

REPORT TO MAYOR JON MITCHELL

RECOMMENDATIONS TO REVISE USE OF FORCE POLICIES

Since July, the New Bedford Commission on NBPB Use Force Policies has pursued a narrowly defined charge to review and offer recommendations to the department's three Use of Force policies:

- *12-01 Use of Deadly Force*
- *12-02 Use of Less-Lethal Force*
- *12-03 Electronic Control Weapons*

Contained in this report are two documents as an outcome of that charge:

- **Policy Recommendations**
- **Related Recommendations, Observations, and Concerns**

Summary of Recommendations

The Commission considers that the recommendations contained in this report represent a step forward in overall police reform in New Bedford. Several of the recommendations included may be considered nuances and minor adjustments to the policies, but there are a number of significant revisions, some of which include:

- Substantive guidance on de-escalation strategies;
- Duty of an officer to intervene when witnessing abuse and violation of use of force policies;
- Duty of an officer to report witnessed abuse and violation of use of force policies;
- Training and demonstrated proficiency on NBPB Use of Force policies;
- Training on implicit bias, cultural competency, mental illness, and developmental problems;
- Annual analysis and summary of use of force instances made available to the public.

The Commission attempted to honor the scope of its charge and confine its recommendations specifically to the content of the Use of Force Policies. However, it became clear that there are other matters directly impacted by the Use of Force policies. The Commission was compelled to address these considerations, since they do bear significant relevance to the Use of Force policies. Those recommendations, observations and concerns are included as a separate document in this report.

The Process

Meeting in closed sessions on a weekly basis, the Commission thoroughly reviewed the policies with an eye toward eliminating or correcting provisions of the policies to limit possibilities for abusive use of force by police. During its deliberations the Commission worked to achieve consensus for all recommendations.

Overall, the existing policies were already closely aligned to those of the *8 Can't Wait* recommendations with the exceptions of "duty to intervene" and "de-escalation" language.

Keeping this in mind, the Commission embarked on extensive research of policies from many different departments. It recognized and adopted language to meet the need of strengthening the emphasis on “duty to intervene” and “de-escalation” components for all three policies.

When it came to language on “choke holds” the commission recommended we move beyond that language and include “strangle hold” and other neck control techniques to be clear and precise.

In developing the policy recommendations, the Commission focused on verbal communications skills and more reporting to ensure transparency.

Once the Commission had compiled its initial list of recommendations, it scheduled its first public hearing.

The Commission held its first public hearing via Zoom on August 19 with 102 in attendance. The purpose of the hearing was to solicit input and insights from the public and any recommendations they had for the revision of the policies. This first hearing proved to be relatively non-productive for a variety of reasons, not the least of which was attributable to the lack of adequate preparation. In retrospect, the Commission recognized that the hearing may have been more productive had the Commission shared its initial draft of recommendations prior to the hearing. In preparation for the hearing, the Commission had only provided a link to the three policies online for the public’s review but had not presented its initial draft of recommendations for public review.

Adding to the problem was the public’s preference for debate on the current social climate vs. providing feedback to the policies. Some of the public’s concerns were the composition of the Commission and the opaqueness of Commission’s process of deliberation. Underlying those criticisms was the reiteration of dissatisfaction with the City’s response to the death of Malcolm Gracia. No recommendations specific to the policies were offered during the two-hour meeting.

A second hearing took place December 3 via Zoom with 63 attending. For this second hearing the Commission posted its draft recommendations to the policies, as well a clear description of the purpose and limitations of the hearing. However, some attendees maintained there was a lack of transparency to the work of the Commission and they were not being afforded an opportunity for input, despite the fact that this was precisely the purpose of the hearing...to provide an opportunity for community input.

Subsequent to the second public hearing, the Commission reconvened and discussed the feedback provided at the hearings and finalized its report and recommendations to be submitted to Mayor Jon Mitchell. The recommendations contained herein represent the consensus of the Commissioners.

Closing Remarks

The recommendations put forth by the Commission reflect reasonable attempts to provide further guidance to police officers in the conduct of their duties and an effort to enhance transparency and accountability in policing. The recommendations are also now entirely consistent with the “8 Can’t Wait” agenda, a campaign designed to reduce excessive police use of force.

The Commission stresses that revision of the Use of Force policies is a necessary and appropriate step to ensure that the New Bedford Police Department continues to operate in a manner that places the

highest value on the life and safety of its officers and the public. However necessary, the revision of Use of Force policies alone is insufficient to effect substantive police reform. Additional strategies and initiatives should be explored to ensure transformation of policing in New Bedford.

