

Independent
CITIZEN POLICE REVIEW BOARD

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Use of Force: Police

Less Lethal Force Options

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Use of Force: Police

This briefing intends to provide general information about forms of less-lethal and non-lethal force available. As a community organized under laws effecting public order, our common mission must be to keep everyone safe while maintaining public order.

Constitutional policing assures civil liberties but when challenged with aberrant or unlawful behavior, options designed to preserve the life of the officer as well as the offender will assure mutual accountability to the community.

The terms Non-Lethal and Less-Lethal present two distinct concepts and convey an overly-confident message of safety. Generally, the options characterized as less-lethal or non-lethal are less likely to inflict a fatal injury when compared to a bullet but there will always be a risk attendant to the application of physical, kinetic or electrical force to the human body.

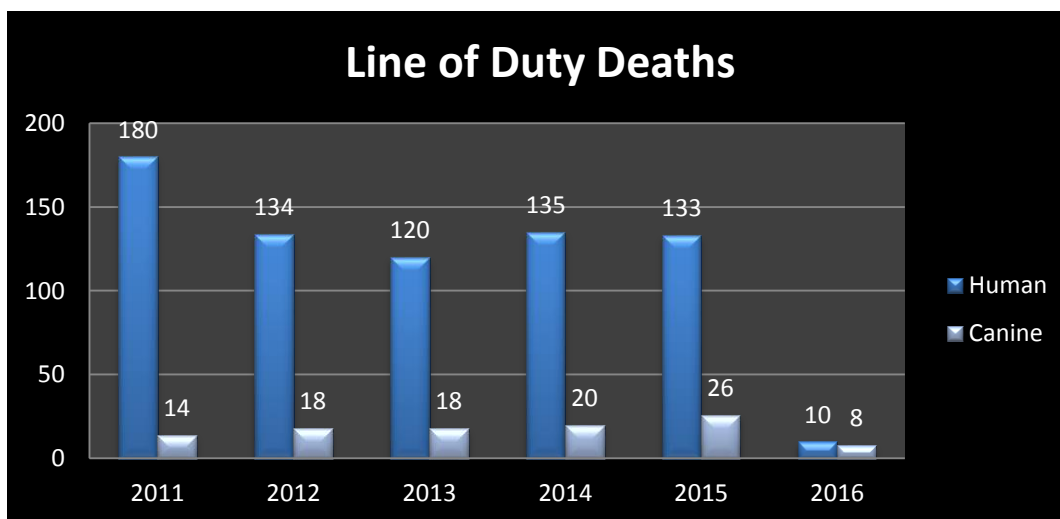
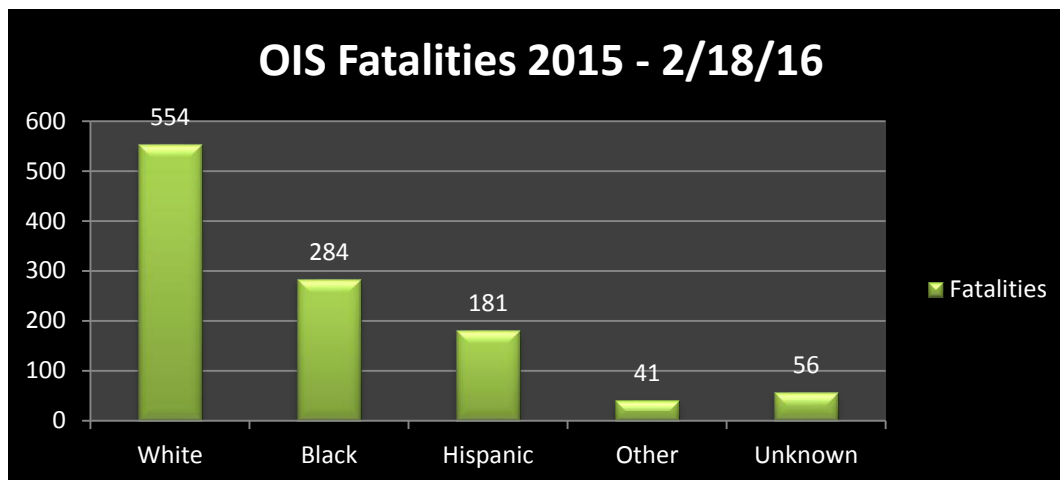
Any discussion about non-lethal, less-lethal and lethal force options must accept that:

1. force is permissible under certain circumstances, and
2. force is sometimes necessary to establish control of a situation.

