METRO NASHVILLE
COMMUNITY OVERSIGHT

Metro Nashville Community Oversight
222 2nd Ave. North, Suite 370-M
Nashville, TN 37201
(615) 880-1800 Office · (615) 313-9144 Fax

September 29th, 2020

To: The Nashville Community

From: Jill Fitcheard, Executive Director

Re: Public Comment on Policy Advisory Report on Use of Force Consent Decrees

The Nashville Community Oversight Board (COB) is considering policy recommendations on use of force developed by Metro Nashville Community Oversight (MNCO), the support department for the COB. This policy advisory report was initiated by the COB following protests related to the police killings of George Floyd and Breonna Taylor as well as a request from Mayor Cooper to review Metro Nashville Police Department (MNPD)'s use of force policies and procedures.

MNCO's policy advisory report examines use of force related consent decrees recommendations made by the Department of Justice (DOJ) Civil Rights Division and compares MNPD polices to these recommendations. The report proposes six policy recommendations to the MNPD regarding use of force policies and procedures.

The COB requests your feedback on the draft report titled, "Policy Advisory Report on Use of Force Consent Decrees." Your thoughts and comments will be used to strengthen the report and recommendations. **We invite your written comments. Please send written comments by October 7th, 2020 to:**

Executive Director Jill Fitcheard
Metro Nashville Community Oversight
222 2nd Ave. North, Suite 370-M
Nashville, TN 37201
Email: community@nashville.gov

In addition to written comments, **the Community Oversight Board will be hosting a virtual public hearing on October 7th, 2020 from 5:00PM to 6:00PM.** The public hearing will be live streamed on Metro Nashville Network at stream.nashville.gov. The COB encourages community members and organizational leaders to share their perspective on use of force related policies in Nashville. To call in live during the public hearing, call 629-255-1907 during the hearing. To leave a recorded message to be played during the public hearing, call 629-255-1906. Instructions for signing into meeting are on the next page.

If you have any questions, please contact MNCO at 615-880-1800. We look forward to hearing from you.

Event: *Public Hearing on COB Policy Advisory Report on Use of Force Consent Decrees*
Date and Time: *10/7/20 @ 5:00 PM*

This meeting will take place via teleconference and will be broadcast through the Metro Nashville Network, (MNN), on Nashville's Comcast Channel 3, AT&T U-Verse Channel 99 and on the MNN Live Stream @ stream.nashville.gov.

To join via WebEx, you may join the Event (hover mouse over green button and use Ctrl+Click to follow link)

Join Event

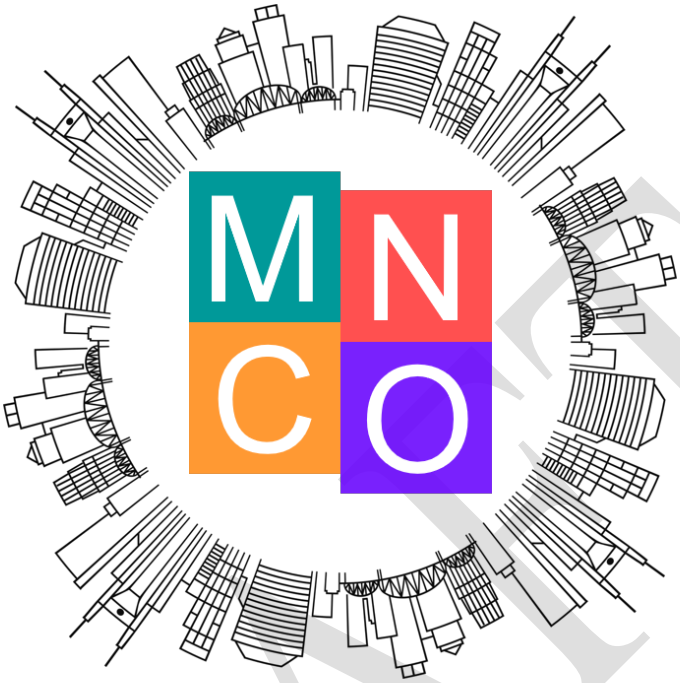
Link:
https://nashville.webex.com/nashville/onstage/g.php?MTID=e7ab7b070aaf71e54b8871dedef535c27

If you would like to join via phone:

1) *Call '415-655-0002'*
2) *When prompted for the meeting access code, enter '146 269 7826' followed by #*
3) *When prompted, press # to indicate you are an attendee*

If the link does not work:

1) *Go to Nashville.webex.com*
2) *Enter '146 269 7826' in the Join Meeting Text box and hit enter*
3) *Fill in your information on the right hand-side*
4) *Enter the Event Password, enter 'metro2020'*
5) *Click on 'Join Now'*



METRO NASHVILLE COMMUNITY OVERSIGHT

Policy Advisory Report on Use of Force Consent Decrees

The Community Oversight Board requests feedback from community members on this draft report which was approved for public comment at the September 23, 2020 COB Meeting.

A public hearing will be held virtually Wednesday October 7th, 2020 from 5:00-6:00PM.

Ways to give feedback:

To call in live during the public hearing, call 629-255-1907 during the hearing.

To leave a recorded message to be played during the public hearing, call 629-255-1906.

To send written feedback, please email your comments to Community@nashville.gov.

DRAFT

Table of Contents

Table of Contents ii

Executive Summary 1

Introduction 3

Methodology 4

Findings 5

Using Force 5

De-escalation 5

De-escalation policies & procedures 6

MNPD policies and procedures 8

Recommendation issued June 24th, 2020: 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. 9

Prohibitions on Use of Force 9

Recommendation 1: MNPD should review policies, procedures, and trainings to ensure consistency between policies in the Manual and prohibitions that are covered in training. Actions that are against policy because of training should be explicitly stated as prohibited in the MNPD Manual. 11

Training 11

MNPD training 13

Recommendation 2: MNPD should implement promotional and annual in-service supervisor training that focuses on conducting use of force investigations. This training should be in addition to the annual in-service training provided to all sworn officers. Recommended training topics include: conducting use of force investigations, strategies for effectively directing officers to minimize uses of force and to intervene effectively to prevent or stop unreasonable force, incident management, and supporting officers who report unreasonable or unreported force, or who are retaliated against for using only reasonable force or attempting to prevent unreasonable force. 14

Crisis Intervention 14

MNPD policies, procedures, and training 16

MNPD training 18

DRAFT

Baltimore Police Department – Crisis Intervention Program Policies 18

Recommendation 3: MNPD should create a Crisis Intervention Team comprised of specially trained officers for response to crisis situations. The MNPD Manual should comprehensively outline policies, procedures, and roles related to the crisis intervention program, including situation-based guidance for officers responding to the scene of a crisis. Since a CIT will require a long-term implementation plan, MNPD should aim to create a budget-neutral plan for developing the program. If additional resources are needed, those should be detailed in a request to the Metro Council for the FY22 budget. 19

Reporting, Investigating, and Reviewing Force 22

Reporting Use of Force 22

MNPD policies and procedures 23

Recommendation 4: MNPD should categorize all use of force above unresisted handcuffing into three levels that will guide the reporting and investigation of the use of force. 23

Investigating and Reviewing Use of Force 23

MNPD policies and procedures 25

Recommendation 5: A Force Investigation Team should be created as a branch of OPA to investigate criminal and administrative aspects of uses of force resulting in serious injury, all firearm discharges, misapplications of force, and other serious uses of force as defined by the department. They should also investigate fatal uses of force for violations of administrative standards parallel to the TBI criminal investigation. The unit should receive specialized training in conducting use of force investigations into serious uses of force. 26

Research and Evaluation 27

Use of Force Data and Reports 27

MNPD research and evaluation 28

Recommendation 6: MNPD should track and analyze use of force data and create an annual use of force report that is available to the public. The analysis in this report should examine the relative frequency and type of force used by officers against individuals in specific demographic categories, examine MNPD's use of force over time, and identify and address any trends that may warrant changes to policy, procedures, training, tactics, equipment, or practice. 29

Conclusion 29

References 30

DRAFT

Executive Summary

The Department of Justice (DOJ)'s Civil Rights Division has the power to launch investigations into patterns and practice in police departments that violate the civil rights of residents. Often, the unlawful practice has been patterns of using excessive force or using force disproportionately on racial minorities. If the DOJ finds constitutional violations after an investigation, they can file a civil suit based on their findings. This usually leads to a negotiated settlement agreement, called a consent decree, where the police department agrees to fix the problems found during the investigation.[1]

Metro Nashville Community Oversight (MNCO) researchers reviewed 14 use of force related consent decrees issued by the Department of Justice and categorized the central recommendations. After the consent decree recommendations were identified, the MNCO research team reviewed the use of force policies from cities with publicly available policies that met the consent decree standards. This process clarified the policy options meeting federal constitutional standards and DOJ recommendations.