The effort to respond to the charge of reviewing and making recommendations for revision to the Use of Force policies was no simple task. In the end very few explicit recommendations to the policies were offered by members of the public. Most comments were directed toward criticizing and delegitimizing the Commission and its work and casting doubt about the true motives and intentions of the Mayor with respect to transforming policing in New Bedford.

In spite of the lack of specific recommendations from the public, some very clear sentiments were expressed by a segment of the public attending the hearings. Attendees vocalizing these sentiments generally expressed dissatisfaction with what they perceived as a lack of transparency that contributed to a lack of opportunity for public input as they viewed it. In addition, with regard to some of the attending public, there seems to be significant doubt about the commitment of the Mayor to genuinely address police transformation. They seemed concerned that establishing the Commission is all that will be done with regard to police transformation.

How this Commission's report is handled and whether additional measures are undertaken for police reform will have significant impact on the community's assessment of the good faith effort of the Mayor and the City to effect police transformation. Members of the Commission would welcome a meeting with the Mayor early in 2021.

Submitted by:

Commissioner Brian Gomes

(December 23, 2020)

New Bedford Commission to Review NPBD Use of Force Policies

Policy Recommendations

The following recommendations were contemplated by the New Bedford Commission to Review NPBD Use of Force Policies throughout the months of July, August, September, October and November 2020. Most have been incorporated into the tentatively revised policies on the use of force.

1. A Commission on the Police Use of Force should remain in existence. Does not necessarily need to be this same group, can be appointed with terms etc.
2. Using Brookline Police Dept.'s "Use of Force" policy as a guide, enhance the emphasis on de-escalation throughout the NPBD policies as recommended in *Proposed Language for Revised Policies* documents.
3. That the Use of Force policies include a "Duty to Report" clause, whereby every officer will be required to report violations of the Policy, abuses of the public, and other inappropriate actions during their duty. Failure to report such instances should be considered a violation of the Policy and should result in appropriate disciplinary action.
4. Require the duty and obligation of other officers on an incident scene to intervene when they witness the excessive use of force by a fellow officer. (Even if this is spelled out in the NPBD Rules and Regulations, it should be reiterated in the Use of Force policies.)
5. That the phrase "lawful and appropriate" be added to the Use of Less-Lethal Force: IV. General Considerations, Part C. "Control is accomplished whenever a person complies with an officer's lawful and appropriate directions..."
6. The section on *Verbal Commands* needs to be expanded upon and should permeate many sections of the Use of Less-lethal Force policy.
7. The prohibited control techniques should be spelled out more specifically, eliminating not only choke holds but other techniques that have potential deadly consequences, as well.
8. In the *USE OF LESS LETHAL FORCE* policy, sec. V. B. include "7) awareness of, or apparent, mental or emotional instability of the subject."
9. Require data collection (including race/ethnic data) and regular comprehensive reporting of police use of force and make such reports available to the public.

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10. Incorporate the use of new language as it relates to prohibiting the shooting of unarmed persons.
11. The use of drive stun is to be addressed in accordance with update language from Policy -01 and Policy -02.
12. Recommendation to adjust language in *Use of Deadly Force* as indicated in highlighted sections: At least annually, all sworn officers authorized to carry weapons are required to receive in-service training **and testing on** the Department's Use of Force policies and demonstrate proficiency with all approved lethal weapons that the officer is authorized to use. Inservice for other less-lethal weapons and weaponless control techniques shall occur at least biennially. (1.3.10) (1.3.11,1.3.12). All officers shall be given a copy of the Department's Use of Force policies and **must annually** pass a written examination before being authorized to carry a weapon. Proficiency training shall be provided by a certified weapons or tactics instructor qualified in the respective less-lethal force weapons.
13. Recommendation to adjust language in *Use of Deadly Force* as indicated in highlighted sections: "Whenever an officer fails to obtain a qualifying score with his/her duty firearm **or fails to meet proficiency on use of force** policies, the officer will be temporarily reassigned and relieved of all police duties requiring a firearm...
14. Recommendation to remove Section: VII Use of Firearms -- Part B subsection 4: "officers may discharge their firearm, without the intent to kill or disable, if it is reasonable to believe that he/she has no alternative method of convincing a would-be attacker that he/she is ready and able to defend himself/herself or others if the potential threat is not discontinued. The provisions of this paragraph shall be limited to extraordinary circumstances because of the possibility that a bullet could ricochet and cause injury to officers, other innocent persons, or may prompt either return fire from the suspect(s), or precipitate the use of firearms by other officers."
15. Recommendation to Section V: Use of Less-Lethal Force Part D add the following highlighted text. The following less-lethal force options are authorized, and **officers are required to go through this list in ascending order whenever feasible.**
16. Language in all relative policies should reflect "public safety" as the primary purpose of those policies. I.e. *It is the policy of the New Bedford Police Department to place its highest value on the life and safety of its officers and the public. In the conduct of policing, all officers must embrace the obligation to ensure that the safety of the public is preserved to the fullest*

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extent possible. Likewise, the safety of all officers must be appropriately safeguarded in all actions of the police. Safety of the public and the safety of the officers must be regarded with the highest priority.