It is certain that the decision to use force by police is situation-dependent and is often subjected to internal and external scrutiny. Every situation offers unique circumstances requiring an agile & well-informed analysis performed in a compressed time frame. Upon commencement of a civilian/officer encounter, the police officer assumes a reactionary role aspiring to gain compliance and control. The expected, and intended outcome, is termination of a threatening act achieved by the parties in the least restrictive and least harmful manner. Ultimately, this altruistic goal seeks to preserve life and restore public order. Failure to accomplish control within the expected outcome leads to controversy, criticism and prolonged scrutiny of both parties to the encounter.

The violence among civilians within our communities escalates the risk associated with domestic law enforcement as well as to public safety. It is a regrettable necessity to equip police with the ability to meet violence with force to gain compliance and control of a threatening situation.

According to a Washington Post project, 990 fatalities nationally resulted from officer-involved shootings in 2015. Through 2/18/16, 130 people have been killed by police. In 2015, 129 police officers were killed in the line of duty; 39 were killed by gunfire. Of the 10 line of duty deaths thus far in 2016, 8 died from gunfire.



On January 29, 2016 a meeting among 200 Chiefs of Police convened in Washington DC to discuss current issues in policing and to consider policy proposals offered by the Police Executive Research Forum (PERF). The gathering was themed “Taking Police to a Higher Standard”. It was the culmination of a year and a half of consciousness-raising by a discordant community fueled by the deaths of several individuals, many of whom were African Americans, during various police encounters. The core of the PERF proposal is to change the manner in which police use force and tactics toward an overall less lethal, less dangerous and more effective police strategy. The PERF proposal has generated controversial discussion as rank & file officers evaluate the potential impacts on officer safety and community relations. The PERF proposal is attached.

Origins of “Reasonableness”

Police tactics range from mere presence of a uniformed officer to the use of deadly force. The range is commiserate with the level of resistance or demonstrated threat presented by an individual. Reasonable force moves along that continuum until the danger is controlled or stopped.

In 1989 the US Supreme Court established the current standard by which force is to be judged:

“The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. Pp. 490 U. S. 396-397.”

In Pennsylvania, police are empowered to use force at 18 Pa.C.S.A. § 508:

§ 508. Use of force in law enforcement.

(a) Peace officer's use of force in making arrest.--

(1) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he believes to be necessary to effect the arrest and of any force which he believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using deadly force only when he believes that such force is necessary to prevent death or serious bodily injury to himself or such other person, or when he believes both that:

(i) such force is necessary to prevent the arrest from being defeated by resistance or escape; and

(ii) the person to be arrested has committed or attempted a forcible felony or is attempting to escape and possesses a deadly weapon, or otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay.

(2) A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which he would be justified in using if the warrant were valid, unless he knows that the warrant is invalid.

A careful read and interpretation of the language used in the USSC decision in *Graham v. O'Connor* and the Commonwealth law places justification at a limited subjective level. In *Graham*, the standard is as judged by a “reasonable officer”, not a reasonable person. The Commonwealth statute places the standard in the officer’s “belief”. With all of the public protests, debates and demands, the “reasonableness” standard remains within the context of law enforcement’s judgment, not within public opinion or general community values and tolerance. To dispute an officer’s use of force successfully, one would require another officer to testify that the force was unreasonable and/or that there was no reasonable basis to “believe” the threat of imminent harm existed.

