



FLORIDA POLICE CHIEFS ASSOCIATION

Subcommittee on Accountability and Societal Change

September 3, 2020
Report and Recommendations:
Use of Force Policy and Related Issues

Submitted by: J. David Marsey, on behalf of Chair Chief Anthony Holloway, St. Petersburg Police Department, and the Subcommittee

Approved by the Florida Police Chiefs Association (FPCA) Board of Directors on September 3, 2020.

I. Executive Summary

The Subcommittee on Accountability and Societal Change (“Subcommittee”) was created to study the intersection between law enforcement and the community to determine how the Florida Police Chiefs Association’s members can better serve its customers – the community. The Subcommittee is comprised of law enforcement executives, members of the community and subject matter experts. The team has worked collaboratively and has accomplished a lot during its short tenure, but there is more to be accomplished.

The Subcommittee recognized the importance of sending a prompt and substantive message, and therefore, has elected to prepare this Report to make its recommendations regarding the development and revision of use of force and other policies and to endorse guiding principles that Florida’s law enforcement agencies should follow to increase accountability and to foster understanding and a working relationship with their community partners.

Nothing contained in this Report may set a state-wide standard nor can it form a basis to limit the otherwise lawful development of individual agency policies or the lawful use of otherwise lawful techniques. Nevertheless, the Subcommittee respectfully submits this Report and Recommendations regarding use of force policy and related issues to the FPCA Board of Directors. The Subcommittee further requests that the FPCA Board of Directors endorse its recommendations contained herein and to publish a public statement that will be distributed to all FPCA Members, encouraging the adoption of the aspirational goals set forth in this Report. Members of the Subcommittee continue to work diligently and anticipate providing additional reports.

II. Composition of the Subcommittee

The Subcommittee was created by Immediate Past President Ken Albano, Temple Terrace Police Department, who memorialized the collective commitment of the Florida Police Chief’s Association to real, meaningful, lasting change. Through his leadership, and that of President Jeff Pearson, Satellite Beach Police Department and Executive Director Amy Mercer, designated members of the Association have entered into a partnership with prominent community members to explore ways to implement change. The Subcommittee is comprised of a diverse mixture of community members, law enforcement leaders and subject matter experts, and consists of:

- Chair: Chief Anthony Holloway – St. Petersburg Police Department

Community Leaders:

- T. Willard Fair, President and CEO, Urban League of Greater Miami
- Rev. Watson L. Haynes, II, President & CEO, Urban League of Pinellas County
- Paula Hoisington, Chairwoman, Central Florida Urban League
- Rev. Arthur Jackson, III, Senior Pastor, Antioch Missionary Baptist Church, Miami Gardens
- Dr. Randy Nelson, Program Director, Bethune-Cookman University Center for Law and Social Justice
- Dr. Shirley Plantin, Executive Director, Miami-Dade County Community Relations Board
- Kareem J. Spratling, Shareholder, Bryant Miller Olive P.A.
- Sabrita Thurman-Newby, Co-Chair, The Neighborhood First Initiative, Tallahassee
- Marilyn Turman, SPC Corporate Trainer, Event Coordinator, Community Activist
- Kerry Wiggins, Educator and Coach, City Commissioner, Sanford
- Pastor Rodney Wilkinson, Lead Pastor, Gospel Fellowship, Boynton Beach

Law Enforcement Members and Subject Matter Experts:

- Chief Charles Broadway, Clermont Police Department
- Chief Terri Brown, Florida State University Police Department
- Major David De La Espriella, Miami Beach Police Department and president, Miami-Dade County Association of Chiefs of Police
- Chief Brian Dugan, Tampa Police Department
- Dr. Lori Fridell, Professor, and subject matter expert on use of force, Department of Criminology, University of South Florida
- Chief Michael Gregory, Boynton Beach Police Department
- J. David Marsey, General Counsel, and subject matter expert on use of force and policy development, Florida Police Chiefs Association
- Assistant Commissioner Jennifer Pritt, Florida Department of Law Enforcement

- Chief Orlando Rolón, Orlando Police Department
- Chief Daniel Slaughter, Clearwater Police Department
- Chief Cecil Smith, Sanford Police Department
- Chief Dexter Williams, Miramar Police department and president, Broward County Association of Chiefs of Police

III. Tasking

The Subcommittee was provided wide latitude to determine its own course and scope through the cooperative engagement of its members. During this collaborative process, and in recognition of the unanimous desire to make a prompt and meaningful statement, the Subcommittee decided to adopt a multi-phase process. First, the Subcommittee determined its mission statement and goals. Second, it identified recommendations regarding use of force policies and related issues to present to the FPCA Board for adoption and dissemination. Third, it determined a broader discussion on societal issues impacting law enforcement officers, agencies and their communities warranted a more detailed and comprehensive dialog, which remains ongoing.