Finally, the MNCO research team compared Metro Nashville Police Department (MNPD) policies to the consent decree recommendations and DOJ approved policies to identify aspects that met and did not meet the DOJ standards. Since consent decrees are expansive and often city-specific based on the DOJ investigations, recommendations in this report focus on broader, process-oriented reforms.

The Community Oversight Board makes the following recommendations regarding use of force policies, procedures, and training to the Metro Nashville Police Department:

Recommendation previously issued on June 24th, 2020: 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.

Recommendation 1: MNPD should review policies, procedures, and trainings to ensure consistency between policies in the Manual and prohibitions that are covered in training. Actions that are against policy because of training should be explicitly stated as prohibited in the MNPD Manual.

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[1] "An Interactive Guide to the Civil Rights Division's Police Reforms" (The United States Department of Justice, 2017).

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Recommendation 2: MNPD should implement promotional and annual in-service supervisor training that focuses on conducting use of force investigations. This training should be in addition to the annual in-service training provided to all sworn officers. Recommended training topics include: conducting use of force investigations, strategies for effectively directing officers to minimize uses of force and to intervene effectively to prevent or stop unreasonable force, incident management, and supporting officers who report unreasonable or unreported force, or who are retaliated against for using only reasonable force or attempting to prevent unreasonable force.

Recommendation 3: MNPD should create a Crisis Intervention Team comprised of specially trained officers for response to crisis situations. The MNPD Manual should comprehensively outline policies, procedures, and roles related to the crisis intervention program, including situation-based guidance for officers responding to the scene of a crisis. Since a CIT will require a long-term implementation plan, MNPD should aim to create a budget-neutral plan for developing the program. If additional resources are needed, those should be detailed in a request to the Metro Council for the FY22 budget.

Recommendation 4: MNPD should categorize all use of force above unresisted handcuffing into three levels that will guide the reporting and investigation of the use of force.

Recommendation 5: A Force Investigation Team should be created as a branch of OPA to investigate criminal and administrative aspects of uses of force resulting in serious injury, all firearm discharges, misapplications of force, and other serious uses of force as defined by the department. They should also investigate fatal uses of force for violations of administrative standards parallel to the TBI criminal investigation. The unit should receive specialized training in conducting use of force investigations into serious uses of force.

Recommendation 6: MNPD should track and analyze use of force data and create an annual use of force report that is available to the public. The analysis in this report should examine the relative frequency and type of force used by officers against individuals in specific demographic categories, examine MNPD's use of force over time, and identify and address any trends that may warrant changes to policy, procedures, training, tactics, equipment, or practice.

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Introduction

The Department of Justice's Civil Rights Division was created in 1957 by the enactment of the Civil Rights Act of 1957.[2] Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994 gave the DOJ the power to launch investigations into patterns and practices in police departments that violate the civil rights of residents. If the DOJ finds constitutional violations, they can file a civil suit based on their findings. The result is usually a negotiated settlement agreement called a consent decree where the police department agrees to fix the problems found during the investigation. The progress in remedying the violations is overseen by a monitor who reports to the court. To achieve compliance, the police department must have its policies and procedures evaluated by the monitor, judge, and Civil Rights Division.

The DOJ's Civil Rights Division's investigations look for systemic patterns or practices of unlawful policing. In many cases, the unlawful practice has been patterns of using excessive force or using force disproportionately on racial minorities. Many investigations also uncover unconstitutional practices related to stops and searches. The goal of investigations is not to prove individual cases of bias or discrimination but to look for patterns in how the community experiences policing. After an investigation, the Division works to define, prohibit, and reform the unlawful practice.[3]

Although the focus of these reforms is specific to each police department, consent decrees are the roadmaps that police departments with systemic flaws took toward reform. These reforms did not only stem from within the departments but were negotiated with the DOJ and overseen by a federal court judge and a court-appointed monitor. Many consent decrees include similar recommendations that address common problems related to the use of force by police. Research on the effectiveness of consent decrees shows that after federal monitoring of departments begins, there is a 27% to 43% reduction in the chance of a Section 1983 filing (a lawsuit based on a civil rights violation).[4]

This report aims to identify the common recommendations across DOJ consent decrees and evaluate whether Metro Nashville Police Department (MNPD) meets the standards that the DOJ has put forward as best practices for police reform.

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[2] "Civil Rights Division" (The United States Department of Justice, 2020), https://www.justice.gov/crt.
[3] "An Interactive Guide to the Civil Rights Division's Police Reforms."
[4] Zachary A. Powell, Michele Bisaccia Meitl, and John L. Worrall, "Police Consent Decrees and Section 1983 Civil Rights Litigation," *Criminology & Public Policy* 16, no. 2 (May 2017): 575–605, https://doi.org/10.1111/1745-9133.12295.

Methodology

Consent decrees were identified from the Department of Justice's Civil Rights Division Special Litigation Section website[5] and from the Police Executive Research Forum's 2013 report on DOJ civil rights investigations.[6] This report focuses on consent decrees agreed to after 2000 that address use of force. Consent decrees prior to 2000 or that were not related to use of force were excluded. Table 1 shows the consent decrees analyzed for this report as well as the date of the consent decree, population in the decree year, the number of sworn officers in the closest

Table 1: Consent Decrees Analyzed for Report

City	Decree Date	Population[1] (Decree year)	Number of sworn officers	Officers per 1,000 Residents
Los Angeles, CA	6/15/2001	3,739,000	9,000	2.4
Detroit, MI	6/12/2003	907,000	2,200	2.4
Warren, OH	1/26/2012	40,695	78	1.9
New Orleans, LA	7/24/2012	369,250	1,216	3.3
Seattle, WA	7/27/2012	634,541	1,433	2.3
East Haven, CT	11/20/2012	29,179	48	1.6
Portland, OR	12/17/2012	603,650	900	1.5
Puerto Rico	7/17/2013	3,593,000	11,600	3.2
Albuquerque, NM	11/14/2014	557,172	1,000	1.8
Cleveland, OH	6/12/2015	388,059	1,180	3.0
Ferguson, MO	3/17/2016	20,915	48	2.3
Newark, NJ	4/29/2016	281,770	1,146	4.1
Baltimore, MD	4/7/2017	619,796	2,514	4.1
Chicago, IL	1/31/2019	2,705,988	13,138	4.9
Nashville, TN[2]	NA	665,498 (2018)	1,410	2.1

[1]Population estimates from Data.Census.gov
[2]Nashville is included in the table for comparison of population, sworn officers, and officers per 1,000 residents.

[5] https://www.justice.gov/crt/special-litigation-section-cases-and-matters/download#police
[6] Police Executive Research Forum, *Civil Rights Investigations of Local Police: Lessons Learned*, 2013, https://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf.

available year to the consent decree, and the number of officers per 1,000 residents.

MNCO researchers analyzed the consent decrees to identify the reform requirements placed on police departments. To analyze the consent decrees, all selected settlement agreements were uploaded to MaxQDA, a qualitative analysis software, and coded in order to extract the common and distinct elements of each agreement.

Following the coding of the consent decrees, MNCO researchers used the analysis functions within MaxQDA to identify and categorize the central recommendations from the consent decrees and track which decrees made specific recommendations. Recommendations were organized into five sections which make the sections of this report. Sections include when and how force can be used, training, crisis intervention, reporting and investigating force, and research and evaluation. Results were organized both thematically and temporally. Trends in more recent consent decrees were given precedence over older agreements.

After the consent decree recommendations were identified, the MNCO research team reviewed the use of force policies from cities with publicly available policies that met the consent decree standards. This process clarified the policy options meeting federal constitutional standards and DOJ recommendations.

Finally, the MNCO research team compared MNPD policies to the consent decree recommendations and DOJ approved policies to identify aspects that met and did not meet the DOJ standards. Since consent decrees are expansive and often city-specific based on the DOJ investigations, recommendations in this report focus on broader, process-oriented reforms.

