



**METRO NASHVILLE
COMMUNITY OVERSIGHT**

*Policy Advisory Report on #8cantwait Use of Force
Policy Recommendations*

Issued by the Community Oversight Board on June 24, 2020

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Executive Summary

The organization Campaign Zero analyzes policing practices across the country and researches effective solutions to end police violence. They also develop model legislation to help end police violence nationwide and provide technical assistance to organizers leading police accountability campaigns.¹

The #8cantwait campaign includes eight policies that may be effective at decreasing police killings:

1. Ban choke holds and strangle holds
2. Require de-escalation
3. Require warning before shooting [Already Implemented]
4. Require officers to exhaust all alternatives before shooting [Already Implemented]
5. Duty to intervene [Implemented on June 11, 2020]
6. Ban shooting at moving vehicles
7. Require a use of force continuum [Already Implemented]
8. Require comprehensive reporting [Already Implemented]

Research from Campaign Zero shows that each of these policies is correlated with fewer police killings.² Additionally, most of these policies have broad support among national policing organizations and are implemented at many police departments across the nation. Many Nashville residents have reached out to Metro Council members and the Mayor's Office asking for the implementation of these policies.

In this policy advisory report, Metro Nashville Community Oversight (MNCO) reviews these policy recommendations and relevant policies in the Metro Nashville Police Department (MNPDP) Manual. In cases where the MNPDP Manual does not include the recommendations, nationwide best practices are reviewed, policy recommendations are issued, and example policy language is proposed.

On June 11th, 2020, MNPDP released two roll call training documents (see appendices) that included changes to MNPDP policy regarding choke holds and neck restraints as well as the duty to intervene that are based on the #8cantwait campaign policy recommendations. These MNPDP policy changes and the resulting COB recommendations are addressed in the relevant sections of this report.

¹ "Campaign Zero - Vision" (Campaign Zero, n.d.), <https://www.joincampaignzero.org/#vision>.

² Samuel Sinyangwe, "Examining the Role of Use of Force Policies in Ending Police Violence," *SSRN*, September 20, 2016, <https://dx.doi.org/10.2139/ssrn.2841872>; DeRay McKesson et al., "Police Use of Force Policy Analysis" (Campaign Zero, September 20, 2016), <http://useofforceproject.org/#review>.

According to the analysis by Campaign Zero, Nashville had three of the eight policies. Analysis from MNCO finds that four of the eight recommendations were already implemented by MNPB prior to the June 11th policy changes. Following the changes, five of the eight policies are fully implemented while three require revision to align them with nationally recognized best practices.

The Community Oversight Board makes the following recommendations regarding policy changes and provides example policies that can be adopted by the MNPB for the remaining four recommendations made by Campaign Zero:

Recommendation on #1. Ban choke holds and strangle holds: “The COB recommends that MNPB policy define “neck restraints” to include choke holds, carotid restraints, lateral vascular restraints, and holds with a knee or other object on the neck while an individual is prone.”

Recommendation on #2. Require de-escalation: “The COB recommends that de-escalation tactics be required before an officer uses force, be it non-deadly and/or deadly, and that failing to use reasonable de-escalation techniques when circumstances permit should make the officer subject to disciplinary action. Policy should state that physical force should only be used as a last resort. The MNPB Manual should also explicitly define common de-escalation tactics that are available to officers.”

Recommendation on #6. Ban shooting at moving vehicles: “The COB recommends that MNPB amend the policy prohibiting shooting of firearms at moving vehicles to specify that the only circumstance where shooting at vehicles is allowed is when an occupant of the vehicle is using deadly force, *other than the vehicle itself*, against the officer or another person. We recommend that shooting at moving vehicles be prohibited except for in the specified circumstances and that the disciplinary category for shooting at a moving vehicle is included.”

Introduction

The organization Campaign Zero analyzes policing practices across the country and researches effective solutions to end police violence. They also develop model legislation to help end police violence nationwide and provide technical assistance to organizers leading police accountability campaigns.³

The #8cantwait campaign includes eight policies that may be effective at decreasing police killings:

1. Ban choke holds and strangle holds
2. Require de-escalation
3. Require warning before shooting
4. Require officers to exhaust all alternatives before shooting
5. Duty to intervene
6. Ban shooting at moving vehicles
7. Require a use of force continuum
8. Require comprehensive reporting

Research from Campaign Zero shows that each of these policies is correlated with fewer police killings.⁴ Additionally, most of these policies have broad support among national policing organizations and are implemented at many police departments across the nation.

In this policy advisory report, Metro Nashville Community Oversight (MNCO) reviews these policy recommendations and relevant policies in the Metro Nashville Police Department (MNPD) Manual. In cases where the MNPD Manual does not include the recommendations, nationwide best practices are reviewed, and policy recommendations are issued.

#8cantwait: Nashville

According to the analysis by Campaign Zero, Nashville had three of the eight policies (Figure 1). Analysis from MNCO finds that four of the eight recommendations were already implemented by MNPD prior to the June 11th, 2020 policy changes. Following the changes, five of the eight policies are fully implemented while three require revision to align them with nationally recognized best practices.

Many Nashville residents have reached out to Metro Council members and the Mayor's office asking for the implementation of these policies.

³ "Campaign Zero - Vision."

⁴ Sinyangwe, "Examining the Role of Use of Force Policies in Ending Police Violence"; McKesson et al., "Police Use of Force Policy Analysis."

Figure 1: Graphic from #8cantwait campaign



On Friday, June 5, 2020, Deputy Chief Hagar responded to an inquiry from Council Member Withers asking about the eight policy recommendations and whether MNPDP policy already addresses these recommendations. His response stated:

As an internationally accredited law enforcement agency, who for 26 years has met rigorous standards of independent review and evaluation of policies and practices - to the Gold Standard of the accrediting body (CALEA), the MNPDP recognizes that the use of evidence informed standards and limitations on police use of force continue to demonstrate that they can significantly reduce the need to use of force. Similarly, the value of a process to ensure continuous review of use of force policy, training and reporting practices regarding use of force remains an essential element of not only maintaining compliance with standards, but also our goal to maintain community confidence in all that we do.

The strategies recommended by the #8cantwait are well received and are fully endorsed by the MNPDP. A review of the MNPDP Manual would indicate that these underlying elements of these principles are not new to the MNPDP. They are consistent with

the CALEA standards the MNPB continues to follow, the recommendations of industry leaders in law enforcement best practices, and advocacy groups.

The MNPB has for several years made its entire department manual online for public review at <https://www.nashville.gov/Police-Department/Department-Manual.aspx>

Within the Manual is the primary use of force policy. This policy is supplemented by basic and ongoing training. The guiding principles of the MNPB use of force policy state:

The Metropolitan Nashville Police Department recognizes and respects the value and special integrity of each human life. When investing police employees with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required.

It is the policy of the Metropolitan Nashville Police Department that authorized employees shall use only that force that is reasonably necessary to effect lawful objectives. Therefore, intentional misuse of the authority granted under this policy is grounds for disciplinary action up to and including those outlined in category A (meaning discipline up to and including termination of employment) of established policy for Discipline and Corrective Action.

A brief comparison of MNPB policy to the #8cantwait principles includes:

1. **Require De-escalation**

A basic, underlying, principle in the MNPB Policy Manual is (emphasis added):

*When the use of force is needed, if feasible, authorized employees will identify themselves and **determine which options in the force continuum will best de-escalate the situation in the most safe, reasonable, and prudent manner possible.***

As recent as January 2019 training for all officers, included:

Officers should attempt to use non-confrontational verbal skills, empathy and/or active listening to stabilize a person in crisis or when confronted with a situation where control is required to effect an arrest or protect the public's safety. The suspect should be allowed to comply before force is used unless this causes unnecessary danger to the officer or others.

De-escalation may also incorporate the use of additional time, distance and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force. Application of these skills increases the potential for resolving the situation with minimal force or no force at all, which reduces the likelihood of injury to the

public, increases officer safety and mitigates the immediacy of potential or ongoing threats.

A reduction in use-of-force incidents also reduces community complaints, promotes the perception of procedural justice and, most importantly, promotes resolution of events with the public's compliance. Proportionality and de-escalation are both critical pieces of the larger concepts of use of force and police legitimacy. Essential to this is the force continuum and proportionality of response.

De-escalation is and remains a fundamental element of MNPDP training and policy.

