment in our use-of-force practices. Monitoring begins with a review of each officer's use of force, first by the supervisor, then the command staff. Each use of force is logged into The Administrative Investigations Management (AIM) database where all

uses of force, complaints and Internal Investigations are completed and saved. The use of the database allows for easy retrieval of statistics and more importantly, there is an early warning/intervention component designed to alert command staff of an officer's use of force that meets a certain criterion set by the agency.

Can officers gain access to their body cam footage? If so, what's to ensure that inappropriate activities captured on cameras are not destroyed? Do officers have to log and document interactions with the public when they do so in an official capacity? Is there random review of camera footage by supervision to ensure officers are adhering to police policy?

DUTY TO INTERCEDE:

Tukwila Police policy states that, in addition to making the scene secure, officers present have a duty to intercede if they witness excessive force. If an officer believes another officer use or is using force that does not appear reasonable, they need to bring the situation to a safe resolution and report the use of force to a supervisor.

Officers may have problems or reservations reporting on fellow officers, how is the TPD going to address this issue?

CRISIS INTERVENTION TACTICS:

Officers should consider that taking no action or passively monitoring the situation may be the most reasonable response to a mental health crisis.

Once it is determined that a situation is a mental health crisis and immediate safety concerns have been addressed, responding members should be aware of the following considerations and should generally:

- Evaluate safety conditions.
- Introduce themselves and attempt to obtain the person's name.
- Be patient, polite, calm, courteous and avoid overreacting.
- Speak and move slowly and in a non-threatening manner.
- Moderate the level of direct eye contact.
- Remove distractions or disruptive people from the area.
- Demonstrate active listening skills (e.g., summarize the person's verbal communication).
- Provide for sufficient avenues of retreat or escape should the situation become volatile.

Responding officers generally should not:

- Use stances or tactics that can be interpreted as aggressive.
- Allow others to interrupt or engage the person.
- Corner a person who is not believed to be armed, violent or suicidal.
- Argue, speak with a raised voice, or use threats to obtain compliance.

The demands of Officers can be quite overwhelming when dealing with mental health crisis. Do officers have the ability to contact health care specialists to assist in resolving

issues with the public when needed? What's the policy on calling those resources in when needed?

FORCE DE-ESCALATION:

The agency has been forward leaning in force de-escalation. During the conversation regarding I-940, the legislative mandate for the de-escalation of force, we resourced and coordinated a mandatory de-escalation training taught by a National Leading Law Enforcement Consulting Firm.

Our goal during 2018 was to build trust and legitimacy through community engagement. As we moved forward in making great strides in our efforts to reduce uses-of-force within the Tukwila Police Department, we recognized that de-escalation training and tactics is an important line of effort in reducing use-of-force incidents.

After the Law Enforcement Training and Safety Act (LETSA) was passed, Tukwila Police Department registered three Scenario-Based Trainers to attend the first iteration of the Criminal Justice Training Commission (CJTC) Patrol Tactics Instructor Course geared to teach officers the tactics of integrating de-escalation training into the use-of-force curriculum. Our recently certified instructors are working on current programming and I expect the first 8-hour module will be approved by the CJTC and trained in the 3rd quarter of 2020. If this timeline is accomplished, I believe we will (again) lead the state in LETSA de-escalation training requirements. Clear language will be added to the policy directing de-escalation tactics as required by the state mandated LETSA.

What does the long-term training look like for officers getting supplemental training? Is there consideration with providing officers some type of compensation for this increased training? For example, if officers were designated for SWAT, they would receive an increase in pay. If officers can get a designation reflecting this training and were to be compensated, there may be more incentive to receive and maintain proficiency in this training.

LESS LETHAL FORCE:

Tukwila Less lethal force options range from impact weapons, launched chemical weapons, Oleoresin Capsicum (OC)/Pepper Spray, Kinetic Energy Projectiles/Weapons and Conducted Energy Weapons (Tasers) and use of impact weapons such as the baton or Kinetic Energy Weapons such as less lethal launched impact rounds.

This department is committed to reducing the potential for violent confrontations. Kinetic energy projectiles, when used properly, are less likely to result in death or serious physical injury and can be used to de-escalate a potentially deadly situation

Use of impact weapons, kinetic energy weapons, the Taser in the probe mode and the use of OC constitute a significant level of force that must be justified by a strong governmental interest that compels the employment of such force.

A verbal warning of the intended use of the device should precede its application unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other officers and individuals that the device is being deployed.

Officer's may use CED's in the following circumstances:

1. When a subject causes an immediate threat of harm to officers or others; or
2. When public safety interests dictate that a subject must be taken into custody, and the level of resistance presented by the subject is likely to cause injury to the officer or the subject if hands-on control tactics are used.

Mere flight from a pursuing officer without other known circumstances or factors, is not good cause for the use of the CED to apprehend an individual.

Training in the proper and ethical use of all less lethal force options is required prior to use.

We have witnessed in other cities officers using non-lethal weapons on the public in ways not intended by the manufacturer. Examples being firing rubber bullets at citizens head or directly into the body, what steps does TPD have to ensure that officers use these weapons as intended. Are commanders responsible for the actions of their officers?

VASCULAR NECK RESTRAINT:

A choke hold is the physical restriction of a person's airway which disrupts their breathing. A lateral vascular neck restraint (VNR) is not a choke hold; regardless, it is confused with the term "choke hold." A VNR is the temporary disruption of the blood flow to the brain by compression of the carotid arteries. It normally takes 4-10 seconds with proper application to render a person unconscious which allows for safe compliant handcuffing avoiding injury to the officer and arrestee. Regardless of the success of this safe technique, the negative response from the community regarding its use (often purported as a "choke hold") has made its use untenable.