Interest in less lethal force options exploded in the wake of the USSC finding in *Tennessee v. Garner*, 471 U.S. 1 (1985), that under the Fourth Amendment, when a law enforcement officer is pursuing a fleeing suspect, the officer may not use deadly force to prevent escape unless "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."

The Use-of-Force Continuum

The traditional “continuum of force” illustrates the escalation of force used commiserate with a person’s increased resistance to the officer’s attempt to obtain compliance and establish control.

Professional law enforcement agencies provide guidance to their officers on internal standards regarding the use of force. Such guidance typically narrates and/or illustrates a description of characteristics equated to escalating subject resistance and “reasonable” reactions by the engaged officer. The National Institute of Justice provides the following example of a use-of-force continuum:

- **Officer Presence — No force is used. Considered the best way to resolve a situation.**
 - The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
 - Officers' attitudes are professional and nonthreatening.
- **Verbalization — Force is not-physical.**
 - Officers issue calm, nonthreatening commands, such as "Let me see your identification and registration."

- Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."
- **Empty-Hand Control — Officers use bodily force to gain control of a situation.**
 - *Soft technique.* Officers use grabs, holds and joint locks to restrain an individual.
 - *Hard technique.* Officers use punches and kicks to restrain an individual.
- **Less-Lethal Methods — Officers use less-lethal technologies to gain control of a situation.**
(See [Deciding When and How to Use Less-Lethal Devices.](#))
 - *Blunt impact.* Officers may use a baton or projectile to immobilize a combative person.
 - *Chemical.* Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).
 - *Conducted Energy Devices (CEDs).* Officers may use CEDs to immobilize an individual. CEDs discharge a high-voltage, low-amperage jolt of electricity at a distance.
- **Lethal Force — Officers use lethal weapons to gain control of a situation. Should only be used if a suspect poses a serious threat to the officer or another individual.**
 - Officers use deadly weapons such as firearms to stop an individual's actions.

The most effective, safest and desirable tactic employed by anyone attempting to gain control of a dangerous situation is communication. For a police officer, communication in such situations will consist of de-escalation language, gestures and body language cues. When rudimentary communication fails, the officer will resort to increasing physical force to gain control and resolve the situation.

The presumed less restrictive and least harmful means of establishing control may not follow a tidy linear or pyramidal scale prescribing characteristics of a civilian/police encounter. Accordingly, the officer's judgment, informed by a quick but thorough assessment of the factors immediately influencing the situation, will determine the progressive use of force, the tactic(s) employed and the removal of the perceived threat. The concept of the "totality of the circumstances" recognizes that the finding of probable cause to take an action, make an arrest, conduct a search or otherwise exercise police power relies on several factors present at the moment and not just one factor or scenario.

It is generally accepted in police training that an officer confronted with resistance may escalate one step above the resistance demonstrated by the subject in his/her effort to gain compliance & control. While valuable as an introduction to the concept of force as a tool to gain compliance and control, the continuum method encourages one-dimensional thought development as opposed to development of analytical assessment and implementation of available options. Development of analytical skills and self-discipline expands the mental & perceptual dexterity of an officer and encourages a holistic approach to problem solving, risk and threat management. Training focused on the practical aspects of officer & civilian safety should be accompanied with an array of options for the officer to deploy during an encounter.

Another concept of disciplined situational awareness is the OODA Loop. The OODA Loop is a decision making cycle developed by USAF Colonel John Boyd for USAF pilots. It has been adopted in business models and is used as a training concept for strategic thinking in many disciplines. The cycle is simple: orient, observe, decide, act. The emphasis on orientation and observation is critical and in law enforcement may require “buying some time” when confronted with a threat. Some, however, perceive the use of cover or diversions to “buy some time” as infringing on the right, or duty, of police to not retreat. Sometimes stepping back and/or using cover is the soundest strategic decision and may avoid the use of lethal force to stop an impending threat.