2. Ban chokeholds and strangleholds as a means to subduing alleged perpetrators.

Chokeholds are essentially prohibited under Tennessee law, unless certain elements are included in the training. The MNPDP does not train nor allow the use of choke holds or neck restraints.

3. Promote a "Duty to Intervene" for any officer witnessing what they believe to be an unjustified use of force.

Multiple provisions of existing department policy mandate that employees report and intercede in situations where they become aware of other employees engaged in unlawful acts, or those that otherwise violate department policy.

4. Ban shooting at moving vehicles.

The MNPDP Policy Manual provides:

*Employees **shall not** discharge their firearm at or from a moving vehicle unless absolutely necessary to protect the life of the employee or others.*

5. Require comprehensive reporting of ALL uses of force.

The MNPDP Policy Manual mandates and creates a comprehensive process for reporting force, or threatened force, force investigation, and numerous levels of review, beginning with the requirement:

Personnel shall report all use of force incidents.

6. Exhaust all other means before shooting.

As noted above, MNPDP policy emphasizes the use of de-escalation techniques and trains officers to utilize measures available in order to peacefully resolve situations, when possible. The discharging of a firearm is considered deadly force, and in order to utilize deadly force, officers must have a reasonable belief the action is immediately necessary to prevent imminent death or serious bodily injury of a human being, including the

employee. The element of necessity requires the officer to have no other reasonable means available before resorting to the use of deadly force.

7. Require warning before shooting

Consistent with state and federal law, MNPD policy requires:

Where feasible, the employee has identified himself/herself as a police employee and given warning such as, “STOP--POLICE--I’LL SHOOT,” that deadly force is about to be used unless flight ceases;...

8. Require use of force continuum

The MNPD Policy Manual mandates and creates a comprehensive force continuum process by first requiring its use (emphasis added):

*When the use of force is needed, if feasible, authorized employees will identify themselves **and determine which options in the force continuum will best de-escalate the situation** in the most safe, reasonable, and prudent manner possible.*

The force-continuum is defined as:

Broad categories of force, in identifiable escalating/de-escalating stages of intensity, in response to a subject's action. They are commonly identified as official presence, verbal direction, soft empty-hand control, hand-held chemical spray/conducted energy device, hard empty-hand control, batons, and firearms. A subject's action may be defined in broad categories including full compliance to commands, verbal uncooperativeness, passive resistance, active resistance, active aggression, and aggravated active aggression (deadly force).

The MNPD Manual also provides for a process to ensure that the MNPD “*shall conduct such review as may be necessary to ensure that provisions remain relevant and any necessary revisions are made*”.

The MNPD remains committed to an ongoing use of force policy, training, and reporting review process.

If you have additional questions, please let me know.

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MNPD Policy Revisions

On June 11th, 2020, MNPD released two roll call training documents (see appendix) that included changes to MNPD policy regarding choke holds and neck restraints as well as the duty to intervene that are based on the #8cantwait campaign policy recommendations. These MNPD policy changes and the resulting COB recommendations are addressed in the relevant sections of this report.

Critiques of #8cantwait

Several critiques of the #8cantwait campaign have been made since its launch after George Floyd was murdered by police officers in Minneapolis. Generally, these critiques fall along two lines; methodology and strategy.

The methodological critiques have primarily focused on two main areas, the outcome—fatal use of force—and the conclusion that, “police departments that implement all eight use of force policies would kill 72% fewer people on average than departments with none of these policies in place.”⁵ Several other critiques have been made related to methodology but the two above are the most prominent.

The outcome critique argues that fatal uses of force are less common than non-fatal uses of force and that the study does not address whether the policies affect other non-fatal force. This is an accurate critique but reliable data on non-fatal uses of force does not exist. In fact, no database of police killings was available until *The Washington Post*, *The Guardian*, Mapping Police Violence, and Fatal Encounters began collecting data in 2015. Federal reporting of police shootings to the FBI is optional and only began in 2019.⁶ The data used by Campaign Zero was the best available data on use of force across departments in the United States.

The critique of the conclusion that departments with all eight policies would kill 72% fewer people than a department without any policies suggests that the figure is misleading. There are departments with all eight policies that have high rates of police killings and departments with few policies that have low rates. Additionally, the coding of the number of policies implemented as a count from 0-8 assumes that each of the policies would have an equal impact on the number of police killings, which is unlikely. Based on the results of the regression model, estimates are calculated to predict the number of police killings. The 72% figure is the result of these calculations. The figure is often presented by advocates as causal when the study was correlational. It is incorrect to say that implementing all eight policies will cause the number of killings to decline 72%. It is correct to say that, based on the model, departments with all eight policies would, on average, have 72% fewer police killings than departments without any of the

⁵ Sinyangwe, “Examining the Role of Use of Force Policies in Ending Police Violence,” 4.

⁶ Federal Bureau of Investigation, “National Use-of-Force Data Collection,” 2019, <https://www.fbi.gov/services/cjis/ucr/use-of-force>.

eight policies. These critiques are all research limitations of linking the policies to the number of police killings, not critiques of the policies themselves.

The second set of critiques on strategy argue that the #8cantwait proposals distract from systemic critiques of police and some have responded with an #8toabolition campaign. The organizers of the #8cantwait posted the following statement about this criticism:

Over the past week, we've heard from communities across the country who, like us, have demanded radical transformative change that moves beyond policing as key to public safety. We've seen dozens of cities adopt the goals of #8CANTWAIT, policies that can reduce the harm caused by police in the short-term. And while we are proud of the impact we were able to make, we at Campaign Zero acknowledge that, even with the best of intentions, the #8CANTWAIT campaign unintentionally detracted from efforts of fellow organizers invested in paradigmatic shifts that are newly possible in this moment. *For this we apologize wholeheartedly, and without reservation.* Our organization was founded on utilizing a data-driven approach to creating solutions, and we are building processes to ensure our future projects are bolder, more transparent and accountable to communities.

While we do not consider these adoptions a sole victory, we believe that they are useful steps on the path towards a collective goal. We needed to be in further conversation with the rest of our community, and are committed to this moving forward.

While we stand by the idea that any political leaders truly invested in protecting black lives should adopt the #8CANTWAIT policies, we also believe the end goal for all of us should be absolute liberation from policing, and encourage visitors to the site to support the range of organizers who are making progress in employing other strategies towards abolition: defunding the police and reinvesting in community.

If you are from a place where #8CANTWAIT is being considered, demand steps towards defunding and abolition. If you are a legislator who has adopted these policies or are considering it, please know that it will take many strategies to move beyond policing and use this time to learn more and listen to the needs of your community.⁷

The methodological and strategic critiques are important to consider but do not change the fact that the eight use of force restrictions are good policies that have the potential to reduce the number of police killings.

⁷ <https://8cantwait.org/>

#1: Ban Choke Holds and Strangle Holds

Background

Choke holds and neck restraints are a controversial police tactic. On July 17, 2014, Eric Garner was killed by an NYPD officer while saying: “I can’t breathe.” The officer who applied the choke hold, Daniel Pantaleo, was fired five years after he killed Eric Garner because he used a choke hold which was against NYPD policy but none of the officers involved in his death were charged with a crime.

Choke holds are a type of neck restraint where an arm is placed around an individual’s neck in a way that restricts breathing. Other forms of neck restraints are also used by police. New Orleans Police Department defines neck holds as:

One of the following types of holds: (1) arm-bar control hold, a hold that inhibits breathing by compression of the airway in the neck; (2) carotid restraint hold, a hold that inhibits blood flow by compression of the blood vessels in the neck; (3) lateral vascular neck constraint; or (4) a hold with a knee or other object to the back of a prone subject's neck. A neck hold is considered lethal force.⁸

A 2006 report from the Canadian Police Research Centre defines the distinction between a choke hold and a lateral vascular neck restraint:

The Lateral Vascular Neck Restraint is a police defense tactic used to restrain violent individuals. Typically, the officer applying the technique will be at the rear of the subject and will encircle the subject’s neck with his/her arm, with the radial surface of the forearm on one side and the upper bicep/anterior deltoid on the other. The throat of the subject rests in the elbow fold of the officer. Pressure is applied equally to either side of the neck with the intention of creating transient unconsciousness. The LVNR has been called by many names including the carotid hold, the upper body control hold, and the sleeper hold. It is sometimes confused with a choke hold, although the two techniques are quite different. Choke holds work by impeding the flow of oxygen to the lungs as pressure is applied across the front of the neck. Carotid holds, on the other hand, do not put pressure on the windpipe.⁹

All neck restraints carry the risk of death.¹⁰ In Campaign Zero’s analysis of the largest 100 police departments’ policies, only 28 explicitly banned both choke holds and strangle holds

⁸ New Orleans Police Department, “Use of Force,” in *New Orleans Police Department Operations Manual*, Chapter 1.3, 2015, <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf/>.