Findings

Using Force

Addressing systemic excessive use of force by police departments is one of the core functions of the Civil Rights Division's agreements.[7] While many of the consent decrees address comprehensive reform to policies and training regarding the use of force, they may also address more specific problems such as the use of force against people with disabilities or in mental health crisis, the misuse of particular weapons, or the failure to properly document or review uses of force.[8]

De-escalation

De-escalation is a common theme that is addressed in almost all the consent decrees that were analyzed by MNCO's research team. Specific policy requirements regarding de-escalation,

[7] "The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present" (The United States Department of Justice, 2017), https://www.justice.gov/crt/file/922421/download.
[8] "The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present."

however, can vary between departments. One of the more common policy recommendations is the use of de-escalation techniques, whenever possible, before the use of force.

Twelve of the 14 consent decrees (see table on right) analyzed had similar language regarding the use of de-escalation techniques before the use of force:

> Police departments should require officers to use de-escalation techniques, including verbal persuasion, warnings, and tactical de-escalation techniques such as slowing down the pace of an incident, waiting out subjects, creating distance (and thus the reactionary gap) between the officer and the subject, and requesting additional resources (e.g. specialized units, behavioral health care providers, negotiators, etc.), whenever possible, before resorting to force and to reduce the need for force.

Recommends De-escalation Techniques Whenever Possible Before Use of Force	
Los Angeles (2001)	
Detroit (2003)	X
Warren (2012)	X
New Orleans (2012)	X
Seattle (2012)	X
East Haven (2012)	X
Portland (2012)	X
Puerto Rico (2013)	X
Albuquerque (2014)	
Cleveland (2015)	X
Ferguson (2016)	X
Newark (2016)	X
Baltimore (2017)	X
Chicago (2019)	X

In addition to the de-escalation techniques listed above, there were two common recommendations made in the consent decrees regarding de-escalation and use of force: (1) In order to prevent and reduce the need for force, officers should allow individuals the opportunity to comply with lawful orders and submit to arrest before force is used whenever safe and feasible; (2) Officers should de-escalate the use of force as resistance decreases while staying in control and as safety permits.

One de-escalation policy recommendation that was present in more recent consent decrees, including Cleveland and Baltimore, is the consideration of mental and medical conditions that may play a role in a use of force incident: As part of de-escalation training, officers should be trained to consider the possibility that a subject may be non-compliant due to a medical or mental condition, physical or hearing impairment, language barrier, drug interaction, or emotional crisis.

De-escalation policies & procedures

As recommended by the DOJ's consent decrees, police departments around the country have adopted department policies that include a de-escalation tactics requirement before resorting to the use of force. Some policy manuals also include examples of de-escalation techniques that are available to officers.

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The Albuquerque Police Department's policy manual includes a Use of Force De-escalation section that highlights their de-escalation policy as well as de-escalation techniques and guidelines.[9] The de-escalation policy states:

> When feasible, an officer shall use de-escalation techniques. Policing, at times, requires an officer to exercise control of a violent or resistant individual, or an individual experiencing a mental or behavioral health crisis. At other times, policing may require an officer to serve as a mediator between parties, or to defuse a tense situation.

The Baltimore Police Department's policy manual clearly outlines their de-escalation policy and includes examples of de-escalation techniques. Their core principle on de-escalation reads:

> **De-Escalation.** Members shall use de-escalation techniques and tactics to reduce any threat or gain compliance to lawful commands without the use of force or with the lowest level of force possible. The goal of de-escalation is to gain the voluntary compliance of subjects, when feasible, and thereby reduce or eliminate the necessity to use physical force.

The section titled "Examples of De-Escalation Techniques" states:

> De-Escalation Techniques may include, but are not limited to:
> 1. Communication techniques to calm an agitated subject and promote rational decision making such as:
>
> 1.1. Ensuring that only one member addresses the person and that other members present remain detached as much as safety permits.
>
> NOTE: The presence of multiple officers that are issuing commands to an agitated subject may escalate the incident by increasing the likelihood of miscommunication, and is less likely to result in a peaceful resolution. Whenever possible, only one member shall communicate with and address the person.
>
> 1.2. Regulating vocal tone and pitch (e.g., speaking slowly in a calm voice, rather than shouting commands),
>
> 1.3. Using calming gestures and facial expressions (e.g., arms extended with palms out; avoiding angry expressions),
>
> 1.4. Sharing the member's name, asking the person his/her name, and exhibiting a genuine willingness to listen,
>
> 1.5. Practicing procedural justice techniques, such as explaining the member's actions and responding to questions (e.g., directly answering questions about why the police are there or taking action),

[9] "2-55 Use of Force De-Escalation" (Albuquerque Police Department, January 11, 2020).

1.6. Verbal persuasion (e.g., explaining, without threats, how the person would benefit from cooperation),
1.7. Verbal advisements (e.g., respectfully explaining the person's rights or what the police want the person to do),
1.8. Verbal warnings (e.g., when necessary, notifying the person of the consequences of continued non-cooperation and then offering the person a chance to cooperate), and
1.9. Avoiding the unnecessary display of weapons, including the CEW [Conducted Energy Weapon], a firearm, a baton, or OC Spray [Oleoresin Capsicum or pepper spray].

2. Decreasing the exposure to the potential threat by moving to a safer position. This may involve:
2.1. Creating distance,
2.2. Seeking cover,
2.3. Tactical repositioning,
2.4. Concealment, and/or
2.5. Placing barriers between an uncooperative person and the member.

3. Slowing down the pace of the incident by slowing your speech, taking deep breaths, and/or applying the critical thinking framework, including:
3.1. Waiting out the person,
3.2. Avoiding physical confrontation,
3.3. Calling for extra resources outside of the person's hearing, whenever possible such as:
3.3.1. Additional members,
3.3.2. Specially trained members (e.g., BEST-trained members, CIT-trained members, behavioral health care providers, negotiators, Qualified Bilingual Members, etc.), and
3.3.3. Members equipped with less-lethal tools.

MNPD policies and procedures

MNPD Manual §11.10.030 (A) 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."[10]

An MNPD roll call training document regarding new firearm display policy, effective as of January 1, 2019, mentions de-escalation in a "policy statement."[11] This statement was part of the

[10] Metropolitan Nashville Police Department, *Department Manual*, 2018, https://www.nashville.gov/Police-Department/Department-Manual.aspx.

training document; however, it was not part of the new policy language added to the MNPD Manual. The policy statement 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.

Although de-escalation is a guiding principle in MNPD policy and training, the MNPD manual does not explicitly require officers to use non-physical de-escalation tactics whenever possible.

The Community Oversight Board issued a recommendation to the Metro Nashville Police Department on June 24th, 2020 regarding de-escalation. MNPD has not responded to the Community Oversight Board's original recommendation at this time. In this report, we reiterate that MNPD should adopt the COB's recommendation from June 2020.

Recommendation issued June 24th, 2020: 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.[12]

Prohibitions on Use of Force

In addition to general use of force policy requirements, consent decrees typically include specific prohibitions on force techniques or other departmental practices that may be considered excessive use of force, unlawful or criminal misconduct, or actions that may lead to an increased risk of injury or death for any person. Table 2, below, compares common prohibitions found in consent decrees with those found in the MNPD Manual and recent roll call training documents.

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[11] Metropolitan Nashville Police Department.

[12] "Policy Advisory Report on #8cantwait Use of Force Policy Recommendations" (Metro Nashville Community Oversight Board, June 24, 2020).

Table 2: Prohibitions Included in Consent Decrees and Whether Nashville Explicitly Prohibits the Action in Policy Manual

Common prohibitions in consent decrees	Explicit in MNPD Policy Manual?*	Manual Section
The use of unauthorized weapons and munitions	Yes	Impact weapons see: 11.10.150 (J) Firearms see: 8.20.090 (A) Tasers see: 11.10.050 (A) OC Spray see: 11.10.040 (C) 3
Using a firearm as an impact weapon	Only under exigent circumstances; considered deadly force.	11.10.150 (J) 1(b)
The use of force as retaliation or punishment	No	
Using force solely because another officer is using force	No	
Neck holds (Chokeholds and carotid holds) Some allow when deadly force is authorized, others recommend an outright ban	Yes	Roll Call Trainings issued June 11, 2020 and July 17, 2020
Head strikes with hard object (except if deadly force is authorized)	No	
The use of force against restrained individuals	Yes	11.10.030 (D)
The use of Tasers against visibly pregnant women, elderly persons, young children, or visibly frail persons	Yes ("unless compelling reason")	11.10.080 (C) 5
Using a Taser in drive stun mode solely as pain compliance	No	
The use of force to attempt to effect compliance with an unlawful command	Yes	11.10.010
Vehicle pursuits unless the potential danger from suspect is greater than danger to public from pursuit.	Yes	13.10
Shooting a firearm at or from a moving vehicle	Yes ("unless absolutely necessary")	11.10.150 (C)
Firing warning shots	Yes	11.10.150 (B) 2
Firing a firearm through a door or window when the target is not clearly in view	No	
*Items that are not explicitly prohibited by the policy manual may be prohibited by related policies or training.		

