

USE OF FORCE TOOLKIT



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In the summer of 2020, the routine killings of people of color by police officers consumed the American consciousness. The Black Lives Matter activists who mobilized for justice in the names of George Floyd, Breonna Taylor, Daniel Prude and countless others have fundamentally questioned the institution of policing in America. The public's confidence in law enforcement's ability to ensure our safety has eroded as we continue to witness state-sanctioned violence, particularly against Black and Brown people. Advocates are now pushing municipalities across the country to end the systems of policing as we know it. This transformational work will not happen overnight and will require a concentrated, coordinated effort over a period of time. In the meantime, the NYCLU will continue to advocate for reforms that, if fully adopted and implemented, will at least reduce the harm to Black and Brown people as we work toward this fundamental transformation. **One key area for possible harm mitigation is in use-of-force policies adopted by municipalities and their law enforcement agencies.**

The police derive their legal authority for brutality and murder from the state. Use-of-force policies can play critical—yet sometimes conflicting—functions in regulating police violence. On the one hand, such policies, if rigorously drafted and enforced, could help us to reduce police violence and to hold police accountable for violent actions, including discipline and termination. On the other hand, use-of-force policies that, for example, give officers a great deal of discretion only serve to legitimize further state-sanctioned abuse by law enforcement. It is essential that advocates fully interrogate use-of-force policies to maximize their potential for **reducing harm to people of color** and minimize adverse consequences. The following tool kit offers metrics and language that advocates may use as guidance when reviewing these policies.

METRICS

Protection of Persons

All policies must include a reference to preserving and respecting the dignity and liberty of all individuals who the police serve. Policies should emphasize the significance and sanctity of an individual's life and the need for police to take all possible measures to protect the individual.

Combination of Tactics

Officers must assess the severity and danger of a method when in combination with other tactics and/or methods. For example, police throwing someone to the ground when they have already handcuffed and put a spit hood on the individual could be deadly, as in the case of Daniel Prude.

Specific Scenarios and Responses

Policies should include a list of specific, common scenarios and the protocol and methods that police officers must comply with during such encounters. **Specific scenarios must include the following:**

- Traffic violation
- Ordinance violation
- Misdemeanor
- Non-violent felony
- Defense of property
- Past conduct of civilian
- Self-harm
- Moving vehicles (e.g., suspect in and shooting from)
- Target not clearly in view (e.g., shooting at a window)
- Suspect in restraints
- Verbal confrontation
- Fleeing suspect
- Passive resistance
- Failure to comply with officer command
- Individual who does not pose a current, active, and immediate threat of death or serious bodily injury to the officer or bystanders

Use-of-force policies must describe when the following methods may—and *may not*—be used by police in encounters with the public:

- Tasers
- Drawing/ pointing firearms
- Batons
- Intentional weapon strikes
- Warning shots
- Chemical sprays
- Kinetic energy/ projectile devices
- Pain compliance techniques
- Spit hoods

Prohibition on Shooting at Moving Vehicles

Firearms must not be discharged at a moving vehicle unless deadly force is used against another person present by means other than the moving vehicle itself. Shooting at moving vehicles endangers other passengers in the vehicle. A ban on shooting at moving vehicles has sharply reduced killings.¹

Retaliation

Policies must prohibit any use of force meant to punish or retaliate against a person, based on bias or other protected characteristic.² Failure to comply should result in discipline, including termination.

Ban Neck Holds and Chokeholds

Policies should explicitly and unequivocally ban the use of neck-holds or chokeholds, and officers who

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¹ Police have Known for 45 years not to Shoot at Moving Vehicles”, May 8, 2017, <https://www.vox.com/policy-and-politics/2017/5/8/15533536/police-shooting-moving-cars-jordan-edwards>

² “Chicago Police Department Use of Force General Order G03-02,” February 29, 2020, <http://directives.chicagopolice.org/directives/data/a7a57be2-128ff3f0-ae912-8fff-44306f3da7b28a19.html>.

violate such a ban should be subject to discipline, including termination.

Duty to Intervene

Policies must explicitly state that law enforcement officers must intervene if they witness other officers using excessive or unnecessary force and must report it to their supervisors. Failure to report incidents involving the use of unnecessary or excessive force must result in disciplinary action.³

Non-Law Enforcement Response to Mental Health 911 calls

If a municipality has the resources, crisis intervention units should respond to calls for individuals who have or appear to have a mental illness, substance abuse-related issue, or are experiencing any other mental or behavioral crisis. These professionals must assess the scene and use de-escalation tactics prior to contacting law enforcement.⁴

Strong Language on Avoiding Use-of-Force

Policies must require officers to avoid the use of excessive force on an individual. They must include a strong focus on de-escalation and list out alternative options to using any form of force on an individual. Law enforcement officers must use proper de-escalation techniques to avoid force and to increase the likelihood of cooperation between officers and civilians. **Such alternative options to deescalate a situation may include:**

- Placing barriers between an uncooperative subject and an officer
- Containing a threat (i.e., stabilization techniques used to keep an individual from fleeing)
- Moving from a position that exposes officers to potential threats to a safer position
- Decreasing the exposure threat by using distance, cover, and/or concealment
- Communicating from a safe position intended to gain the individual's compliance using verbal persuasion like advisements or warnings

In addition, the policy must require police to determine if an individual's failure to comply with an order is the result of **one of the following factors:**