⁹ Noreen Barros, “Calgary Police Service Neck Restraint Literature Review : A Review of Medical, Legal, and Police Literature on Carotid Neck Restraint Techniques,” Technical report (Ottawa: Canadian Police Research Centre, 2006).

¹⁰ Barros.

(carotid restraints).¹¹ Departments that banned both neck restraints had 22% fewer police killings, on average, than departments without the policy.

A related concern to choke holds is positional asphyxia. Placement of individuals—especially while restrained—in positions that inhibit breathing can cause unconsciousness or death. For instance, a handcuffed individual should not be left face-down since that position can put pressure on the chest inhibiting breathing, especially if weight is placed on the person’s neck or back.

MNPD Policies Related to Choke Holds

MNPD’s use of force policy did not explicitly mention choke holds and made only one reference to neck restraints prior to the June 11th, 2020 update. In the MNPD Manual §11.10.020 (S), “restraining force” was defined as: “Force which is limited to holding and restraining persons, which shall include arm-lock and takedown holds, but shall not include neck restraints.” The term “neck restraints” is not defined in the policy.

MNPD Manual §11.10.030 (C) restricts officers from “us[ing] hobble restraints, leg shackles, plastic ties, or any other device to place any subject in a manner which is likely to produce positional asphyxia.” Presumably, this section prohibits a knee on the back or neck of a prone individual since the action is high-risk for positional asphyxia.

Deputy Chief Hagar’s email to Metro Council members stated that, “Chokeholds are essentially prohibited under Tennessee law, unless certain elements are included in the training. The MNPD does not train nor allow the use of choke holds or neck restraints.”

MNPD Policy Change Effective June 11, 2020

MNPD issued a roll call training (Appendix A) informing officers of a policy change related to choke holds. The change adds a definition to the Manual and restricts usage of the choke holds:¹²

Definitions

Chokehold or Similar Neck Restraint: any pressure or constriction to the neck, throat or windpipe that may inhibit breathing.

Chokehold or Similar Neck Restraint Technique

A member of the MNPD shall not use a choke hold or other similar neck restraint technique on any suspect, arrestee, defendant, or other person.

¹¹ McKesson et al., “Police Use of Force Policy Analysis.”

¹² “Roll Call Training: Policy Briefing - Chokehold or Similar Neck Restraint Techniques” (Metropolitan Police Department, 2020).

Legal Context of Police Use of Choke Holds

Tennessee law restricts law enforcement officers' use of choke holds as cited in Deputy Chief Hagar's email to Metro Council members. Tennessee Code § 38-3-121—"Choke holds; restrictions on use"—states:

No law enforcement officer shall use a choke hold or other similar respiratory restraining maneuver, with or without the use of a police baton, on any suspect, defendant or other person unless other methods of restraint are ineffective. Nothing in this section shall be construed to prohibit the use of the lateral vascular maneuver.

Tennessee Code §38-8-113—"Choke hold and restraining maneuver training"—continues:

Use of choke holds and other similar restraining maneuvers, with or without the use of a police baton, if included in the training curriculum, shall be taught to candidates at state law enforcement training facilities as an alternative method of restraint to be used after mace or other less dangerous methods of restraint have failed to be effective or are unavailable.

According to Tennessee law, law enforcement may not block the airway of an individual but may use lateral vascular neck restraints that block blood flow to the brain. If neck restraints are taught, Tennessee law specifies that they are higher risk than other defensive techniques such as chemical spray or Tasers.

National Best Practices

National police organizations have developed several different recommendations related to neck restraints and choke holds. A 2017 consensus policy led by the International Association of Chiefs of Police (IACP) and supported by 11 law enforcement leadership and labor organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA), the Fraternal Order of Police (FOP), and other organizations states that choke holds should be prohibited unless deadly force is authorized.¹³ The consensus recommendation does not extend to other neck restraints including carotid holds or lateral vascular restraints. Previously, IACP provided testimony to President Obama's Task Force on 21st Century Policing that said:

The use of choke holds—or similar procedures such as carotid control holds—has long been a topic of debate. The purpose of the technique is to incapacitate an aggressive subject temporarily to gain control of the situation. But because of the risk involved with these techniques—they are intended to restrict the airflow through the windpipe or flow of blood to the brain—some departments have prohibited them outright, while others have narrowly defined the circumstances under which they can be used. Most departments that allow this option classify the

¹³ International Association of Chiefs of Police, "National Consensus Policy and Discussion Paper on Use of Force," October 2017, <https://www.theiacp.org/resources/document/national-consensus-discussion-paper-on-use-of-force-and-consensus-policy>.

choke hold as deadly force. Federal agreements underscore this definition and advocate the restrictive use of choke holds. In relevant consent decrees and MOAs, the Department of Justice states that departments' *policies should "explicitly prohibit the use of choke holds and similar carotid holds except where deadly force is authorized."*¹⁴ [emphasis added]

The Police Executive Research Forum stated in an organization review of the Winslow, Arizona Police Department that "PERF has traditionally recommended the prohibition of any type of neck restraint due to the limited occasions in which it is generally used and the extensive training and skill required to perform it effectively."¹⁵ PERF added that if carotid holds are authorized only in situations where lethal force is authorized, the department "must ensure all officers are trained and tested yearly on the technique."

Campaign Zero recommends that the best practice for choke holds and carotid restraints is to prohibit them altogether.¹⁶

Model Policies

Campaign Zero recommends the following model policy: "Law enforcement officers shall not use chokeholds, strangleholds, Lateral Vascular Neck Restraints, Carotid Restraints, chest compressions, or any other tactics that restrict oxygen or blood flow to the head or neck."

Campaign Zero also points to New Orleans Police Department's (NOPD) policy that was issued following the consent decree with the Department of Justice. NOPD's policy defines neck holds (as quoted above) and states: "Officers shall not use neck holds, except when lethal force is authorized."¹⁷

Policy Recommendation

Tennessee state law banning choke holds (but not other neck restraints) is insufficient. MNPD's policy revision on June 11th, 2020 strengthens departmental policy related to choke holds and related neck restraints but requires additional specificity. The definition of "choke hold or similar neck restraint" is focused on breathing but blood flow to the brain is also a central concern. While the new policy definition would likely prohibit carotid restraints and lateral vascular neck restraints because they may inhibit breathing if applied incorrectly, the policy should be explicit about the restriction. The COB recommends that MNPD policy define "neck restraints" to include choke holds, carotid restraints, lateral vascular restraints, and holds with a knee or other object on the neck while an individual is prone.

¹⁴ International Association of Chiefs of Police, "Testimony of the International Association of Chiefs of Police: Task Force on 21st Century Policing Listening Session on Policy and Oversight," January 30, 2015, 129, <https://www.theiacp.org/sites/default/files/IACPTestimonyListeningSessionPolicyandOversight.pdf>.

¹⁵ Police Executive Research Forum, "Winslow, AZ Police Department Review and Assessment" (Washington, DC, April 2017), 15.

¹⁶ McKesson et al., "Police Use of Force Policy Analysis."

¹⁷ New Orleans Police Department, "Use of Force."

Example Neck Restraint Policy for Nashville

Neck restraints are defined as one of the following types of holds: (1) arm-bar control hold, a hold that inhibits breathing by compression of the airway in the neck; (2) carotid restraint hold, a hold that inhibits blood flow by compression of the blood vessels in the neck; (3) lateral vascular neck constraint; or (4) a hold with a knee or other object to the back of a prone subject's neck.

Law enforcement officers **shall not** use neck restraints.