Several of the prohibitions included in consent decrees are not included in the Manual but are prohibited because they are not consistent with the training that officers receive. For instance, chokeholds and neck restraints were not allowed because the MNPD training academy did not teach them and Tennessee state law (T.C.A. 38-3-121) prohibited chokeholds. However, the policy manual did not explicitly include a provision prohibiting the behavior. There may have been ambiguity since veteran officers may have been taught some neck restraint techniques while newer officers had not. Adding an explicit prohibition to the Manual, as was added in Roll Call trainings from June 11th and June 17th, 2020, makes the expectations of the department clear regarding neck holds and restraints.

Departmental policies should provide clarity regarding actions that are prohibited. Actions that are prohibited based on training should be reinforced in the Manual. Adding consistency between training and the policy manual assists officers when reviewing policies as well as educates community members about the expectations the department has for officers. Based on this perspective toward policy, we recommend:

Recommendation 1: MNPD should review policies, procedures, and trainings to ensure consistency between policies in the Manual and prohibitions that are covered in training. Actions that are against policy because of training should be explicitly stated as prohibited in the MNPD Manual.

Training

In addition to general policy requirements regarding the use of force, consent decrees also outline training requirements for sworn officers. These training requirements are typically focused on the application of force, but also include specific training guidance for supervisors and internal force investigators.

The most recent consent decree analyzed, for the city of Chicago, stated that academy and annual in-service training must provide officers with knowledge of policies and laws regulating the use of force and equip officers with tactics and skills—including de-escalation techniques—to prevent or reduce the need to use force. When force must be used, officers should use force that is objectively reasonable, necessary, and proportional under the totality of the circumstances, and there must be appropriate supervision and accountability. In-service use of force training should be provided at least annually, and more frequently when necessitated by developments in applicable law and department policy.

Consent decrees from Detroit, East Haven, New Orleans, Seattle, Warren, Albuquerque, Cleveland, Ferguson, Baltimore, and Chicago also specifically outlined that academy and in-service training will include:

- Policies and Fourth Amendment law governing the use of force.
- Proper use of force decision-making that utilizes a critical thinking framework in which officers gather relevant facts, assess the situation, threats, and risks, consider department policy, identify options, and determine the best course of action, and act, review, and reassess the situation.
- Role-playing scenarios and interactive exercises that illustrate proper use of force decision-making.
- Ethical decision-making and peer intervention, principles of procedural justice, the role of implicit bias, and strategies for interacting with individuals in crisis.
- De-escalation techniques and tactics to prevent or reduce the need for force, including exercising persuasion and advice, and providing a warning, stabilizing the situation

through the use of time, distance, or positioning to isolate and contain a subject, and requesting additional personnel to respond or make use of specialized units or equipment, the proper deployment of department issued or approved weapons or technologies, including firearms and Tasers.

- Use of force reporting, investigation, and review requirements, including documenting reportable use of force incidents.
- Other topics as determined based on the training needs assessment required by the agreement.

Consent decrees often address weapon-specific training and policies as a component of use of force training and policies. Regarding weapon-specific training, the Chicago consent decree recommends training regarding the use of firearms, Tasers, OC spray, impact weapons, and other force options that the department currently authorizes or may authorize in the future. All weapons training is required to include de-escalation as a core principle. Any initial training, qualification, or requalification is to include scenarios in which officers achieve resolution without employing force. The training will also provide specific guidance to officers regarding required procedures and techniques after each of these force options are used, including procedures and techniques for limiting a subject's injuries.

Many places, including Detroit, East Haven, New Orleans, Puerto Rico, Albuquerque, and Cleveland, had an additional recommendation regarding the regularity of weapon-specific training and related disciplinary actions. They require officers, at least once annually, to successfully qualify with each firearm they are authorized to use or carry while on-duty. Any officers who fail to qualify shall immediately relinquish department issued firearms on which they failed to qualify. Those officers who still fail to qualify after remedial training within a reasonable time shall be subject to disciplinary action, up to and including, termination of employment.

In addition to use of force training for all sworn officers within a department, consent decrees often include recommendations for supervisor-specific training. This training is conducted on a regular basis and helps to prepare employees for supervisory duties. The consent decrees for Seattle, Albuquerque, Ferguson, and Chicago recommend that supervisors of all ranks, including those assigned to the Internal Affairs Bureau, as part of their initial and annual in-service supervisory training, shall receive additional training that includes: conducting use of force investigations, strategies for effectively directing officers to minimize uses of force and to intervene effectively to prevent or stop unreasonable force, incident management, and supporting officers who report unreasonable or unreported force, or who are retaliated against for using only reasonable force or attempting to prevent unreasonable force.

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Another key element of the consent decrees analyzed was the implementation of a Force Investigation Team (FIT) for response to serious force incidents. *(Force Investigation Teams are addressed in more detail below in Reporting, Investigating and Reviewing Force.)* The Seattle consent decree recommended that FIT staff should have appropriate expertise and investigative skills to ensure that uses of force that are contrary to law and policy are identified and appropriately resolved. In addition, each member shall receive a minimum of eight hours of training on an annual basis, including legal updates regarding use of force and curriculum utilized by the training division regarding use of force. The New Orleans and Cleveland consent decrees added to this annual in-service training, stating that FIT personnel will receive 40 hours of initial FIT-specific training in FIT procedures; call out and investigative protocols; proper roles of on-scene counterparts such as crime scene technicians, the Monitor, the District Attorney, the Independent Police Monitor, and the City Attorney's Office; and investigative equipment and techniques.

MNPD training

All MNPD officers must successfully complete the police training academy. Training at the academy is guided by the Peace Officer Standards and Training Commission (POST), the governing agency for law enforcement training in Tennessee. The MNPD training academy exceeds the number of training hours that are required by POST. The training curriculum for MNPD's Session 88 shows that the total number of hours of instruction for recruits was 994.5 hours, while the POST requirement is only 480 hours of instruction.[13] In addition to the high number of training hours, the MNPD training curriculum includes important elements of training recommended by the DOJ in use of force consent decrees, such as reality-based training, ethical decision making, and de-escalation techniques. After completion of the training academy, training continues in the Field Training Program under the supervision of a Field Training Officer as well as through in-service training for all sworn officers. Assessing the messaging and content of training modules is beyond the scope of this report since it is focused on consent decree recommendations.

The MNPD training academy also provides training in basic supervision to officers promoted within the department to the rank of sergeant. This supervisory training includes management training that covers management information systems, fiscal management, organizational behavior, decision making, basic supervision, communication skills, and human resource management. This training is to take place no later than thirty days following the promotional appointment but preferably prior to the officer assuming their duties. Basic supervision courses

[13] "Basic Police Curriculum - Session 88" (Metropolitan Police Department - Training Academy, 2020), 88.

must be successfully completed, or the officer shall be recommended for reduction in rank for having failed to meet training standards during the probationary period.[14]

Currently, MNPD does not conduct promotional or in-service supervisory training that is specific to conducting use of force investigations. Supervisors take part in the regular in-service training curriculum that is prepared for all sworn officers. This annual in-service training for 2020 included: Law Updates, Incident Documentation & Report Writing, Emergency Vehicle Operation Course, Firearms Training & Qualifications, Professional & Ethical Behavior, Officer Wellness & Resiliency, Domestic Violence Update, Defensive Tactics, Active Killer/Rescue Task Force, Child Sexual Abuse, Safety, Bloodborne Pathogen, & Communicable Diseases Update, Professional Conduct & Decision Making (Bias Based Policing), Emergency Contingency Section – Incident Command Systems, Mental Health Cooperative: Trauma Informed Care, and Officer Involved Shootings.[15] These modules include information on updates to the use of force policy, legal updates, and refreshers on report writing but to ensure that supervisors are conducting use of force investigations that are consistent and thorough they should have specific training on the requirements and procedures of those investigations.