This Report is intended to convey the Subcommittee’s recommendations regarding the adoption, in part, of the 2020 National Consensus Policy and Discussion Paper on Use of Force (“Consensus Policy”). Because a consensus could not be reached on the adoption of the Consensus Policy as a whole, this report serves to more fully identify the additional recommendations of the members that may not be fully discussed in the Consensus Policy.

IV. Methodology

At the outset, the Subcommittee prepared its mission statement:

The Florida Police Chiefs Association’s Subcommittee on Accountability and Societal Change, as composed of law enforcement and community leaders, will review reform recommendations and develop a series of proposals that could be implemented at the local and state level to enhance trust, ensure transparency and accountability, and strengthen relationships between the police and the communities they serve

Once its mission was identified, the Subcommittee had its first meeting with its law enforcement members and subject matter experts on June 15, 2020 to prepare

a preliminary plan and timeline. Of the utmost importance was the identification of community members to aid the Subcommittee on its Mission. In furtherance of that goal, members identified and submitted the names of community members to serve side-by-side with them. Particular emphasis was placed on the “8 Can’t Wait” and other nationally recognized talking points as the foundation of discussion. Members recognized that many of those factors were already incorporated into law enforcement best practices generally and the policies of the law enforcement Subcommittee members specifically. During subsequent discussions with the full Subcommittee, the subject matter experts incorporated these factors in their numerous presentations and moderated discussions.

The Subcommittee met approximately once per week and the majority of these meetings included our community partners. Subject matter experts Dr. Lorie Fridell and General Counsel David Marsey made numerous presentations on use of force, policy and related issues that served as the springboard for productive engagement and discussion. There were several occasions where FPCA staff conducted surveys of FPCA members, including the areas of force models and guiding principles, the results of which were used to supplement Subcommittee discussions. While recognizing the FPCA’s inability to “require” change, Subcommittee members agreed to prepare this report to make recommendations about the adoption of use of force policies and other practices. The Subcommittee anticipates additional reports will be forthcoming as the Subcommittee continues its important work.

V. Recommendations

Because the Subcommittee’s intent was to promptly address use of force policy and related issues, it utilized the existing National Consensus Policy and Discussion Paper on Use of Force as the starting point. The Consensus Policy was a result of a collaboration between a variety of national associations affiliated with or representing law enforcement, including Associations that represent persons of color. It “incorporates the most current information and contemporary professional judgment and is designed to provide a framework of critical issues and suggested practices from which agencies can develop their own use of force policies.” *See* Discussion Paper, §I(A). Although the Consensus Policy “is not intended to be a national standard by which all agencies are held accountable, and agencies are not required to institute” it, it reflects the best practices in the law enforcement community. *See* Discussion Paper §I(A). The Consensus Policy was created by several of the leading law enforcement leadership and labor organizations:

- Association of State Criminal Investigative Agencies
- The Commission on Accreditation for Law Enforcement Agencies, Inc.
- Fraternal Order of Police
- Federal Law Enforcement Officers Association
- International Association of Chiefs of Police
- Hispanic American Police Command Officers Association
- International Association of Directors of Law Enforcement
- National Association of Police Organizations
- National Association of Women Law Enforcement Executives
- National Organization of Black Law Enforcement Executives (NOBLE)
- National Tactical Officers Association

As more fully set forth below, the Subcommittee recommends the FPCA Board of Directors endorse the Consensus Policy in part, with several substantive exceptions.

The Consensus Policy and Nationally Recognized Talking Points

The Consensus Policy was determined to be a solid foundation for discussions because many of the current discussion factors circulating nationally were already addressed within its provisions. More specifically, the following factors were satisfactorily addressed by the Consensus Policy:

1. Banning Chokeholds – Chokeholds are prohibited unless the use of deadly force is authorized. *See* Consensus Policy, §IV(D)(3)(e).
2. Require De-Escalation – De-escalation techniques are required whenever possible and appropriate before resorting to force and to reduce the need for force. *See* Consensus Policy, §IV(B).
3. Require Warning Before Shooting – 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. *See* Consensus Policy, §IV(D)(2).
4. Require a Duty to Intervene – An officer has a duty to intervene to prevent or stop the use of excessive force by another officer when it is safe and responsible to do so. *See* Consensus Policy, §IV(A)(4).