#2: Requiring De-escalation Before Use of Force

Background

De-escalation tactics are actions that officers can take in potential force encounters in order to reduce the chance that the encounter will require physical force.¹⁸ De-escalation may include active listening, empathy, verbal persuasion, and warnings with the aim of resolving the situation without use of physical force or minimal physical force. A core principle of police agencies is to use only the force necessary to achieve lawful objectives. De-escalation is an effective method for reducing the need for physical force, both deadly and non-deadly. While most police agencies encourage de-escalation, only 44 out of 100 policies from the largest 100 police departments in the United States require de-escalation whenever possible before using force.¹⁹

De-escalation is included in MNPDP policy and training as a guiding principle to interactions that might lead to physical force. Officers are trained to use verbal and non-verbal strategies to defuse tense situations before force is needed. However, the MNPDP Manual does not explicitly require officers to attempt non-physical de-escalation tactics whenever possible.

MNPDP Policies Related to De-escalation

The MNPDP Manual defines physical force as, “the application of a technique, action, or device to compel a change in the actions of another person; usually compliance with a desired behavior, submission to authority, or to de-escalate a threatening behavior.”²⁰ Officers are authorized to only use force that is “reasonable and necessary under the particular circumstances to protect themselves or others from bodily injury, and only after other reasonable alternatives have been exhausted or it is determined that such alternative action(s) would be ineffective under the circumstances.”²¹ Officers receive training on assessing resistance and applying reasonable force based on the resistance of a suspect. Officers are trained to apply a force continuum that can assist in determining what de-escalation tactics and physical force actions are necessary and proportionate to the situation.

MNPDP Manual §11.10.030 (A) outlines the parameters for the use of non-deadly force where the Manual mentions de-escalation. The section states, “When the use of force is needed, if feasible, authorized employees will identify themselves and determine which options in the force continuum will best de-escalate the situation in the most safe, reasonable, and prudent manner.”²²

MNPDP Manual §11.10.020 outlines the “Definitions Specific to Use of Force” and defines the “Force-Continuum” as:

¹⁸ International Association of Chiefs of Police, “National Consensus Policy and Discussion Paper on Use of Force.”

¹⁹ McKesson et al., “Police Use of Force Policy Analysis.”

²⁰ §11.10.020 (P) Metropolitan Nashville Police Department, *Department Manual*, 2018, 699, <https://www.nashville.gov/Police-Department/Department-Manual.aspx>.

²¹ 11.10.030 (E) Metropolitan Nashville Police Department, 700.

²² Metropolitan Nashville Police Department, *Department Manual*, 2018, <https://www.nashville.gov/Police-Department/Department-Manual.aspx>.

Broad categories of force, in identifiable escalating/de-escalating stages of intensity, in response to a subject's action. They are commonly identified as official presence, verbal direction, soft empty-hand control, hand-held chemical spray/electronic immobilization device, hard empty-hand control, batons, and firearms. A subject's action may be defined in broad categories including full compliance to commands, verbal uncooperativeness, passive resistance, active resistance, active aggression, and aggravated active aggression (deadly force).

When asked about de-escalation policies, MNPD Deputy Chief Mike Hagar provided the following language in an email that he indicated was included in training for all officers as recent as January 2019:

Officers should attempt to use non-confrontational verbal skills, empathy and/or active listening to stabilize a person in crisis or when confronted with a situation where control is required to effect an arrest or protect the public's safety. The suspect should be allowed to comply before force is used unless this causes unnecessary danger to the officer or others.

De-escalation may also incorporate the use of additional time, distance and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force. Application of these skills increases the potential for resolving the situation with minimal force or no force at all, which reduces the likelihood of injury to the public, increases officer safety and mitigates the immediacy of potential or ongoing threats.

A reduction in use-of-force incidents also reduces community complaints, promotes the perception of procedural justice and, most importantly, promotes resolution of events with the public's compliance. Proportionality and de-escalation are both critical pieces of the larger concepts of use of force and police legitimacy. Essential to this is the force continuum and proportionality of response.

De-escalation is and remains a fundamental element of MNPD training and policy.

Legal Context for Policies on De-escalation

Generally, courts have afforded law enforcement officers a significant amount of leeway in determining whether force is warranted. The United States Supreme Court has routinely held that a law enforcement officer's use of force will be judged based on a "reasonableness" standard. The review of an officer's actions is not judged in hindsight in a vacuum but is instead based on the judgment of an objectively reasonable officer on the scene.²³

²³ *Tennessee v. Garner*, 471 U.S. 1 (1985).

Similarly, courts have stated that officers are not required to engage in de-escalation tactics prior to the use of force. For example, the Sixth Circuit has said, “no caselaw supports [an] assertion [that] the deputies were prohibited from using any physical force . . . before first attempting alternative de-escalation techniques.”²⁴ Although de-escalation tactics may not be required by law, the objective reasonableness standard put forth in cases like *Tennessee v Garner* may necessitate the use of alternative means to resolve a conflict, which may include de-escalation techniques, depending on the circumstances at a scene.

National Best Practices

Many police departments across the country have policies regarding the use of de-escalation. The Police Executive Research Forum (PERF), a nationally recognized leader in police policy where Nashville’s Chief of Police serves on the Board of Directors, recommends the adoption of a formal de-escalation agency policy that includes discussion of proportionality, using distance and cover, and tactical repositioning, “slowing down” situations that do not pose an immediate threat, and calling for supervisory and other resources.²⁵

IACP’s consensus policy with 11 national policing organizations recommends the following de-escalation policy:

1. An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever possible and appropriate before resorting to force and to reduce the need for force.
2. Whenever possible and when such delay will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.²⁶

IACP’s consensus policy reflects two important points. First, that policy should explicitly require alternatives to physical force whenever possible. Second, that—whenever possible—officers should allow time for individuals to consider their situation and comply with verbal directions prior to escalating up the force continuum.

Campaign Zero endorses a policy requiring de-escalation and found that the agencies that require de-escalation have 15% fewer people killed by police than agencies without the requirement.²⁷

²⁴ *Roell v. Hamilton Cty.*, 870 F.3d 471, 482 (6th Cir. 2017).

²⁵ “Guiding Principles on Use of Force” (Police Executive Research Forum, 2016), <https://www.policeforum.org/assets/guidingprinciples1.pdf>.

²⁶ International Association of Chiefs of Police, “National Consensus Policy and Discussion Paper on Use of Force,” 3.

²⁷ Sinyangwe, “Examining the Role of Use of Force Policies in Ending Police Violence”; McKesson et al., “Police Use of Force Policy Analysis.”

Model Policies

PERF highlights the de-escalation policy from the Seattle Police Department in their Guiding Principles on Use of Force document. The Seattle Police Department Policy states: “When safe under the totality of the circumstances and time and circumstances permit, officers shall use de-escalation tactics in order to reduce the need for force.”²⁸

Campaign Zero also proposes a model policy for de-escalation.²⁹ The Campaign Zero model policy states:

DE-ESCALATION. Prior to using physical, non-deadly and/or deadly force, all law enforcement officers must use proper de-escalation techniques to decrease the likelihood that law enforcement officers will resort to force and to increase the likelihood of cooperation between law enforcement officers and members of the public.

Law enforcement officers shall employ effective communication techniques to engage with individuals who are not compliant with orders by establishing rapport, using the appropriate voice intonation, asking questions and providing advice to defuse conflict and achieve voluntary compliance before resorting to force options.

MNCO researchers also reviewed the de-escalation policy from Camden County, New Jersey which was developed in consultation with The Policing Project at NYU.³⁰ The Camden County de-escalation policy states:

CORE PRINCIPLE #2: Whenever feasible, officers should attempt to de-escalate confrontations with the goal of resolving encounters without force. Officers may only use force that is objectively reasonable, necessary, and as a last resort.

²⁸ “Guiding Principles on Use of Force.”

²⁹ “Model Use Of Force Policy” (Campaign Zero, n.d.),

<https://static1.squarespace.com/static/56996151cbced68b170389f4/t/5deffb38594a9745b936b64/1576009651688/Campaign+Zero+Model+Use+of+Force+Policy.pdf>.