Recommendation 2: MNPD should implement promotional and annual in-service supervisor training that focuses on conducting use of force investigations. This training should be in addition to the annual in-service training provided to all sworn officers. Recommended training topics include: conducting use of force investigations, strategies for effectively directing officers to minimize uses of force and to intervene effectively to prevent or stop unreasonable force, incident management, and supporting officers who report unreasonable or unreported force, or who are retaliated against for using only reasonable force or attempting to prevent unreasonable force.

Crisis Intervention

At least ten percent of police calls for service involve mental illness.[16] Mental illness and crisis is also an underlying risk factor for the use of force. Research based on *The Washington Post's* database of police-involved deaths estimates that around 25 percent of all deaths by police are related to mental illness and acute crisis.[17] Consent decrees typically recommend the creation of Crisis Intervention Teams (CIT) to reduce the risk of force being used on people in a mental health crisis. According to a 2019 report by the CIT in TN Task Force, there were 18 CIT

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[14] Metropolitan Nashville Police Department, *Department Manual*, 2018.
[15] "In-Service Training Catalog" (Metropolitan Nashville Police Department, 2020).
[16] CIT in TN Task Force, "Advancing Crisis Intervention Team Programs in Tennessee: Tools, Guidelines & Recommendations," March 2019, https://www.tn.gov/content/dam/tn/mentalhealth/documents/Advancing_CIT_Programs_in_Tennessee_ALL.pdf.
[17] Emma Frankham, "Mental Illness Affects Police Fatal Shootings," *Contexts* 17, no. 2 (2018): 70–72.

programs in Tennessee either active or in development stages.[18] Memphis began the first CIT program in the country in 1988 and the "Memphis Model" is considered a national best practice.[19]

Nine of the 14 consent decrees reviewed recommend instituting Crisis Intervention Teams and training for officers assigned to CIT. The consent decrees recommend that departments appoint a coordinator who oversees the development of training curricula and selection of officers to receive the training. The coordinator should also work with an advisory committee of partner

organizations to create and implement the training.

Recommends Crisis Intervention Teams	
Los Angeles (2001)	
Detroit (2003)	
Warren (2012)	
New Orleans (2012)	X
Seattle (2012)	X
East Haven (2012)	
Portland (2012)	X
Puerto Rico (2013)	X
Albuquerque (2014)	X
Cleveland (2015)	X
Ferguson (2016)	X
Newark (2016)	
Baltimore (2017)	X
Chicago (2019)	X

Training for CIT officers, based on the Memphis Model, consists of 40-hour of mental health specific training as well as 8-hours of annual in-service training. The Bureau of Justice Assistance published an instructor guide for CIT training programs titled, *Effective Community Responses to Mental Health Crisis: A National Curriculum for Law Enforcement Based on Best Practices from CIT Programs Nationwide.* This training guide provides a comprehensive curriculum that covers research and systems, mental health basics, community site visits, community resources and viewpoints, and tactical scenario-based skills training as well as discussions of key issues such as policy and liability. The modules for basic mental health training include: depressive disorders; bipolar disorder, psychotic disorders, and schizophrenia; substance-related and addictive disorders; assessment, commitment, and legal considerations; neurodevelopmental and neurocognitive disorders; psychopharmacology; disorders in children, youth, and adolescents; disruptive, impulse-control, and conduct disorders; personality disorders; post-traumatic stress disorder; and suicide.[20]

Guidance on the types of instructors who should teach each type of course module is also included in the instructor guide (e.g. having local community leaders teach the module on

[18] CIT in TN Task Force, "Advancing Crisis Intervention Team Programs in Tennessee: Tools, Guidelines & Recommendations." CIT in TN Task Force.
[19] Amy C Watson and Anjali J Fulambarker, "The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners," *Best Practices in Mental Health* 8, no. 2 (December 2012): 71–71.
[20] "Effective Community Responses to Mental Health Crises: A National Curriculum for Law Enforcement Based on Best Practices from CIT Programs Nationwide - Instructor Guide" (Bureau of Justice Assistance, n.d.), https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/cit-curriculum-instructor-guide.pdf.

community resources and viewpoints, while having local mental health professionals teach Mental Health Basics and law enforcement agency employees teach the tactical scenario-based training modules).[21]

Some consent decrees recommend training enough CIT officers to provide coverage for potential calls for all precincts on all shifts. The New Orleans consent decree, for example, required that 20% of patrol officers become CIT certified within three years in order to provide adequate coverage.

In addition to training officers, consent decrees recommend training for dispatchers to ensure they can identify eligible calls and know how to communicate information about the crisis to the responding officers. It is also recommended that departments review policies, procedures, and general training curricula in consultation with the program's advisory committee. One general training recommendation that was included was that all recruits and non-CIT officers receive basic crisis intervention training. This training, on how to respond to individuals in crisis, is to be provided to everyone in the training academy and as in-service training, every three years.

In order to properly assess the progress of a crisis intervention program, consent decrees recommend tracking data on crisis intervention, conducting annual audits of how calls were handled, and releasing a public annual report regarding the findings.

MNPD policies, procedures, and training

Although MNPD has some policies and practices in place when it comes to interactions with someone considered a "mentally ill individual,"[22] the Department does not have a dedicated Crisis Intervention Team or unit.

Currently, MNPD collaborates with the local Mental Health Cooperative's Crisis Treatment Center (CTC) and Mobile Crisis Response Team (MCRT). The CTC is an outpatient treatment center where MNPD officers can take individuals in crisis to get professional mental health assistance. The Crisis Treatment Center was opened in February 2019. According to a webinar with Amanda Bracht, the Senior Vice President of Clinical Service for the Mental Health Cooperative, the CTC has substantially reduced police wait times associated with the drop-off of individuals needing emergency mental health evaluation and treatment. MCRT is a group of mental health professionals, available to MNPD 24/7, who are trained to assess the mental status of an individual. The professionals on the MCRT will assess individuals with psychiatric

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[21] "Effective Community Responses to Mental Health Crises: A National Curriculum for Law Enforcement Based on Best Practices from CIT Programs Nationwide - Instructor Guide."

[22] Metropolitan Nashville Police Department, *Department Manual*, 2018, sec. 18.110, https://www.nashville.gov/Police-Department/Department-Manual.aspx.

disorders but not individuals who suffer solely from alcohol or drug dependence. MNPD also has 24/7 access to the Youth Villages Crisis Team, another group of mental health professionals who are trained to assess the mental status of juveniles (aged 17 and under) who have psychiatric disorders or serious emotional disturbances.[23]

When an MNPD officer is called to respond to a situation involving a "mentally ill individual," they are tasked with determining if that person is in fact a "mentally ill individual" and if that individual poses a "substantial likelihood of serious harm" to themselves or to others. This determination is made using the criteria outlined by TCA 33-6-401 and 33-6-404.[24] The MNPD manual states that consistent with these codes, a "mentally ill individual" must exhibit an immediate substantial likelihood that serious harm will occur unless the person is placed under involuntary treatment AND one or more of the following:

1. Threatened or attempted suicide or to inflict serious bodily harm on such person;
2. Is unable to avoid severe impairment or injury from specific risks;
3. Threatened or attempted homicide or other violent behavior; or
4. Placed others in reasonable fear of violent behavior and serious physical harm.

After accessing these criteria, the MNPD officer and their supervisor (if necessary) determine whether the situation warrants a non-custodial or custodial action. In a non-custodial action, an officer may determine that the individual is not "mentally ill" or does not pose a "substantial likelihood of serious harm" to themselves or others, and no criminal offense has occurred. The officer will take no action, other than offering community resource information.

In a custodial action situation, the officer is to then contact MCRT, complete an MNPD Incident Report, and transport the individual to the Mental Health Cooperative for further examination by a mental health professional. When contacted, MCRT may direct the officer to transport the individual to a hospital, take them to the Mental Health Cooperative, or take other actions. Per Tennessee state law (T.C.A. 33-6-402), law enforcement officers are authorized to take individuals into custody for immediate examination without a civil order or warrant.[25] The Mental Health Cooperative is the only caregiver authorized by the MNPD for mental health assessments unless otherwise directed by the MCRT.[26]

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[23] Metropolitan Nashville Police Department, *Department Manual*, 2018.
[24] Metropolitan Nashville Police Department.
[25] "2010 Tennessee Code Title 33 - Mental Health and Developmental Disabilities Chapter 6 - Mental Health Service Part 4 - Emergency Involuntary Admission to Inpatient Treatment 33-6-402 - Detention without Warrant Authorized." (Justia US Law, 2020), https://law.justia.com/codes/tennessee/2010/title-33/chapter-6/part-4/33-6-402/.
[26] Metropolitan Nashville Police Department, *Department Manual*, 2018.