The use of force by police must be “reasonable” to the circumstances and never punitive, sadistic or used as a torture tactic. Force deemed to be “excessive” is that use of force exceeding the minimal amount of force necessary to gain control of a situation. The challenge to modern law enforcement is to provide the tools necessary to minimize harm while maximizing the tactical goal of neutralizing an imminent threat, and everything in between.

Less lethal options

Less lethal options include tactics as well as implements. It is generally accepted that police officers do not have a duty to retreat when approaching or engaging a known or potentially dangerous situation. Tactical decisions should be predicated upon the observed situation, intelligence information and the tools readily available to the officer.

Force Techniques

In a civilian/police encounter, the first level of engagement and show of authority is the mere presence of a uniformed police officer. Symbolically the officer represents the law seeking to restore the order that is expected or provide the help that is needed. No physical force is applied.

If the officer cannot gain compliance and control because the civilian is voluntarily resisting, belligerent, defiant or otherwise uncooperative, the engagement will escalate to verbal commands and directions. It is possible that this level of engagement could rapidly escalate and more force will be needed, but the officer must assess the totality of the situation and proceed with the least amount of force necessary to gain compliance of the individual and control the situation.

When the tension cannot be reduced through verbal communication, the use of physical force may be necessary. Again, it depends on all of the circumstances. The usual progression of physical force at this point would be empty hand techniques which do not extend to the use of closed fist strikes, implements or weapons. The intent is to provide minimal hands-on guidance, restraint or takedowns.

Hard empty hands techniques elevate the level of force employed to overcome the resisting individual and may include punches, kicks, elbow and physical strikes. The use of OC Spray (pepper spray), canines and electronic control devices (ECD) such as TASER may be appropriate. These techniques are less likely to cause serious injury to a resisting individual. It is noted that some studies reported a significant decrease in injuries to civilians and officers when OC or ECDs were used and that frequency and severity of injuries increased to civilians when canines were deployed for apprehension.

If an individual continues to resist and makes deliberate efforts to defeat an arrest or carry out the continuing threat, chemical, conducted energy devices and/or impact weapons may be deployed. Impact weapons are implements capable of delivering kinetic force such as batons, less lethal munitions or other objects readily available to the officer.

Ultimately, deadly force will be used to stop a threat posing serious injury or death to the officer or another person. The concept of stopping the threat is not a simple one. When an officer discharges a firearm at a person threatening to seriously injure or kill the officer or another, the officer is attempting to incapacitate the ability of that individual to carry out the threat. There is a neurological processing delay between the brain and body before incapacitation occurs. The officer will use any force necessary until the person is unable to deliver the threat or the weapon is neutralized in some fashion until the threat no longer exists.

Contemporary community concerns involve the use of deadly force in situations that appear not to warrant such force. The desire to avoid inflicting fatal injuries in the name of peace or as a defensive protection has led to several options characterized as less-lethal. Among the common less lethal options used by police:

OC and CS spray: OC is a pepper based irritant and CS is a form of tear gas. Both irritate eyes, nose, mouth, throat and skin causing pain and burning. Both are pain compliance agents and some formulas combine the two.

Light: intense light beams can be used as a direct beam or as a strobe to disorient, distract and temporarily impair vision to allow the officer an advantage to gain control. Flashlights of 200 lumens or higher are compact and easily attached to a duty belt.

Conducted Electrical Devices: the most common CED is the TASER. An electrical current is discharged through two contacts affixed to the subject. The contacts can be used in drive mode (stationary) or as two barbs wired and launched up to about 21 feet. The device interrupts neuromuscular communication and temporarily incapacitates the subject allowing an officer to secure the subject. When TASER is deployed, a cover officer must be prepared to discharge deadly force if the situation escalates.

Blunt impact projectiles: form of kinetic force designed to deliver a beanbag or sock round with enough force to knock down the subject or knock a weapon from the subject's control. Current projectiles have been engineered to minimize the risk of penetration without compromising effectiveness. Most are launched from shotguns. There are blunt projectiles that have collapsible noses and may serve as a delivery system for CS or OC agents, gas, malodorants, marking liquids and powders.