³⁰ Camden County, NJ provides an interesting case example of police reform. In 2013, Camden City police department was dissolved, and the Camden County police force took over policing responsibilities in Camden. A motivating factor for the change was to circumvent the existing police union contract which financially prevented the department from hiring more officers. The new county police department is double the size of the city department. Serious crime fell in the years after the change; however, other New Jersey cities saw similar declines in serious crime. Notably, there was a spike in summonses and low-level arrests in the year following the transition and uses of force increased. In 2019, Camden County Police Department instituted a new use of force policy in consultation with The Policing Project from NYU. The revised use of force policies require de-escalation. For more information about Camden County Police Department reforms, see: <https://www.inquirer.com/news/camden-police-defund-minneapolis-george-floyd-protest-20200609.html>; <https://www.bloomberg.com/news/articles/2020-06-04/how-camden-new-jersey-reformed-its-police-department>; <https://www.washingtonpost.com/outlook/2020/06/16/camden-nj-police-reboot-is-being-misused-debate-over-police-reform/>; <https://www.aljazeera.com/news/2020/06/camden-nj-model-change-police-forces-200609200444590.html>; <https://www.nj.com/camden/2019/08/camden-police-launch-strict-last-resort-use-of-force-policy-chief-wants-it-to-be-national-model.html>

7. **Officers will use de-escalation and force-mitigation tactics and techniques whenever safe and feasible to do so.** It should be every officer’s goal to resolve all situations without using force. To make this more likely, officers must use de-escalation and force mitigation tactics and techniques whenever doing so will not put the officer or another person at undue risk.
 - a) Officers will receive substantial training on the Critical Decision-Making (CDM) model, as well as when and how to appropriately use de-escalation and force-mitigation, including but not limited to *Tactical Communication*, *Tactical Positioning*, and *Time as a Tactic*.
8. **Officers will provide clear instructions and warnings whenever feasible before using force.** Whenever safe and feasible, officers should not use force immediately when encountering noncompliance with lawful verbal directions. Instead, whenever safe and feasible, before using force: officers should:
 - a. Provide clear instructions and warnings;
 - b. Seek to communicate in non-verbal ways when a verbal warning would be inadequate (such as when the person does not speak English, or is unable to hear or understand warnings);
 - c. Indicate the consequences of refusing to comply with a mandatory order, including that force will be used unless the person complies; and
 - d. Give the person a reasonable amount of time to comply.
9. **Officers must consider an individual’s mental, physical, or other incapacities.** Officers must, when feasible, consider whether a person’s failure to comply with an officer’s command is due to a medical condition, mental impairment, physical limitation, developmental disability, language barrier, drug interaction, behavioral crisis, or other factors beyond the individual’s control. In these situations, officers should consider whether specific techniques or resources would help resolve the situation without force.
10. **Officers should not exercise force unless it is necessary and as a last resort.** Officers should exhaust all other reasonable means before resorting to the use of force. Using force only as a last resort means that officers not engage in unnecessary, overly aggressive, or otherwise improper actions that create a situation where force becomes needed. Using force only as a last resort also means that an officer shall not use force if a safe alternative would achieve the law enforcement objective. [emphasis in original]³¹

Policy Recommendation

The COB recommends that de-escalation tactics be required before an officer uses force, be it non-deadly and/or deadly, and that failing to use reasonable de-escalation techniques when circumstances permit should make the officer subject to disciplinary action. Policy should state that physical force should only be used as a last resort. The MNPD Manual should also explicitly define common de-escalation tactics that are available to officers.

³¹ “Use of Force” (Camden County Police Department, 2020), <https://policy.camdenpd.com:8443/pdf/CCV3C2%20Use%20of%20Force%20Policy.pdf>.

Example De-escalation Policy for Nashville:

All law enforcement officers must use proper de-escalation techniques prior to the use of physical non-deadly and/or deadly force in order to decrease the likelihood that officers will resort to the use of force and increase the likelihood of voluntary compliance. Officers may only use force that is objectively reasonable, necessary, and as a last resort. Officers shall consider whether a person's failure to comply with an officer's command is due to a medical condition, mental impairment, physical limitation, developmental disability, language barrier, drug interaction, behavioral crisis, or other factors beyond the individual's control. In these situations, officers should consider whether specific techniques or resources would help resolve the situation without force.

#3: Require Warning Before Shooting [Already Implemented]

Background

Campaign Zero recommends requiring a verbal warning in all situations before using deadly force. Similarly, IACP consensus policy of 11 policing organizations recommends the following policy: “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.”³²

MNPD Policies Related to Warning Before Shooting

MNPD Manual §11.10.130—“Use of Deadly Force to Effect an Arrest—states:

Authorized employees may use deadly force to effect the arrest of a fleeing felon only when:

- A. The employee has probable cause to believe the individual to be arrested has committed a felony involving the infliction or threatened infliction of serious bodily injury; **AND**
- B. The employee has probable cause to believe that the individual to be arrested poses a threat of death or serious bodily injury, either to the employee or to others unless immediately apprehended; **AND**
- C. Where feasible, the employee has identified himself/herself as a police employee and given warning such as, “**STOP--POLICE--I'LL SHOOT,**” that deadly force is about to be used unless flight ceases; **AND**
- D. If all other means of apprehension available to the employee under the attendant circumstances have been exhausted.

Policy Recommendation

No recommendation is made since MNPD policy is consistent with model recommendations.

³² International Association of Chiefs of Police, “National Consensus Policy and Discussion Paper on Use of Force,” 4.

#4: Require Exhausting All Alternatives Before Shooting [Already Implemented]

Background

Campaign Zero recommends a policy that requires officers to exhaust all other alternatives, including non-physical force and less-lethal force options, prior to resorting to deadly force.³³

MNPD Policies Related to Exhausting All Alternatives

MNPD Manual §11.10.010 states:

“It is the policy of the Metropolitan Nashville Police Department that authorized employees shall use only that force that is reasonably necessary to effect lawful objectives. Therefore, intentional misuse of the authority granted under this policy is grounds for disciplinary action up to and including those outlined in category A of established policy for Discipline and Corrective Action. [emphasis in original]

This policy is for Metropolitan Nashville Police Department use only and does not apply in any criminal or civil legal proceedings. This department policy should not be construed as the creation of a higher legal standard of care. Violation of this directive will only form the basis for departmental administrative sanction.”

MNPD Manual §11.10.130 outlines the Use of Deadly Force to Effect an Arrest. It states:

Authorized employees may use deadly force to effect the arrest of a fleeing felon only when:

- A. The employee has probable cause to believe the individual to be arrested has committed a felony involving the infliction or threatened infliction of serious bodily injury; **AND**
- B. The employee has probable cause to believe that the individual to be arrested poses a threat of death or serious bodily injury, either to the employee or to others unless immediately apprehended; **AND**
- C. Where feasible, the employee has identified himself/herself as a police employee and given warning such as; **“STOP--POLICE--I’LL SHOOT,”** that deadly force is about to be used unless flight ceases; **AND**
- D. *If all other means of apprehension available to the employee under the attendant circumstances have been exhausted. [emphasis in italics added; bold in original]*

Policy Recommendation

No recommendation is made since MNPD policy is consistent with model recommendations.

³³ “#8cantwait” (Campaign Zero, n.d.), <https://8cantwait.org/>.

#5: Duty to Intervene [Implemented on June 11, 2020]

Background

Police officers are authorized to use reasonable and necessary force in order to achieve compliance with a lawful order. Unfortunately, examples of excessive force are abundant and undermine the legitimacy of police. Accountability after excessive force is important for rebuilding trust, but policies that can reduce excessive force before they occur are critical. One such policy is a *duty to intervene* when officers witness excessive force from their peers.

The murder of George Floyd by police officers in Minneapolis, Minnesota on May 25th, 2020 was an example of when three officers had the opportunity and responsibility to intervene to save the life of a man who was being suffocated by a police officer kneeling on his neck. All four officers were quickly fired because one officer used deadly force while Mr. Floyd was restrained and the other three failed to intervene, which is against the city's duty to intervene policy adopted in 2016. Metro Nashville Police Department (MNPDP) Police Chief, Steve Anderson, in a statement about the killing of George Floyd said that the lack of intervention from the other officers was "intolerable."

Prior to the June 11, 2020 policy revision, MNPDP policy did not state that personnel have a duty to intervene when fellow officers are using excessive force.

MNPDP Policies Related to Excessive Force and Duty to Intervene

The MNPDP Manual defines physical force as, "the application of a technique, action, or device to compel a change in the actions of another person; usually compliance with a desired behavior, submission to authority, or to de-escalate a threatening behavior."³⁴ Officers are authorized to only use force that is "reasonable and necessary under the particular circumstances to protect themselves or others from bodily injury, and only after other reasonable alternatives have been exhausted or it is determined that such alternative action(s) would be ineffective under the circumstances."³⁵ Officers receive training on assessing resistance and applying reasonable force based on the resistance of a suspect. Officers are trained to apply a force continuum that can assist in determining what de-escalation tactics and physical force actions are necessary in a situation.