- Medical conditions
- Mental impairment
- Developmental disability
- Physical limitation
- Language barrier
- Drug interaction
- Behavioral crisis
- Other factors beyond the individual's control

Prohibitions on the Use of Deadly Force

Policies must state that under no circumstances will officers discharge their firearms on moving vehicles, fleeing persons, to fire a warning shot, or in defense of property. All officers who fail to comply

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³ Campaign Zero, "Model Use of Force Policy," 2020, <https://static1.squarespace.com/static/55ad38b1e4b0185f0285195f/t/5deffeb7e827c-13873eaf07c/1576009400070/Campaign+Zero+Model+Use+of+Force+Policy.pdf>

⁴ Campaign Zero, "Model Use of Force Policy," 2020.

must be subject to disciplinary action, termination, and/or criminal investigation.⁵

Test of Proportionality

Proportionality is a term often used to discuss force guidelines that assess whether or not the response is proportional to the threat being faced. Policies must require the police to consider proportionality when they first approach an individual and to continually reassess proportionality as the situation evolves. To aid in this assessment, policies should include a list of questions for officers to ask themselves, such as the following:

- Am I using only the minimum level of force necessary to mitigate the threat and safely achieve a lawful objective?
- Are there non-physical, less-injurious options available that will allow me to achieve the same objective as effectively and safely for the individual?
- Will my actions be viewed as appropriate by the public given the totality of the circumstances?

Use-of-Force Continuum

Policies must include a use-of-force continuum that explicitly states the types of forces and weapons that *may not* be used in different levels and types of resistance. The use-of-force continuum must be accompanied by different levels of discipline for the officer who uses excessive force in violation of the policy.

Report Use-of-Force Data

To promote transparency and accountability, the policies must include specific procedures and criteria for reporting use of force data, including all complaints of excessive force or injury and all uses of excessive and deadly force or instruments of potentially deadly or serious force. By law, police departments across New York are required to report use of force data to the Division of Criminal Justice Services; it is imperative that departments comply with this mandate, but nothing should prevent policies from requiring that even more detailed information be captured and reported. Metrics for data should include, but not be limited to the following:

- Type of force
- Type of degree of injury to suspect and officer
- Date and time of incident
- Location of incident
- Officer's unit, station, and assignment
- Number of officers that used force in incident
- Officer's activity when force was used
- Civilian's activity when force was used
- Demographic information of officer (race, ethnicity, age, gender identity)
- Demographic information of civilian (race, ethnicity, age, gender identity)
- Outcome of investigation

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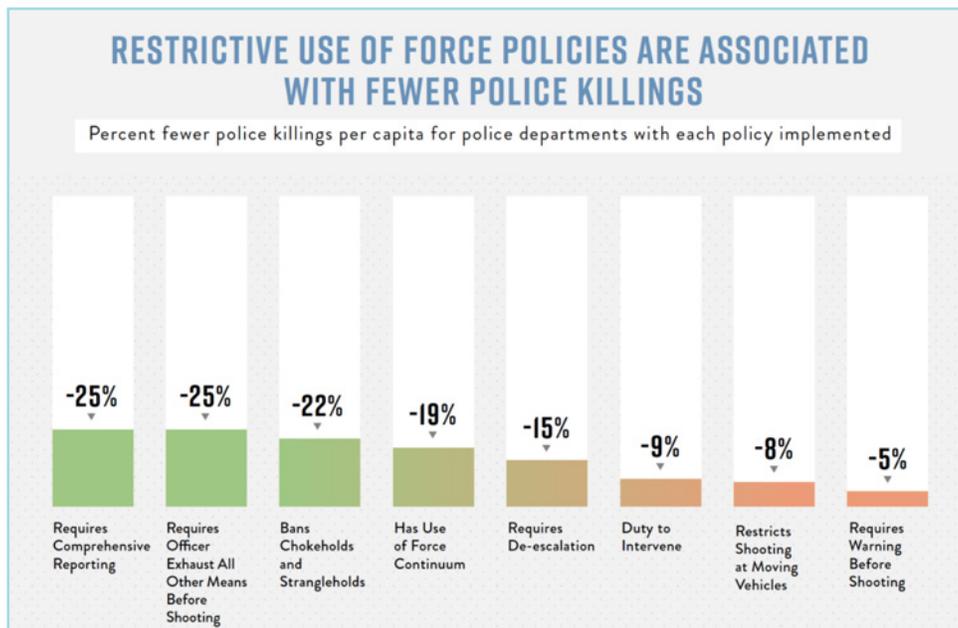
⁵ Campaign Zero, "Model Use of Force Policy," 2020.

Civilian Oversight Investigations

Any existing civilian oversight structure for the law enforcement agency – such as a civilian review board for example – should review, gather data, and investigate the use of force, and prepare reports to the entire board. The board should prepare reports on the use of force to review and determine if the officer involved complied with the policies. Board findings must be made public.

Implementation of These Policies Reduce Deaths

Municipalities that have adopted restricted use of force policies in line with the above recommendations have seen a reduction in deaths by police (see chart below). Limiting the use of force is a necessary action to protect civilian populations from police brutality as we work to divest from the institution of policing and invest in community services that will redefine public safety.



“Use of Force Project,” 2020, <http://useofforceproject.org/#analysis>.