MNPD training

In the Basic Police Curriculum for each Metro Nashville Police Department training academy session, MNPD breaks down the number of hours dedicated to each block of instruction. In the curriculum for Session 88 (August 16, 2019 to February 6, 2020), MNPD includes an appendix on Mental Illness Response. This appendix outlines the relevant training that recruits receive throughout their time at the training academy. The courses listed include: [27]

Alzheimer's Association	2 hours
Fair & Impartial Policing	8 hours
Grief and Loss	1 hour
Law Enforcement Response to Mental Illness	8 hours
Law Enforcement Response to Mental Illness Reality Based Training	4 hours
Serving People with Varying Degrees of Hearing Loss	2 hours
Suicide Prevention	2 hours
Tactics: Reality Based Training	16 hours
Traumatic Brain Injuries	2 hours
Verbal Defense & Influence	9 hours
Verbal Defense & Influence Reality Based Training	4 hours
Total	58 hours

Below this list of courses, MNPD explains that they include courses that teach communication skills and decision making for de-escalation in the total number of hours for Mental Illness Response. They further elaborate that this is because much for the instruction for decision making is based on PERF's ICAT (Integrating Communications, Assessment, and Tactics) model, which was developed specially to respond to individuals in a mental crisis, emotion crisis, or someone with intellectual disabilities.[28]

Although some of these courses are explicitly about responding to individuals with mental illness, there are other courses included in this appendix that—while they may have some transferable skills—are not focused on mental health for the full duration of instruction as is recommended in CIT curricula.[29]

Baltimore Police Department – Crisis Intervention Program Policies

The Baltimore Police Department's draft CIT policy published on July 3, 2019, outlines the policies regarding their Crisis Intervention Program in response to the DOJ's consent decree recommendations. The draft policy includes five core principles: Community Planning and

[27] "Basic Police Curriculum - Session 88," 88.
[28] "Basic Police Curriculum - Session 88," 88.
[29] "Effective Community Responses to Mental Health Crises: A National Curriculum for Law Enforcement Based on Best Practices from CIT Programs Nationwide - Instructor Guide."

Implementation, Civil Rights, Community and Officer Safety, De-Escalation, and Sanctity of Human Life.[30]

The goals of Baltimore's Crisis Intervention Program include[31]:

1. Reduce the inappropriate involvement of individuals with Behavioral Health Disabilities or in Crisis with the criminal justice system.
2. Equip members with methods to safely and appropriately interact with persons with Behavioral Health Disabilities or experiencing Crisis to improve the safety of members, individuals with Behavioral Health Disabilities or in Crisis and their families, and others within the community.
3. De-escalate Crises to achieve peaceful resolutions to incidents and eliminate the unreasonable, unnecessary, and/or disproportional uses of force against individuals with Behavioral Health Disabilities or in Crisis.
4. Minimize arrests and law enforcement interactions with individuals with Behavioral Health Disabilities or experiencing Crisis.
5. Collaborate with the Collaborative Planning and Implementation Committee in the development, implementation, and evaluation of the Department's Crisis Intervention Program as it integrates with a citywide crisis response system providing for the least police-involved response for persons with Behavioral Health Disabilities or in Crisis consistent with community safety.
6. Assist individuals and their families to obtain voluntary stabilizing support.

In addition to outlining the elements of the Crisis Intervention Program required by the consent decree, the Baltimore Police Department's policy includes a table to help guide CIT Officers through crisis situations based on the nature of the call they are responding to and what type of non-criminal or suspected criminal behavior has taken place.[32]

Recommendation 3: MNPD should create a Crisis Intervention Team comprised of specially trained officers for response to crisis situations. The MNPD Manual should comprehensively outline policies, procedures, and roles related to the crisis intervention program, including situation-based guidance for officers responding to the scene of a crisis. Since a CIT will require a long-term implementation plan, MNPD should aim to create a budget-neutral plan for developing the program. If additional resources are needed, those should be detailed in a request to the Metro Council for the FY22 budget.

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[30] "Policy 712 - Crisis Intervention Program" (Baltimore Police Department, July 3, 2019), https://www.baltimorepolice.org/712-draft-crisis-intervention-program.
[31] "Policy 712 - Crisis Intervention Program."
[32] "Policy 712 - Crisis Intervention Program."

Table 3: Reporting, Investigating, and Reviewing Force Incidents by Force Level

	Level 1	Level 2	Level 3
Definition	Any force used to overcome active resistance that does not rise to the level of a Level 2 use of force. • Force that causes only transient pain or disorientation during its application as a means of gaining compliance. • Soft empty hand control or escort techniques (e.g., elbow grip, wrist grip, or shoulder grip) and pressure point compliance techniques. • Pointing a firearm or Taser at an individual. • "Cycling" a Taser as a form of warning. • Soft takedowns that do not result in actual injury or complaint of injury. It does not include escorting, touching, or handcuffing a person with minimal or no resistance.	Any use of force which causes an injury, could reasonably be expected to cause an injury, or results in a complaint of an injury, but does not rise to the level of a Level 3 use of force. • Hard empty hand control techniques. • CED deployment of any type against a subject. • Use of an impact weapon (including batons) to strike a subject. • Deployment of canine that results in an injury or complaint of injury. • Deployment of Oleoresin Capsicum Spray (OC Spray) at a subject. • Placing a subject in a full restraint position.	Any use of force likely to cause serious injury or death. • Strikes to the head, neck, sternum, spine, groin, or kidney area with an impact weapon. • All firearm discharges (except during training or practice), including unintentional firearm discharges. • Applications of more than three Taser cycles on an individual during a single encounter. • A Taser application for longer than 15 seconds. • Uses of force resulting in death, serious physical injury, loss of consciousness or requiring hospitalization. • Level 3 force can result from a lower level force option being improperly applied.
Immediate Response	• Officer evaluates subject for injury. • Uninvolved supervisor notified and may respond to scene at their discretion.	• Officer provides first aid and requests emergency medical services, if necessary. • Uninvolved supervisor notified and responds to scene.	• Officer provides first aid and requests emergency medical services, if necessary. • Specialized Force Investigation Team (FIT) or Internal Affairs if not FIT team responds to scene.

Reports Required	• Level 1 Use of Force Report.
	  ○ Can be an abbreviated form or included on arrest/incident forms.
	• Supplemental weapon-specific reports if firearm or Taser is displayed.
		• Use of Force Report.
		  ○ Each involved officer submits report with narrative and incident information.
		  ○ Supervisor compiles witness statements and evaluates evidence.
		• Supplemental weapon-specific reports if firearm is displayed or Taser is displayed/deployed.
			• Use of Force Report.
			  ○ Each involved officer submits report with narrative and incident information.
			  ○ FIT compiles witness statements and evaluates evidence.
			• Supplemental weapon-specific reports if firearm is displayed/discharged or Taser is displayed/deployed.

Investigative Process	• Uninvolved supervisor reviews report from officer by end of shift.
	  ○ If any deficiencies found, can be forwarded to FIT.
		• Uninvolved supervisor leads investigation.
		  ○ Interviews subject, officer, and witnesses.
		  ○ Photographs of any injuries taken.
		  ○ Document evidence at scene.
		  ○ Make preliminary determination of whether force is within policy.
		  ○ Notifies Internal Affairs and/or FIT if criminal conduct is suspected.
		  ○ Provides constructive feedback to employee.
			• FIT leads investigation.
			  ○ Interviews subject, officer(s), and witnesses.
			  ○ Photographs of any injuries taken.
			  ○ Document evidence at scene.
			• Investigation completed within 30 days
			  ○ Report issued which compiles all statements and evidence.
			  ○ Provides a preliminary determination of whether force is within policy.