MNPDP Manual §4.20 outlines standards of conduct and discipline for the department.³⁶ Applying more force than is reasonable or necessary is considered "abusive treatment." §4.20.040 (N) states that "employees shall not treat any person or animal cruelly by the use of excessive force or failing to act in a humane manner when circumstances justify such action." Abusive treatment is a Category B offense carrying a consequence of an 8-13-day suspension for a first offense, 14-19-day suspension and/or demotion for a second offense, and a 20-day

³⁴ §11.10.020 (P) Metropolitan Nashville Police Department, *Department Manual*, 2018, 699.

³⁵ 11.10.030 (E) Metropolitan Nashville Police Department, 700.

³⁶ Metropolitan Nashville Police Department, *Department Manual*, 2018.

suspension and/or demotion or dismissal for a third offense. Other disciplinary infractions can be applied in cases of excessive force which could result in discipline, including dismissal.

Since excessive use of force is police misconduct, all officers who witness it are required by policy to report it to a supervisor. §4.20.050 (T)—Failure to Report Misconduct—states:

Any department employee who observes or becomes aware of any act of misconduct by another employee of the government shall immediately report the incident to their immediate supervisor or the most appropriate Metropolitan Nashville Police Department (MNPd) supervisor (*Violation of this provision may be charged up to and including the category of the underlying offense not reported.*)

The failure to report misconduct policy suggests that officers have a responsibility to report excessive force to a supervisor when they witness it, but the policy did not require them to intervene for the welfare of an individual being abused by fellow officers until the June 11th policy change.

MNPd Policy Change Effective June 11, 2020

MNPd issued a roll call training (Appendix B) informing officers of a policy change related to the duty to intervene. The change adds a definition to the Manual and outlines multiple points regarding the duty to intervene:³⁷

Definitions

Intervene: To come between, whether verbally or physically so as to prevent or alter a result or course of events.

Duty to Intervene

1. All members must recognize and act upon the Duty to Intervene in order to prevent or stop any member from conducting any act that violates law or policy (including, but not limited to excessive or unlawful force, unlawful behavior, abuses of authority or major violations of department policy or procedure).
2. Such interventions shall be reported to an appropriate supervisor without delay. Successful intervention does not negate a duty to report.
3. Consistent with established policy and training, if medical attention is required by any individual, ensure that medical attention has been provided and/or summoned.
4. Failure to intervene or report may subject a member to disciplinary action. (Category varies by severity of violation)

³⁷ “Roll Call Training: Policy Briefing - Duty to Intervene” (Metropolitan Police Department, 2020).

Legal Context for Failing to Intervene in Excessive Force

The Supreme Court of the United States has found that, under the doctrine of qualified immunity, a government official that performs a discretionary function is protected from civil liability as long as their conduct does not violate an established statutory or constitutional right known to a reasonable person.³⁸ Similarly, Tennessee and its local governments are protected from liability by the doctrine of sovereign immunity and the Tennessee Governmental Tort Liability Act (TGTLA). However, there are circumstances when a law enforcement officer or the municipality they represent may be held liable for their failure to protect a person from the excessive use of force of a fellow officer. The Sixth Circuit has stated “Generally speaking, a police officer who fails to act to prevent the use of excessive force may be held liable when (1) the officer observed or had reason to know that excessive force would be or was being used, and (2) the officer had both the opportunity and the means to prevent the harm from occurring.”³⁹ Similarly, governmental immunity for municipalities may not apply if an injury results from the negligent acts of its employees acting within the scope of their employment.

Most courts acknowledge that, in many situations, an officer must decide to use force within fractions of a second. An officer’s failure to prevent the excessive use of force in these moments typically does not carry civil liability. However, the incident occurring in Minneapolis highlights a scenario that can arise wherein an officer has an obligation to act to prevent excessive force. In Minneapolis, an officer left his knee on the throat of George Floyd for several minutes. Under the requirements in *Turner v. Scott*, officers in Minneapolis had the opportunity to observe the excessive force and the opportunity to act to prevent harm from occurring. Had this incident occurred in Tennessee, these officers could be held liable. The potential liability of an officer and the Metropolitan Government, if an officer negligently fails to act to prevent excessive force being used, justifies MNPDP adopting both training and policies on the duty of an officer to intervene.

National Best Practices

Multiple organizations include a duty to intervene as a best practice for police organizations. PERF, a nationally recognized leader in police policy where Nashville’s Chief of Police serves on the Board of Directors, includes a duty to intervene as a guiding principle on use of force.⁴⁰ They state:

Officers should be obligated to intervene when they believe another officer is about to use excessive or unnecessary force, or when they witness colleagues using excessive or unnecessary force, or engaging in other misconduct. Agencies should also train officers to detect warning signs that another officer might be moving

³⁸ See *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

³⁹ *Turner v. Scott*, 119 F.3d 425, 429 (6th Cir. 1997) (citing see *Anderson v. Branen*, 17 F.3d 552, 557 (2d Cir.1994)).

⁴⁰ Police Executive Research Forum, *Guiding Principles on Use of Force*, Critical Issues in Policing Series (Washington, D.C., 2016), <https://www.policeforum.org/assets/30%20guiding%20principles.pdf>.

toward excessive or unnecessary force and to intervene *before* the situation escalates.⁴¹ [emphasis in original]

Duty to intervene policies have been increasing in departments across the country for decades. NYPD instituted a duty to intervene policy in 1993 after Rodney King was beaten by LAPD officers and a sergeant was seen on the video passively watching.⁴² Citing the former police chief of San Francisco, Greg Suhr, PERF states that, “when an officer intervenes to stop misconduct, that can increase community trust.”⁴³ Suhr stated, “What we try to tell our officers in San Francisco is that something like that [intervening in response to excessive force] will be on video too. It won’t just be the bad stuff; it’ll be the corrective action that somebody took, or the apology. That’ll be on the video as well.”

Campaign Zero, an organization dedicated to reducing officer involved shootings, also endorses a duty to intervene policy and has found that agencies with the policy have fewer shootings by police officers.⁴⁴ In a 2016 report, the authors analyzed policies from the 100 largest departments in the United States, including Nashville, and found that 48 out of 100 departments include a duty to intervene in their use of force policy. Additionally, they found that departments that had a duty to intervene in their policy had 9% fewer police killings per capita than departments without a duty to intervene.

Model Policies

PERF highlights policies from Phoenix Police Department and Las Vegas Metropolitan Police Department.⁴⁵

- The Phoenix policy states: “All sworn employees will intervene, if a reasonable opportunity exists, when they know or should know another employee is using unreasonable force.”
- The Las Vegas Policy states: “Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, safely intercede to prevent the use of such excessive force. Officers shall promptly report these observations to a supervisor.”

Campaign Zero proposes a model policy as well as highlights San Francisco Police Department’s policy.

- The Campaign Zero model policy states: “All law enforcement officers must intervene when they reasonably believe that a law enforcement officer is using or is about to use unnecessary or excessive force in violation of this mission [minimizing physical harm

⁴¹ Police Executive Research Forum, 41.

⁴² Police Executive Research Forum, 46.

⁴³ Police Executive Research Forum, 42.

⁴⁴ McKesson et al., “Police Use of Force Policy Analysis.”

⁴⁵ Police Executive Research Forum, *Guiding Principles on Use of Force*, 41–42.

and unnecessary use of force], and must report the incident to a supervisor. Failure to report incidents involving the use of unnecessary or excessive force will result in disciplinary action.

- The San Francisco policy states: “When in a position to do so, officers shall intervene when they know or have reason to know, that another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.”

Policy Recommendation

Based on revisions to the MNPDP Manual on June 11th, 2020, current MNPDP policy is consistent with the #8cantwait recommendation and national best practices.

#6 Ban Shooting at Moving Vehicles

Background

Police officers are authorized to use reasonable and necessary force in order to achieve compliance with a lawful order. Policies regarding the use of force can help to reduce excessive force and ensure that actions taken are safe for officers and all others present at the scene of an incident. One such policy is to prohibit the shooting of firearms at or from a moving vehicle. When an officer fires at a vehicle, bystanders are put at heightened risk if the driver loses control or is incapacitated.

MNPD's existing policy is very close to several best practice policies recommended by Campaign Zero and other police organizations. Based on the following review, we recommend a revision to the current policy.