Noise Flash Diversionary Device (NFDD): commonly known as flashbangs or stun grenades. These are explosive devices that produce an intense light flash that will blind a person for about five seconds with an extended residual "afterimage". The blast temporarily impairs hearing and disturbs the inner ear fluid resulting in imbalance. The NFDD can ignite flammable material in proximity to its detonation. NFDDs are a mainstay for SWAT operations.

Net Gun/Catch Net: A net gun is a non-lethal weapon designed to fire a net which entangles the target. Net guns have been used in animal research and rescue and have had limited use in US law enforcement. The Sheriff of Saginaw County Michigan has deployed a net gun. This is a less lethal device that could be used to stop a person including one armed with a knife.

Police Drones: equipped with less lethal weapons, such as TASERS, bean bags, pepper spray, sound cannon and rubber bullets. Authorized first in North Dakota in April 2015.

LRAD: Long Range Acoustic Device. Originally designed for communication at sea, the technology was adapted for domestic law enforcement and first deployed in the US during the 2009 G-20 Summit in Pittsburgh. The LRAD emits a high intensity sound accompanied by an acoustic wave that disorients those in front of the device. It is usually mounted atop a police armored vehicle. The LRAD also has a public address system useful for hailing subjects and dispersing crowds. Exposure to the sound can cause lasting hearing impairment.

Countering Edged Weapons

Since the '80s, the Tueller Rule or "21 foot rule" is the common standard to which police have been trained to manage confrontations with a person wielding an edged weapon. The "21 foot rule" was developed by police trainer Dennis Tueller of Salt Lake City. Essentially, a non-scientific experiment was conducted to examine time, distance and neutralization of a threat coming from a person with an edged weapon. Awareness of the threat, decision to react to the threat, react and outcome were measured and 21 feet was the limit of close proximity necessary for a defensive outcome to be effective. Recent studies and forensic efforts have been evaluating the validity of the "21 foot rule" but by far it remains the contemporary "unofficial" standard when dealing with a person posing a threat with an edged weapon. It is noted that the "21 foot rule" is not the sole justification for the use of deadly force nor does it justify shooting someone with a knife who is 50 feet away. A less lethal impact projectile with a range of 30-45 feet could be an effective alternative to deadly force delivered by a firearm.

Canines as a less-lethal force option

Dogs have been used to assist with public safety tasks since medieval days. The use of dogs to apprehend people remains a controversial issue. In the US, ethnic reticence stems from the historical use of dogs to track and apprehend slaves and control civil rights gatherings in the 1960s. Animal rights advocates and ethicists raise issues around the propriety of exposing dogs to high risk. The ethical questions arise from the absence of free-will, autonomy and self-determination of the dog as a living being placed in danger by another living being. The dilemma centers on the dog's utility to protect human life perhaps at the cost of its own life without its ability to consent to such self-sacrifice.

In 2014 Pennsylvania adopted “Rocco’s Law” which amended the state statutes by making it a second degree felony to willfully or maliciously torture, mutilate, injure, disable, poison or kill a police animal.

The US Federal Law Enforcement Animal Protection Act of 2000 extended penalties for harming a federal police animal. Anyone harming a police animal could be imprisoned for up to one year with a fine and if the harm is permanent or fatal, imprisonment can be up to 10 years. Prior to this Act, harm to a police animal was classified as “property damage”.

Police dog functions:

- Crowd control
- Search & Rescue dogs (tracking, locating)
- Detection (drugs, explosives, electronics)
- Arson dogs
- Cadaver dogs
- Suspect apprehension (bark & hold, bite & hold)

The attached report from the National Institute of Justice provides information on studies related to Less Lethal Force options, including the use of canines.

##

Attachments

Use of Force: Taking Policing to a Higher Standard

PERF, January 2016

Police Use of Force, Tasers and Other Less-Lethal Weapons

NIJ, Research, May 2011