Review Process	• Level 1 use of force incidents are reviewed by a supervisor by the end of the shift and do not typically require higher levels of review. If a supervisor re-categorizes a level 1 incident to a level 2 or 3 use of force, then the incident would undergo the respective review process.	• Supervisors complete a Use of Force Report within 72 hours. The report is forwarded through the chain of command. The Division Commander may order additional investigation when it appears there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings. Once the investigation is complete and the findings are supported by the evidence, the file shall be forwarded to Internal Affairs. • *If the Division Commander finds evidence indicating apparent criminal conduct by an officer, they shall suspend the investigation immediately and notify internal affairs, who will notify FIT, which will take over the investigation.*	• Chief of Police or designee briefed within 24 hours of incident. • Force Review Board will review each FIT report within 30 days of investigatory findings. • *The Director of Internal Affairs shall immediately notify and consult with the District Attorney, oversight entities, and other relevant parties regarding any use of force indicating apparent criminal conduct by an officer, evidence of apparent criminal conduct discovered during a misconduct investigation, any use of force in which an officer discharged his firearm, or where an individual has died while in, or as an apparent result of being in, police custody.*

Reporting, Investigating, and Reviewing Force

All consent decrees related to the use of force address reporting and investigating uses of force. Police departments need to have clear, specific, and complete policies and procedures following all uses of force. Recent consent decrees delineate force into categories which guide the reporting requirements, investigative procedures, and review processes.

Reporting Use of Force

When police officers use force, they are required to report that force. According to CALEA standard 4.2.1:

> A written report [should be] submitted whenever an employee:
> a. discharges a firearm, for other than training or recreational purposes;
> b. takes an action that results in, or is alleged to have resulted in, injury or death of another person;
> c. applies force through the use of lethal or less lethal weapons; or
> d. applies weaponless physical force *at a level as defined by the agency.* [emphasis added]

The CALEA standard includes commentary that helps guide departments on how to decide the threshold for requiring a written use of force statement but does not have a specific recommendation on which weaponless force techniques should prompt a written use of force report.

Recommends Categorizing Force into Levels	
Los Angeles (2001)	
Detroit (2003)	
Warren (2012)	
New Orleans (2012)	X
Seattle (2012)	X
East Haven (2012)	
Portland (2012)	
Puerto Rico (2013)	
Albuquerque (2014)	
Cleveland (2015)	X
Ferguson (2016)	X
Newark (2016)	X
Baltimore (2017)	X
Chicago (2019)	X

Seven of the 14 consent decrees recommend categorizing force into levels. Five of the consent decrees (Seattle, Cleveland, Ferguson, Baltimore, and Chicago) require that the department categorize force into three levels and provide definitions for what should be included in those levels. New Orleans' decree defines four levels and Newark's consent decree required the department to define the levels in collaboration with the monitor. Each of the levels of force is attached to specific reporting and investigation requirements. Table 3 shows the definitions and investigatory process attached to each of the three levels of force.

The Seattle consent decree specifies that *all force used to overcome resistance* should be tracked by the department in a searchable and retrievable format so that it can be analyzed by the department. This requirement to track any physical force used to overcome resistance is consistent with the requirement to track Level 1 force from other consent decrees. Reports for Level 1 force can be abbreviated forms and do not usually require the same investigatory process

as Level 2 or Level 3 force. Consent decrees from East Haven, New Orleans, Portland, Seattle, Albuquerque, Cleveland, Ferguson, Newark, and Baltimore specify that unholstering a firearm and pointing it at a subject constitutes a Level 1 reportable use of force that will be reported and investigated as such.

In force reports, consent decrees state that officers should avoid using boilerplate or canned language (e.g. "furtive movement" or "fighting stance") and instead explain in detail what the officer saw during the interaction. Supervisors and command staff should review reports for specificity as well as material omissions. When omissions are found, corrective action should be taken by the department. Finally, consent decrees support a duty to intervene and a duty to report unreasonable force. Officers who use or observe a use of reportable force but do not report it will be disciplined, up to and including termination (Found in consent decrees from East Haven, 2012; New Orleans, 2012; Puerto Rico, 2013; Cleveland, 2015; Ferguson, 2016; Baltimore, 2017).

MNPD policies and procedures

MNPD uses a force continuum to categorize force into escalating levels. These are: official presence, verbal direction, soft empty-hand control, hand-held chemical spray/conducted energy device, hard empty-hand control, batons, and firearms. MNPD policy states that "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." When soft empty-hand control is used and no injuries are alleged—what consent decrees consider Level 1 force—officers are not required to complete a use of force report meaning that these incidents are not systematically tracked in a way where those incidents can be analyzed. Two other components of Level 1 force are firearm displays and Taser displays which are tracked by MNPD using the 108F and 108T forms, respectively. MNPD's force reporting requirements are consistent with consent decree recommendations for tracking Level 2 and Level 3 force.

Recommendation 4: MNPD should categorize all use of force above unresisted handcuffing into three levels that will guide the reporting and investigation of the use of force.

Investigating and Reviewing Use of Force

Table 3 describes the immediate response, investigative, and review processes for uses of force by the level of force.

Consent decrees recommend that all Level 1 uses of force are reviewed by an uninvolved supervisor prior to the end of their shift. When a Level 1 use of force occurs, an officer should inform their supervisor and the supervisor can decide whether responding to the scene is necessary. The officer should submit his or her report and the supervisor should review the report to determine whether the use of force was appropriate. If the force was necessary and within policy, Level 1 uses of force do not typically require higher levels of review. The supervisor can

give feedback to officers on how to de-escalate and avoid force in future encounters. If the force was unnecessary or out of policy, it can be reviewed by the appropriate chain of command and the department's Internal Affairs division.

Level 2 uses of force are those that are reasonably likely to cause an injury or result in the complaint of an injury. All Level 2 uses of force should be reported to an uninvolved supervisor who will report to the scene to conduct the investigation. The supervisor should interview subject, officer, and witnesses, take photographs of any injuries, document any evidence at the scene, and make a preliminary determination of whether force is within policy based on the preponderance of evidence. The supervisor can provide feedback to the officer on how to de-escalate and avoid force in future encounters. The investigation and all officer statements are then reviewed by the appropriate chain of command and are submitted to the Chief of Police. At any point in the review, when policy violations are found, the incident can be referred to Internal Affairs and/or FIT, as appropriate.

Recommends Force Investigation Team for Level 3 Force	
Los Angeles (2001)	
Detroit (2003)	
Warren (2012)	
New Orleans (2012)	X
Seattle (2012)	X
East Haven (2012)	
Portland (2012)	
Puerto Rico (2013)	X
Albuquerque (2014)	
Cleveland (2015)	X
Ferguson (2016)	
Newark (2016)	X
Baltimore (2017)	X
Chicago (2019)	

Serious uses of force (Level 3) which are force applications likely to cause serious injury or death should be investigated by a Force Investigation Team (FIT) solely focused on use of force. The scope of a FIT can be broader than only Level 3 force. New Orleans Police Department's FIT investigates any uses of force with apparent criminal conduct, all uses of force by employees with a rank above Sergeant, in-custody deaths, and any other use of force referred by executive leadership. Newark Police Department includes any use of force resulting in a loss of consciousness, force against a restrained person, Taser deployments, and all canine bites as uses of force to be investigate by their All-Force Investigations and Tracking Team (A-FIT Team).

FIT leads both the criminal investigation and the administrative investigation. FIT is usually a division of an Internal Affairs department. FIT is considered an emerging best practice that has been popularized through consent decrees.[33] According to Samuel Walker and Carol Archbold in their book *The New World of Police Accountability*, FIT aims to improve investigations in two

[33] Samuel Walker, "Twenty Years of DOJ 'Pattern or Practice'Investigations of Local Police: Achievements, Limitations, and Questions," *Unpublished Manuscript*, 2017, https://samuelwalker.net/wp-content/uploads/2017/02/DOJ-PP-Program-Feb24.pdf.

ways.[34] First, investigations by FIT are conducted by officers with the expertise, training, and experience to conduct both the criminal and administrative investigation. Second, the investigation of serious force is removed from an officer's immediate supervisor who has a close working relationship with the officer. A FIT should be more independent than a supervisory investigation and is likely to reduce the perception of bias related to use of force investigations.

Consent decrees recommend that all Level 3 uses of force investigated by FIT are reviewed by the Force Review Board (FRB). The FRB should review FIT investigations within a specified time frame—some consent decrees state a 30-day time frame while others state 90-days—of receiving the investigation for any policy violations. If the use of force violated policy, determined using a preponderance of the evidence standard, the investigation should be referred to the Chief of Police for discipline and/or corrective action. The FRB should document its findings in a report within a specified time frame.

MNPD policies and procedures

MNPD investigates all reported uses of force that meet the reporting guidelines (see Reporting Force section, above). Most use of force incidents are investigated by an officer's supervisor. The supervisor has the responsibility of responding to the scene, reviewing the officer's statements in their 108 form, interviewing witnesses, documenting evidence, and reporting the findings of their investigation in a supplemental report. The supervisor should make a preliminary determination of whether the use of force was consistent with departmental policy and training. If out of policy, the incident is referred to the Office of Professional Accountability (OPA). If the use of force is within policy, the investigation is then "processed through the appropriate chain of command up to the Office of the Chief of Police."[35] At any stage, the incident can be transferred to OPA if a violation of policy is found to have occurred.