MNPD Policies Related to Shooting at Moving Vehicles

MNPD Manual §11.10.150 General Provisions Section D states that “Employees **shall not** discharge their firearm at or from a moving vehicle unless absolutely necessary to protect the life of the employee or others.” In bullet E of the same section, it is further stated that, “Employees shall not knowingly place themselves in a position where they would be in jeopardy of being struck by a suspect vehicle or knowingly stand and/or step into the path of a vehicle, creating circumstances where the use of deadly force may be necessary.” [emphasis in original]

Legal Context for Policies on Shooting at Moving Vehicles

In *Tennessee v. Garner*, the United States Supreme Court said, “The use of deadly force to prevent the escape of all felony suspects, whatever the circumstance, is constitutionally unreasonable. It is not better that all felony suspects die than they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failure to apprehend him does not justify the use of deadly force to do so.”⁴⁶ Likewise, multiple cases within the Sixth Circuit have held that law enforcement officers may only use deadly force when they have probable cause to believe that a suspect poses a serious physical threat either to the officer or members of the public.⁴⁷

The important takeaway from these cases is that simply because the suspect is in a motor vehicle does not mean that force is warranted. Without the threat of imminent danger, discharging a weapon at a fleeing vehicle is improper.⁴⁸

⁴⁶ *Tennessee v. Garner*, 471 U.S. 1, 11 (1985).

⁴⁷ See *Williams v. City of Grosse Pointe Park*, 496 F.3d 482, 487 (6th Cir. 2007); see *Dudley v. Eden*, 260 F.3d 722, 726-27 (6th Cir. 2001); see *Scott v. Clay County*, 205 F.3d 867, 871-73 (6th Cir. 2000).

⁴⁸ See *Sigley v. City of Parma Heights*, 437 F.3d 527, 537 (6th Cir. 2006).

National Best Practices

Many police departments across the country have policies regarding the shooting of firearms at moving vehicles. PERF recommends that “agencies should adopt a prohibition against shooting at or from a moving vehicle unless someone in the vehicle is using or threatening deadly force by means other than the vehicle itself.”⁴⁹

Policies prohibiting law enforcement officers from shooting at moving vehicles are not new. Many law enforcement agencies across the country have had such policies for years, including the New York Police Department, which enacted their policy in 1972.⁵⁰

Campaign Zero, an organization dedicated to reducing officer involved shootings, also endorses a policy banning shooting at moving vehicles and found that agencies with such policies have 8% fewer police killings than agencies without the policy.⁵¹

Model Policies

PERF’s guiding principles state that a prohibition on shooting at moving vehicles has been recommended to individual agencies for years and that it is also included in the model use of force policy from the International Association of Chiefs of Police. PERF highlights multiple cities whose police departments have this policy in effect including New York, Boston, Chicago, Cincinnati, Denver, Philadelphia, and Washington, DC.⁵²

- The New York Police Department Policy states: “Members of the service **SHALL NOT**: Discharge their firearms at or from a moving vehicle unless deadly physical force is being used against the member of the service or another person present, by means other than a moving vehicle.”⁵³ [emphasis in original]
- The Denver Police Department Policy states: “Firing at moving vehicles: Firing at a moving vehicle may have very little impact on stopping the vehicle. Disabling the driver may result in an uncontrolled vehicle, and the likelihood of injury to occupants of the vehicle (who may not be involved in the crime) may be increased when the vehicle is either out of control or shots are fired into the passenger compartment. An officer threatened by an oncoming vehicle shall, if feasible, move out of the way rather than discharging a firearm. Officer(s) shall not discharge a firearm at a moving vehicle or its occupant(s) in response to a threat posed solely by the vehicle unless the officer has an objectively reasonable belief that:

⁴⁹ “Guiding Principles on Use of Force.”

⁵⁰ “Guiding Principles on Use of Force.”

⁵¹ “#8cantwait.”

⁵² “Guiding Principles on Use of Force.”

⁵³ “Use of Force Policy Database” (Campaign Zero, n.d.), <https://useofforceproject.org/database>.

- The vehicle or suspect poses an immediate threat of death or serious physical injury to the officer or another person and
- The officer has no reasonable alternative course of action to prevent death or serious physical injury.⁵⁴

Campaign Zero proposes a model policy as well as highlights the Philadelphia Police Department’s policy.

- The Campaign Zero model policy states: “Officers shall not discharge a firearm at or into a moving vehicle unless the occupants of the vehicle are using deadly force, other than the vehicle itself, against the officer or another person, and such action is necessary for self-defense or to protect the other person; shall not intentionally place themselves in the path of, or reach inside, a moving vehicle; and shall attempt to move out of the path of a moving vehicle.”⁵⁵
- The Philadelphia Police Department policy states: “Police officers shall not discharge their firearms **AT** a vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle (e.g., officers or civilians are being fired upon by the occupants of the vehicle). [emphasis in original]
 - a) A moving vehicle alone shall not presumptively constitute a threat that justifies an officer’s use of deadly force.
 - b) Officers shall not move into or remain in the path of a moving vehicle. Moving into or remaining in the path of a moving vehicle, whether deliberate or inadvertent, **SHALL NOT** be justification for discharging a firearm at the vehicle or any of its occupants. An officer in the path of an approaching vehicle shall attempt to move to a position of safety rather than discharging a firearm at the vehicle or any of the occupants of the vehicle. [emphasis in original]

NOTE: An officer should never place themselves or another person in jeopardy in an attempt to stop a vehicle.”⁵⁶

Policy Recommendation

The COB recommends that MNPD amend the policy prohibiting shooting of firearms at moving vehicles to specify that the only circumstance where shooting at vehicles is allowed is when an occupant of the vehicle is using deadly force, *other than the vehicle itself*, against the officer or another person. We recommend that shooting at moving vehicles be prohibited except for in the

⁵⁴ “Use of Force Policy Database.”

⁵⁵ “Model Use Of Force Policy.”

⁵⁶ “Use of Force Policy Database.”

specified circumstances and that the disciplinary category for shooting at a moving vehicle is included.

Example Policy for Nashville on Shooting at Moving Vehicles:

MNPD officers **shall not** discharge a firearm at or into a moving vehicle unless the occupants of the vehicle are using deadly force, other than the vehicle itself (e.g., officers or civilians are being fired upon by the occupants of the vehicle), against the officer or another person, and such action is necessary for self-defense or to protect the other person; shall not intentionally place themselves in the path of, or reach inside, a moving vehicle; and shall attempt to move out of the path of a moving vehicle.

Moving into or remaining in the path of a moving vehicle, whether deliberate or inadvertent, SHALL NOT be justification for discharging a firearm at the vehicle or any of its occupants. An officer in the path of an approaching vehicle shall attempt to move to a position of safety rather than discharging a firearm at the vehicle or any of the occupants of the vehicle.

#7 Use of Force Continuum [Already Implemented]

Background

Campaign Zero recommends establishing a “Force Continuum that restricts the most severe types of force to the most extreme situations and creates clear policy restrictions on the use of each police weapon and tactic.”⁵⁷

MNPD Policies Related to the Use of Force Continuum

MNPD Manual §11.10.020 outlines the Definitions Specific to Use of Force and defines the Force-Continuum as:

Broad categories of force, in identifiable escalating/de-escalating stages of intensity, in response to a subject’s action. They are commonly identified as official presence, verbal direction, soft empty-hand control, hand-held chemical spray/electronic immobilization device, hard empty-hand control, batons, and firearms. A subject’s action may be defined in broad categories including full compliance to commands, verbal uncooperativeness, passive resistance, active resistance, active aggression, and aggravated active aggression (deadly force).

Policy Recommendation

No recommendation is made since MNPD policy is consistent with model recommendations.

⁵⁷ “#8cantwait.”

#8: Require Comprehensive Reporting [Already Implemented]

Background

Campaign Zero recommends that policies require police officers to report all uses of force including threats of force and pointing a firearm at someone. Campaign Zero categorized MNPD as not meeting the policy; however, since the publication of the MNPD Manual in 2018, the department has revised use of force reporting in a way that meets the recommendation.