5. Require Comprehensive Reporting – All uses of force shall be documented and investigated pursuant to his agencies policies. *See* Consensus Policy, §IV(A)(5). The Subcommittee has additional recommendations beyond those included in the Consensus Policy, which are discussed more fully below.

Several other factors were substantially addressed in the Consensus Policy, but required some minor revision to ensure the safety of the officers and community:

6. Require the Exhaustion of All Alternatives Before Shooting – The requirement to exhaust all alternatives before shooting is impractical and could result in unnecessary risk to officers and citizens. The Subcommittee recognized that in some circumstances, the only reasonable response would be the immediate use of deadly force, *i.e.* an officer being shot at or otherwise being under the imminent threat of death or great bodily harm. Accordingly, the Subcommittee recognizes and recommends the endorsement of the Consensus Policy that requires “Officers shall use force only when no reasonably effective alternative appears to exist and shall only use the level of force which a reasonably prudent officer would use under the same or similar circumstances.” *See* Consensus Policy, §III, Definitions; §IV(B)(1).
7. Ban Shooting at Vehicles – The complete ban on shooting at vehicles is impractical and could result in unnecessary risk to officers and citizens. The Subcommittee recognized that in some narrow circumstances, that shooting at a moving vehicle may be required for the preservation of human life and to protect against the imminent threat of death or great bodily harm. Accordingly, the Subcommittee recognizes and recommends the endorsement of the Consensus Policy that prohibits the shooting at moving vehicles, unless: (1) a person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle, or (2) the vehicle is operated in a manner deliberately intended to strike an officer or another person, and all or the reasonable means of defense have been exhausted, are not present, or are impractical, which includes moving out of the path of the vehicle. *See* Consensus Policy, §IV(D)(3)(C).
8. Requiring a Use of Force Continuum – Agency use of force policies are generally categorized as a force continuum, sometimes referred to as a linear force matrix, and objective reasonableness models. Although bare

minimum constitutional standards require an officer to consider the totality of circumstances before using any force, generally, a force continuum identifies specific areas of resistance and the appropriate officer response, with the anchor factor being the subject's conduct. An objective reasonableness policy includes subject factors as one of the many variables that an officer takes into account when determining the appropriate level of force to use but does not incorporate a matrix. Several objective reasonableness policies include descriptors of suspect conduct typically included in the force continuum, therefore, the lines between the models are frequently obscured.

Significant discussion was held regarding the adoption of a force continuum or an objective reasonableness model. Assuming the bare threshold constitutional requirement that officers must consider the totality of circumstances, both models are permissible. While the movement by law enforcement agencies is towards the objective reasonableness policy each model has its own proponents and opponents. A survey of a representative sample of FPCA members revealed an approximately 50/50 split of members who have a linear continuum policy and those who have an objective reasonableness policy. While the Consensus Policy endorses an objective reasonableness policy, *see* Discussion Paper, §III(C), the Subcommittee does not endorse or reject the force continuum model, but instead, recognizes that both models may be legally sufficient if properly drafted. Instead of adopting one force model over another, the Subcommittee offers guiding principles it believes should be considered in the development of agency use of force policies, as more fully set forth below.

Exceptions to the Consensus Policy

Although the Consensus Policy provides a foundation for some of the changes discussed by the Subcommittee, there were two noteworthy exceptions to the Policy the Subcommittee expressly seeks to reject, and in the place of, to make the following recommendations.

1. Warning Shots – A warning shot is defined as the “[d]ischarge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury.” *See* Consensus Policy §III (Definitions). The Consensus Policy permits the firing of warning shots under certain limited conditions. *See* Consensus Policy §IV(D)(3)(b).

However, in recognition of the serious danger of discharging a firearm for warning purposes and the potential to inflame already tense and dangerous situations, the Subcommittee specifically rejects this section of the Consensus Policy and recommends that the Association endorse a prohibition on warning shots.

2. Vascular Neck Restraint – A vascular neck restraint is “a technique that can be used to incapacitate individuals by restricting the blood flow to their brain” which results in temporary unconsciousness. *See* Consensus Policy, §III(Definitions). Although the Consensus Policy defines, but does not address, the use of the vascular neck restraint, the Discussion Paper recommends that these techniques be permitted only when deadly force is authorized. The Subcommittee endorses the Discussion Paper’s recommendation, and in the absence of a specific provision of the Consensus Policy, recommends that the Association endorse the prohibition on the use of the vascular neck restraint unless deadly force is authorized.