17. Recommendation under II. Policy should include “when an individual is armed or officers or another life is in danger.” Nothing in this policy should be construed to prohibit officers from using whatever means are necessary. Unarmed individuals posing no threat should not lose a life.
18. Recommendation to III. Definitions: Professionalism as it relates to policing should be defined. It is referenced within the documents but assumed rather than defined.
19. Recommendation to VI Training and Qualifications: Officers physical and mental wellbeing should be evaluated annually to be conducted and certified by independent, competent healthcare professionals.
20. Training is provided to all Officers at the time of promotion to ensure they are skilled in assessing physical and mental well-being.
21. Recommendation to Use of Deadly Force Section XII. Add at end of paragraph: “An annual summary of such analyses shall be made available to the public, upon request.
22. Recommendation to Use of Less-Lethal Force: Add at end of paragraph: “An annual summary of such analyses shall be made available to the public, upon request.
23. Recommendation to Electronic Control Weapons: Insert to V. Reporting: *An officer who employs an Electronic Control Weapon for other than training purposes shall notify her/his Division Commander immediately and submit a written report through the Division Commander to the Chief of Police forthwith. The Division of Professional Standards shall produce and forward to the Chief of Police an annual analysis of all use of Electronic Control Weapons for indications of patterns or trends that could indicate training needs, equipment upgrades, and or policy revisions. An annual summary of such analyses shall be made available to the public, upon request.*

(12/9/20)

New Bedford Commission to Review NPBD Use of Force Policies

Related Recommendations, Observations, and Concerns

The following recommendations, observations, and concerns were captured by the New Bedford Commission to Review NPBD Use of Force Policies throughout the months of July, August, September, October and November 2020. It is recognized that while the nature of these items is beyond the mandate of the Commission, it is important that these items be forwarded to Mayor Jon Mitchell as significant time was spent in discussion on each topic and each bears significant relevance for Police reform.

The very limited scope of the charge given to the Commission guarantees that only very minimal reform of policing in New Bedford will take place, if all we are about doing is tweaking a package of policy documents on the use of force. It is an important element in transforming policing but does not equate to the totality of transformation of policing consistent with the Obama Foundation's Mayor's Pledge. Several other measures and initiatives would need to be considered and undertaken to approach significant transformation of policing. Reforming the use of force policies alone is insufficient for overall Police reform.

A culture of accountability in law enforcement is of utmost importance. A culture of accountability in law enforcement builds trust between the Police and the community. The public holds the Police to high standards. When Police Officers violate the rules, they break public trust and lose credibility. This ultimately makes policing more difficult, as people are unlikely to cooperate with police if they don't trust them. Accountability is a key component of effective Policing efforts.

When the public sees that law enforcement has systems in place to enforce Police accountability, it is more likely to see Police as legitimate. And therefore, they will be more willing to assist the Police.

It is important for Officers to be mindful of their actions and maintain objectivity, keep an open mind, and give others the benefit of the doubt. Police Officers shouldn't be in a hurry to make an arrest and above all, never underestimate the value of courtesy and respect.

1. The Commission strongly endorses New Bedford's adoption of body camera usage for Police Officers when on duty. The Commission recommends a pilot program be created for Officers to test body cameras and that all funding sources be leveraged to ensure a body camera program is implemented and sustained."
2. The NPBD should not execute "NO KNOCK WARRANTS" without a Judge's approval.
3. The NPBD should broadly publicize and promote the procedure for filing a complaint against the NPBD to residents of New Bedford, at schools and in marginal communities.

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4. The Commission seeks more training and guidance for Police Officers on how to engage without those experiencing mental illness, intellectual and physical disabilities. Sensitive and informed practices in these matters may be extremely valuable in preventing or minimizing wholly avoidable adverse outcomes that endanger both citizens and Police Officers. This is consistent with our support for enhanced de-escalation training.
5. NPBD Police Officers should be trained annually on the use of force policies and be required annually to demonstrate proficiency in the comprehension and application of such policies.
6. All NPBD Police Officers should be trained annually on implicit bias, explicit bias, anti-racism, and cultural competency. Emotional Intelligence testing should be required for hiring.
7. An independent committee, including people who are not Police Officers, should be created to review any cases related to use of force and documents from such cases should be public.
8. Culturally responsive, comprehensive de-escalation training must be provided to all officers. Teaching Police Officers to rely on communication and negotiation tactics rather than physical force can effectively teach a guardian-style mentality.

(12/9/20)