Uses of force that cause serious bodily injuries or death as well as firearm discharges during a use of force are investigated through a separate process with separate administrative and criminal investigations. The criminal investigation is conducted by the Cold Case Unit or, if a fatality occurs, by the Tennessee Bureau of Investigation (TBI).[36] The administrative investigation, led by OPA, is secondary to the criminal investigation. OPA responds to the scene of "all use of force incidents involving the use of a firearm by an employee of this department, or used against an employee of this department, that result, or could have resulted, in injury to and/or death of a

[34] Samuel E Walker and Carol A Archbold, *The New World of Police Accountability* (Sage Publications, 2018).
[35] Metropolitan Nashville Police Department, *Department Manual*, 2018, sec. 11.10.170 (G).
[36] Metropolitan Nashville Police Department, "Office of Professional Accountability Standard Operating Procedures Manual," July 27, 2018, sec. 5.01 (C).

civilian or an officer."[37] OPA investigates incidents for violations of administrative standards set by department policy.

MNPD's Force Review Board reviews all uses of force involving firearms discharges; all uses of force involving the use of deadly force, or any force which results in death or serious bodily injury; uses of less than lethal force when such force is applied through the use of a primer activated weapon; and any incident referred to the board by the Chief of Police, a Bureau Deputy Chief, the Director of the Training Division, or the Director of the Office of Professional Accountability.[38]

The Force Review Board meetings "occur within thirty (30) calendar days, but no more than sixty (60) calendar days after each use of force required to be reviewed" unless there is an ongoing criminal investigation. The Force Review Board reports three findings: whether the force was in policy or out of policy; whether the force was intentional, negligent, or accidental; and any associated recommendations including revisions to policies, procedures, or training.[39] The Chief of Police holds the final authority to issue a disposition on a Force Review Board finding and to issue discipline and/or corrective action, as appropriate.

Recommendation 5: A Force Investigation Team should be created as a branch of OPA to investigate criminal and administrative aspects of uses of force resulting in serious injury, all firearm discharges, misapplications of force, and other serious uses of force as defined by the department. They should also investigate fatal uses of force for violations of administrative standards parallel to the TBI criminal investigation. The unit should receive specialized training in conducting use of force investigations into serious uses of force.

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[37] Metropolitan Nashville Police Department, sec. 5.01 (A).
[38] Metropolitan Nashville Police Department, *Department Manual*, 2018, sec. 11.10.180 (B)4.
[39] Metropolitan Nashville Police Department, sec. 11.10.180 (F)4.

Research and Evaluation

Consent decrees often require that police departments track their use of force related data in order to conduct analysis and produce reports that are published on a regular basis. Some consent decrees also recommend regular reviews and audits of documentation and investigations of reportable uses of force.

Ten of the 14 consent decrees that were reviewed recommended that at least annually, departments analyze the year's force data–including de-escalation and force-related outcome data–to determine significant trends, identify and correct deficiencies revealed by this analysis, and document its findings in a public report.

Recommends Annual Use of Force Analysis and Public Report	
Los Angeles (2001)	
Detroit (2003)	
Warren (2012)	
New Orleans (2012)	X
Seattle (2012)	X
East Haven (2012)	X
Portland (2012)	X
Puerto Rico (2013)	
Albuquerque (2014)	X
Cleveland (2015)	X
Ferguson (2016)	X
Newark (2016)	X
Baltimore (2017)	X
Chicago (2019)	X

Consent decrees for Portland, Newark, and Chicago recommended that this data analysis review citywide and precinct-level data regarding reportable uses of force to: (a) assess the relative frequency and type of force used by officers against persons in specific demographic categories, including race or ethnicity, gender, age, or perceived or known disability status; and (b) identify and address any trends that warrant changes to policy, training, tactics, equipment, or department practice.

In addition to publishing reports, consent decrees for Los Angeles and Chicago required that a designated unit routinely review and audit documentation and information collected regarding each level 2 reportable use of force incident, a representative sample of level 1 reportable use of force, and incidents involving accidental firearm discharges and animal destructions with no human injuries. It was also recommended that the Chicago Police Department review their use of force polices annually for consistency with accreditation requirements. Additionally, every two years, the department should conduct a comprehensive review of its use of force polices to assess whether they incorporate best practices, address observed trends and practices, as necessary, and reflect developments in applicable law.

Use of Force Data and Reports

There are multiple examples of public reports published by police departments around the country that address their use of force. Most of the time, this information is included in a department's annual report, which may also highlight department successes, operational changes, crime rates, arrests, and activity by specialized units. One example of this reporting style is the city of Chicago, which includes a Tactical Response Report within their department's annual

report. This section includes a breakdown of force incidents by district, force as used by specialized units, and detailed analysis of force by level or force or type of weapon used.[40] Other police departments chose to fulfill this reporting requirement through an annual use of force report. One such city is Cleveland, who publishes a Use of Force Report at the beginning of the calendar year analyzing force incidents over the course of the previous year.[41]

In addition to publishing reports with use of force data analysis, departments may also choose to publicly post information online as it becomes available. The Newark Police Department has taken this extra step for transparency regarding their use of force data as well as information regarding professional standards investigations and discipline. The department posts data from the previous month on an online dashboard called Transparency Data. By providing information to the public at the end of each month, the community can look at these "snapshots" before the publication of an annual report. This data dashboard also includes a link to a more detailed report of the information for the past month that is broken down into sub-categories such as age, race, gender, precinct, and type of force used by officers.[42]

MNPD research and evaluation

MNPD's Strategic Development Division has a Research and Evaluation team, staffed by two full-time analysts.[43] MNPD has previously published annual reports and made them publicly available on their website. However, the most recent annual report posted was the 2016 Annual Report, added to their website on January 13th, 2020. This report includes some information on crime statistics but does not provide any information about department use of force.[44]

The MNCO research team requested annual use of force reports from MNPD and received two three-page memorandums sent to the Chief of Police regarding use of force analysis for 2017 and 2018. MNCO also received an ad-hoc use of force report created by the Quality Assurance Unit that was published on December 20th, 2019. This use of force analysis did not address department trends over time and was focused on comparing MNPD's 2017 and 2018 use of force

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[40] "2019 Annual Report" (Chicago Police Department, 2020), https://home.chicagopolice.org/wp-content/uploads/2020/09/19AR.pdf.

[41] "2017 Use of Force Report" (Cleveland Division of Police, City of Cleveland, 2018), http://www.city.cleveland.oh.us/sites/default/files/forms_publications/2017UseOfForce.pdf?id=13640.

[42] "Transparency Data" (Newark Police Division, 2020), https://npd.newarkpublicsafety.org/statistics/transparency.

[43] "Research and Evaluation" (Metro Government of Nashville & Davidson County, Tennessee, 2020), https://www.nashville.gov/Police-Department/Executive-Services/Strategic-Development/Research-and-Evaluation.aspx.

[44] "Police Department Reports" (Metro Government of Nashville & Davidson County, Tennessee, 2020), https://www.nashville.gov/Police-Department/News-and-Reports/Reports.aspx.

rates to those of peer cities from a Center for Policing Equity report published in 2016 called *The Science of Justice: Race, Arrests, and Police Use of Force.*[45]

Recommendation 6: MNPD should track and analyze use of force data and create an annual use of force report that is available to the public. The analysis in this report should examine the relative frequency and type of force used by officers against individuals in specific demographic categories, examine MNPD's use of force over time, and identify and address any trends that may warrant changes to policy, procedures, training, tactics, equipment, or practice.

Conclusion

Overall, the MNCO research team found that the Metro Nashville Police Department already meets many of the use of force recommendations that are put forth by the Department of Justice in consent decrees from across the country. There are, however, several key recommendations regarding policies, procedures, training, and data analysis that the Community Oversight Board recommends that MNPD adopt.

By implementing these recommendations, MNPD can continue to ensure they are up to date with best practices in law enforcement. These recommendations are meant to help the department increase consistency between policies and training, implement more comprehensive supervisor-specific training, develop a more specialized force investigation unit, develop a specialized crisis response team, and increase transparency regarding the reporting and tracking of use of force data.

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[45] "Use of Force Analysis" (Metropolitan Nashville Police Department, December 20, 2019).

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