*Guiding Principles that Should be Considered in the Drafting of
Agency Use of Force Policies*

Although the Consensus Policy, as modified, addresses many of the concerns identified by the widely disseminated talking points and the members of the Subcommittee, it failed to satisfactorily cover the breadth and scope of the Subcommittee’s recommendations. Additionally, the Subcommittee’s inability to endorse a specific force model requires further supplementation to the terms of the Consensus Policy. The Subcommittee recommends and endorses the following guiding principles govern the development of agency use of force and other policies:

1. Preservation of Life – The preservation of life should guide all law enforcement actions. Where necessary to use force against a member of the community, the force should be objectively reasonable, proportional, and necessary in defense of an officer, another, or in pursuit of a lawful objective.
2. Communication by Officers – Many incidents involving the use of force may be eliminated or mitigated by thoughtful, clear, continuous, and calm communications when possible. In every encounter with the community, officers should strive to thoughtfully communicate as a reasonably prudent officer would and to use force only when all

reasonable efforts to communicate without the use of force are unsuccessful or impracticable.

3. Communication by Administrators – Many misperceptions, misconceptions, rumors, and innuendo may be eliminated or mitigated by a law enforcement administration’s prompt, clear, and continuous communication with the community. This communication should occur as a matter of course and in the absence of any pressing critical incident. Only through comprehensive and continuous communication can the community and law enforcement administrators develop a relationship to more fully understand and appreciate the other’s perspective. In the case of a critical incident, law enforcement administrators should release as much information as appropriate under the law as quickly as possible. This will serve the two-fold purpose of educating the community and reducing the dissemination of incorrect or false rumors.
4. Training – Regardless of which force model adopted by an agency, law enforcement officers should receive sufficient training to provide them the tools to interpret policy and to engage with the community in a meaningful manner. Agencies should not simply rely on police academy training or the use of field training programs. Instead, training should be ongoing and continuous to include the use of scenarios that require officers to apply the legal and policy fundamentals to a variety of factual circumstances they may find in the community.
5. Aggressive Investigation, Tracking and Reporting of Use of Force Data – Law enforcement agencies should develop policies, customs and practices that require officers to report when force is used, including the pointing of a firearm at someone even if it is not discharged. These use of force incidents should be reviewed by multiple levels of supervision, investigated where appropriate, and prompt remedial action taken if the force is in violation of law or policy. The collection of data should include a mechanism by which an officer’s history of using force may be reviewed to promptly identify overly aggressive officers or those in need of remedial or additional training. The reporting of force incidents will more fully inform the community of the nature, type, and extent an agency utilizes force against citizens. Statistically, the number of encounters that involve the use of force is very small and the promulgation of such information at the local level may educate the community, foster trust and prompt additional communications between the agency and the community.

6. Accountability – Hand in hand with the investigation, tracking and reporting of force applications is the principle that all officers should be held accountable should they use excessive force or otherwise violate policy. Accountability may include termination or lesser discipline, retraining, or referral to outside agencies for criminal prosecution if warranted. Accountability also includes communicating with the community about investigative outcomes as allowed by the Officer’s Bill of Rights, Florida public records law and other legal requirements.
7. Local Reform – Agencies should identify and advocate for reform at the local level. Although state and national reform may also be necessary, the unique local environments and relationships demand prompt, comprehensive and continuous efforts to engage with the community to achieve mutual goals. Local reform particularly is about how the local agency “can do better,” while remaining mindful of the need for officers to protect themselves, members of the community and the integrity of internal or criminal investigations.
8. Recruitment – Applications to serve as a law enforcement are at historically low levels, especially amongst people of color. Agencies should actively recruit police officers who reflect the demographics of the community. The use of community outreach and increased communications with the community may result in attracting police recruits with a desire to serve their community.

VI. Conclusion

Although the Subcommittee has addressed many issues during its short tenure its work is just beginning. The information and ideas exchanged during Subcommittee meetings is indicative of the success that may be had at the local level if law enforcement administrators engage with their communities. After careful consideration and much discussion, the Subcommittee recommends the FPCA Board of Directors issue a statement adopting the National Consensus Policy, subject to the clarifications and modifications set forth above, as well as setting forth the guiding principles upon which its members should abide when developing and revising agency policies and procedures.