I suspended the VNR pending a full review and potential adjustment in consideration of the concerns surrounding its use unless the officer's life is at risk. When trained and used properly, the VNR allows an officer to safely take a resistive/assaultive subject into custody without having to use other intermediate level force such as punches, baton strikes, Taser applications, or impact weapons, which are all less lethal options. VNR when professionally trained and applied by a skilled officer and regulated, will temporarily subdue the combative subject resulting in no injuries to officers and the arrestee.

Continued use of the VNR will be difficult if not impossible; however, I believe law enforcement will lose a viable de-escalation tool because of mis-information associated with improper and untrained use of the variant called the "choke hold" which resulted in the deaths of several subjects.

What sort of feedback are officers relaying back to their commanders regarding this policy change?

DEADLY FORCE APPLICATIONS:

The Tukwila Police policy states that deadly force is justified to protect oneself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.

An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.

Under the above circumstances, a verbal warning should precede the use of deadly force, where feasible.

What is TPD policy when deadly force is used, is there a review process, who is involved, is it just TPD staff or is there a civilian observer there as well?

SHOOTING AT OR FROM MOVING VEHICLES:

Shots fired at or from a moving vehicle are rarely effective. Tukwila Police use-of-force policy states that, Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

Officers should not shoot at any part of a vehicle to disable the vehicle.

TPD from this statement appears to be saying that when shooting at a vehicle, it is with the intent of killing the driver/suspect, is that accurate?

REPORTING THE USE OF FORCE:

Any use of force by a member of this department shall be documented promptly (by the end of shift, unless approved by a supervisor), completely and accurately in a case report and on a Use of Force Report form.

What is the process afterwards, is there an investigation?

APPLICATION OF HANDCUFFS:

Handcuffs, including temporary nylon or plastic cuffs, may be used only to restrain a person's hands to ensure officer safety. Although recommended for most arrest situations, handcuffing is discretionary and not an absolute requirement of the Department. Officers should consider handcuffing any person they reasonably believe warrants that degree of restraint. However, officers should not conclude that to avoid risk every person should be handcuffed regardless of the circumstances.

What is the policy on vehicle stops, officers in other cities routinely remove motorists from vehicles and place them in handcuffs, what is TPD's policy on vehicle stops? Is there de-escalation training regarding vehicle stops?

While conducting non-compliant handcuffing where a subject is face down on the ground, officers shall not place a knee on the subject's neck. A knee can be placed on the upper portion of the subject back while most of the officer's body weight is concentrated on the opposite knee resting on the ground. This technique avoids damage to the subject's neck caused by prolonged compression while it assists with stabilizing a non-compliant subject while speedily applying restraints. As soon as the restraints are applied, the subject should be assisted up and placed in a sitting position inside of a vehicle.

ANNUAL MANAGEMENT ANALYSIS OF THE USE OF FORCE:

The commander with oversight of the use-of-force training cadre shall compile and analyze the data from use-of-force reports. The intent of the analysis is to identify patterns or trends that could indicate training needs or policy modifications. A report of this analysis shall be prepared for Assistant Chief of Police.

What is the policy on officers with many uses of force complaints from citizenry? Is there a policy to ensure officers who don't meet the standards are removed from duty?

RENDERING MEDICAL AID:

Medical aid shall be obtained for any person who exhibits signs of physical stress, who has sustained a visible injury, or expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

RESPONSIBILITIES FOR IMMEDIATE MEDICAL CARE:

Whenever practicable, members should take appropriate steps to provide initial medical aid (e.g., first aid, CPR and use of an automated external defibrillator (AED)) in accordance with their training and current certification levels. This should be done for those in need of immediate care and only when the member can safely do so.

Are officers trained in providing Medical Aid? Can officers on-scene refuse to provide aid?

RECOMMENDATION

What police need is support in the following areas.

1. Funding for cognitive/emotional intelligence training such as the Cognitive Command C2 training for officers. Cognitive training has scientifically proven that an officer's mental faculties are pragmatically more important than the weapons on her or his tool belt and it can improve an officer's control of self, others, and the environment during a critical situation to improve officer/citizen safety.

2. Funding the integration of Mental Health Professionals in our patrol function to respond to persons in crisis who are suffering from Mental Illnesses with the intent to unburden the police as opposed to defunding the police.
3. Funding to support the integration of the legislative mandated training because of LETSA. LETSA calls for 24 additional hours of training in scenario-based de-escalation training and 16 hours of implicit bias, Crisis Intervention, and other training such as Cognitive Command Training.

There is generally a negative stigma from officers and their colleagues when asking for help in relation to mental counseling. Are there thoughts on making it mandatory that officers visit health care professionals periodically and passing an evaluation before resuming their duties?

We have seen officers in other cities cover their badge number while performing their duties. What is the policy regarding this? Officers generally have their name printed on their chest, is there a way to have their badge number embroidered on their uniform in the same fashion?

We have seen law enforcement in other cities in riot gear with no discernable identification. Can TPD consider making it mandatory for officers to affix a large printed patch that shows their name and has their badge number visible for the public? On their helmet as well?

What are the criteria for the use of tear gas? If used, who is held accountable for its use? Who makes the decision to use tear gas?

The need for additional training is paramount but also costs money. It is the opinion of some, that one well-trained officer can in most circumstances equal the value of two or more officers. Is the city making the resources available to TPD to be able to implement the additional training needed to make the department better?

Has the city investigated pay increases to officers in lieu of additional personnel?

Attachments:

Tukwila Police Department Policy Manual
The National Consensus Policy on Use of Force