MNPD Policies Related to Reporting Use of Force

MNPD Manual §11.10.170—“Reporting Use of Force”—requires reporting of use of force incidents. The Manual states:

- A. Personnel shall report all use of force incidents. However, no MNPD Form 108 is required when official presence, verbal direction, and/or soft empty-hand control is used by the employee and there is no injury and no allegation of injury.
- B. Use of force incidents to be reported shall include but are not limited to:
 - 1. Whenever an employee discharges a firearm, other than for training, or legal recreational purposes;
 - 2. Whenever an employee takes an action that results in (or is alleged to have resulted in) injury or death of another person;
 - 3. When force is applied through the use of less lethal weapons, CE devices, chemical spray, baton, etc.; and/or
 - 4. Whenever an employee uses defensive or physical force other than soft empty-hand control.
- C. The employee involved in a use of force incident shall notify the appropriate supervisor immediately and complete an MNPD Form 108, Use of Force Report.
- D. The employee’s immediate supervisor shall investigate the incident and review the MNPD Form 108, Use of Force Report and any associated documents completed by the employee, and document his/her findings on an MNPD Form 104, Supplement Report.

The National Institutes of Justice defines “soft empty hand control” as, “officers us[ing] grabs, holds and joint locks to restrain an individual.”⁵⁸ In these cases, a use of force report is not required.

The published Manual dated August 20th, 2018 would not qualify as comprehensive reporting because it did not require officers to report when a firearm was pointed at an individual. MNPD began requiring reporting of firearm displays as of January 2019.⁵⁹ Several changes to reporting

⁵⁸ National Institute of Justice. Office of Justice Programs, “The Use-of-Force Continuum,” August 3, 2009, <https://nij.ojp.gov/topics/articles/use-force-continuum>.

⁵⁹ Deputy Chief Hagar, e-mail message to Dr. Peter Vielehr, MNCO Lead Research Analyst, October 4, 2019.

were also made at the end of 2019. A January 2nd, 2020 roll-call training informed officers of several changes.

The first change is to distinguish between injuries sustained prior to officer arrival, self-inflicted injuries, and injuries from physical or defensive force from the officer. Only injuries sustained due to officer force are reportable to the FBI's National Use-of-Force Data Collection program so MNPD procedures were updated to streamline reporting.

The second change was to reporting firearm displays. The Manual §11.10.020 was updated defining "Display of Firearm" as:

Drawing and aiming, or similar un-holstered display indicating potential use, without discharge, of a firearm in circumstances where any person perceives the action as a threat of a use of force, whether or not this is accompanied by a verbal warning, aiming at or illuminating a subject with a weapon mounted light.

Additionally, §11.10.170 on reporting is updated to state:

The display of a firearm when such display has had the effect of reducing or eliminating the need for additional use of force. Reporting of such displays shall be by the completion of a Firearm Display Report-MNPD Form 108F (if no other force is used, a Use of Force Report-MNPD Form 108 is not required). **Firearm Displays are not reported by the MNPD as a Use of Force and are captured for Law Enforcement Certification purposes only.** [emphasis in original]

The language of the firearm display policy mirrors the policy for reporting Taser display which was already required in the August 2018 version of the MNPD Manual.

Policy Recommendation

No recommendation is made since MNPD policy is consistent with model recommendations.

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METROPOLITAN POLICE DEPARTMENT NASHVILLE, TENNESSEE

Roll Call Training: Policy Briefing

MNPD FORM 101
Rev. Feb. 2020

SUBJECT: CHOKEHOLD OR SIMILAR NECK RESTRAINT TECHNIQUES	REVISED:	RESCINDS:
REFERENCE: TCA 38-8-113 & MNPD Manual 11.10 generally, and 11.10.020(S)	EFFECTIVE DATE: June 11, 2020	DISTRIBUTION: All Personnel

I. PURPOSE

The purpose of this roll call training document is to ensure ongoing compliance and adherence to the policy regarding the prohibition of chokeholds or similar neck restraint techniques by MNPD employees.

In accordance with the current requirements, supervisors shall ensure all employees under their command are aware of this document and that they have received notice of the information and accept responsibility to follow the directive(s) contained herein.

II. KEY POINTS TO COVER DURING ROLL CALL TRAINING

Recent events have highlighted the need for increased transparency and clarity of mission. Therefore, to further the goals of police legitimacy, the MNPD seeks to simplify certain policies to ensure clarity and ensure that any ambiguity is eliminated in those policies.

Under existing MNPD Manual provisions, neck restraints are prohibited as a restraining force technique. Additionally, the MNPD does not include "chokeholds" or similar neck restraining maneuvers in our training curriculum; therefore, by application of TCA 38-8-113, the use of those techniques are also prohibited.

Existing provisions of the MNPD Manual provide that neck restraint techniques are not an authorized restraining force technique:

MNPD Manual, 11.10.020(S) provides (emphasis added):

Restraining Force: Force which is limited to holding and restraining persons, which shall include arm-lock and takedown holds, ***but shall not include neck restraints.***

Purpose

It is the purpose of this policy to clarify this prohibition on chokeholds or similar neck restraint techniques by MNPD employees. The following provision is in effect and shall be inserted into the Department Manual at an appropriate location:

Policy

Definitions

Chokehold or Similar Neck Restraint: any pressure or constriction to the neck, throat or windpipe that may inhibit breathing.

Chokehold or Similar Neck Restraint Technique

A member of the MNPD shall not use a choke hold or other similar neck restraint technique on any suspect, arrestee, defendant, or other person.



**METROPOLITAN POLICE DEPARTMENT
NASHVILLE, TENNESSEE**

Roll Call Training: Policy Briefing

MNPD FORM 101
Rev. Feb. 2020

SUBJECT: DUTY TO INTERVENE	REVISED:	RESCINDS:
REFERENCE: Various Provisions MNPD Manual, 1.20, 1.30, 4.10, 4.20, et al	EFFECTIVE DATE: June 11, 2020	DISTRIBUTION: All Personnel

I. PURPOSE

The purpose of this roll call training document is to ensure ongoing compliance and adherence to the policy regarding the duty of MNPD employees, particularly sworn employees, of their moral, legal and departmental duty to intervene and stop any other member from committing an unlawful or improper act, including but not limited to, acts of brutality, abuses of process, abuses of authority, and any other criminal acts or major violations of department rules and procedures.

In accordance with the current requirements, supervisors shall ensure all employees under their command are aware of this document and that they have received notice of the information and accept responsibility to follow the directive(s) contained herein.

II. KEY POINTS TO COVER DURING ROLL CALL TRAINING

Recent events have highlighted the need for increased transparency and clarity of mission. Therefore, to further the goals of police legitimacy, the MNPD seeks to simplify certain policies to ensure clarity and ensure that any ambiguity is eliminated in those policies.

Although, multiple provisions of existing department policy mandate that employees report and intercede in situations where they become aware of other employees engaged in unlawful acts, or those that otherwise violate department policy, the following provision is in effect and shall be inserted into the Department Manual at an appropriate location:

Duty to Intervene

Purpose

It is the purpose of this policy to explain the legal and moral obligation of MNPD employees, under the Law Enforcement Code of Ethics, Oath of Office and MNPD policy to intervene and report any act that violates law or policy. Every member of the MNPD has the individual responsibility to intervene and stop any other member from committing an unlawful or improper act, including but not limited to, acts of brutality, abuses of process, abuses of authority, and any other criminal acts or major violations

of department rules and procedures. Successful intervention enhances police legitimacy by preventing misconduct and reducing opportunities for mistakes.

Policy

Definitions

Intervene: To come between, whether verbally or physically, so as to prevent or alter a result or course of events.

Duty to Intervene

1. All members must recognize and act upon the Duty to Intervene in order to prevent or stop any member from conducting any act that violates law or policy (including, but not limited to excessive or unlawful force, unlawful behavior, abuses of authority or major violations of department policy or procedure).
2. Such interventions shall be reported to an appropriate supervisor without delay. Successful intervention does not negate a duty to report.
3. Consistent with established policy and training, if medical attention is required by any individual, ensure that medical attention has been provided and/or summoned.
4. Failure to intervene or report may subject a member to disciplinary action.
(Category varies by severity of violation)

Types of Intervention

Employees should examine the circumstances surrounding the incident to determine the appropriate form of Intervention. Intervention may be verbal or physical, depending on the circumstances.

Preventative: Take a preventive approach, whenever possible, if observing behavior that suggests that another member is about to conduct or engage in inappropriate behavior.

Active: Take an active approach to intervene; in order to stop any behavior or misconduct that violates policy or law, when such conduct is being committed by another member.

Supervisor Role

Consistent with applicable policy, when an intervention occurs, the supervisor shall initiate an appropriate inquiry or investigation, consistent with applicable policy.