



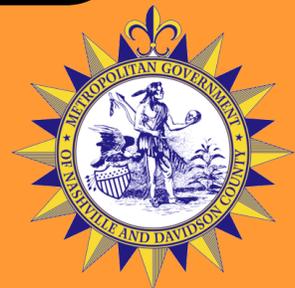
**DRAFT Expedited Report**

# **COB Recommendation to Require Reporting of Soft Empty-Hand Control**

Draft Report Issued for Public Comment by the  
Metropolitan Nashville Community Oversight  
Board on September 29, 2020

Public Hearing:  
October 13, 2021 @ 5:00pm  
Howard Office Building, Sonny West Room

Email written feedback to [Community@Nashville.gov](mailto:Community@Nashville.gov)



**The Community Oversight Board**

The Community Oversight Board (COB) was created through a Metropolitan Charter Amendment approved by Nashville voters in November 2018. The mission of the Board is to provide an accessible, respectful, independent and effective forum for community participation in the investigation and resolution of complaints of Metropolitan Nashville Police Department (MNPd) Misconduct; to examine and issue policy recommendations regarding local law enforcement policies and practices; to encourage open and constructive communication and cooperation between local law enforcement and Metro's residents; and to protect civilians' rights and promote professionalism and best practices in the MNPd, enhancing community-police relations and creating a safer Nashville.

**Table of Contents**

Executive Summary ..... 2

Introduction..... 3

Benefits of Tracking Soft Empty-Hand Control..... 3

Policies of Other Departments ..... 5

How Common are Soft Empty-Hand Techniques? ..... 5

Recommendations to MNPd ..... 7

    Recommendation 1: ..... 7

    Recommendation 2: ..... 7

Recommendation to the Metropolitan Council..... 9

Appendix A:..... 10

Appendix B: Sample Ordinance ..... 12

## Executive Summary

Metropolitan Nashville Police Department (MNPD) does not require that officers submit a written report documenting all instances where physical force is used to control a resistant subject. Currently, when soft empty-hand control tactics are used to take a resistant subject into custody, a written report is only required if an injury occurs. Fifty-one percent of the 50 largest police departments in the United States require that these incidents are reported. These incidents, where soft empty-hand control is the highest force used, comprise 1/3 of all uses of force for some departments.

The COB recommends to MNPD that:

- All uses of soft empty-hand control techniques used to overcome resistance should be immediately reported to an officer's supervisor and require a written report that is tracked by MNPD. Tracking of all uses of soft empty-hand control techniques used to overcome resistance should begin by January 1, 2022.
- Officers using soft empty-hand control techniques to overcome resistance without an allegation of injury should be required to complete a Form 108-S, a form that would be created by MNPD to collect information about soft empty-hand control when the force does not rise to the current Form 108 reporting level.

The COB also recommends to the Metropolitan Council that:

- The Metropolitan Council amend section 2.44.115 of the Metropolitan Code to require quarterly and annual use of force reports be posted to the MNPD website, sent to Metro Council, and sent to the Executive Director of the COB that include the number of use of force incidents where soft empty-hand control is the highest force used and there is no allegation of injury. A sample ordinance is included in Appendix B.

## Introduction

The Metropolitan Nashville Police Department (MNPDP) uses a force continuum as a guide for conceptualizing the use of force. Physical force on the force continuum ranges from soft empty-hand control to deadly force, with soft empty hand techniques being the lowest level of physical force (see Figure 1). The Department Manual defines soft empty-hand control as:

“The use of physical strength and skill in defensive tactics to control arrestees who are reluctant to be taken into custody and offer some degree of physical resistance. Such techniques are not impact oriented and include pain compliance pressure points, controlled takedowns, joint manipulation, or simply grabbing a subject. Touching or escort holds may be appropriate for use against levels of passive resistance.”

MNPDP does not track the number of incidents where soft empty-hand control techniques are used to gain compliance during an encounter unless the subject alleges an injury. Section 11.10.190 of the MNPDP Manual<sup>1</sup> states, “no MNPDP Form 108, Use of Force Report 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.”

MNPDP has received multiple recommendations to change their reporting threshold for use of force. Both the Community Oversight Board (COB) in October 2020<sup>2</sup> and Mayor Cooper’s Policing Policy Commission in November 2020<sup>3</sup> recommended that soft empty hand control that does not result in an injury is reported and tracked by the department.

The COB considers the lack of tracking to be a major concern requiring swift action. This brief report will show that tracking these incidents is a common practice for police departments, that incidents with soft-empty-hand control are one of the most common types of force incident, and that having information on the use of soft empty-hand control will benefit the police department and the community of Nashville. The recommendations in this report will reiterate and increase the specificity of the previously issued COB policy recommendation and recommend Metropolitan Council action to ensure transparency with the Nashville community.

## Benefits of Tracking Soft Empty-Hand Control

Soft empty-hand control is the most common type of police physical use of force<sup>4</sup>. A policy requiring the documentation of all uses of physical force allows the department to manage risk

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<sup>1</sup> Revised manual section available at: <https://bit.ly/2VOYUy2>

<sup>2</sup> Metro Nashville Community Oversight. “[Policy Advisory Report on Use of Force Consent Decrees](#)” (2020).

<sup>3</sup> Policing Policy Commission. “[Policing Policy Commission Report](#)” (2020).

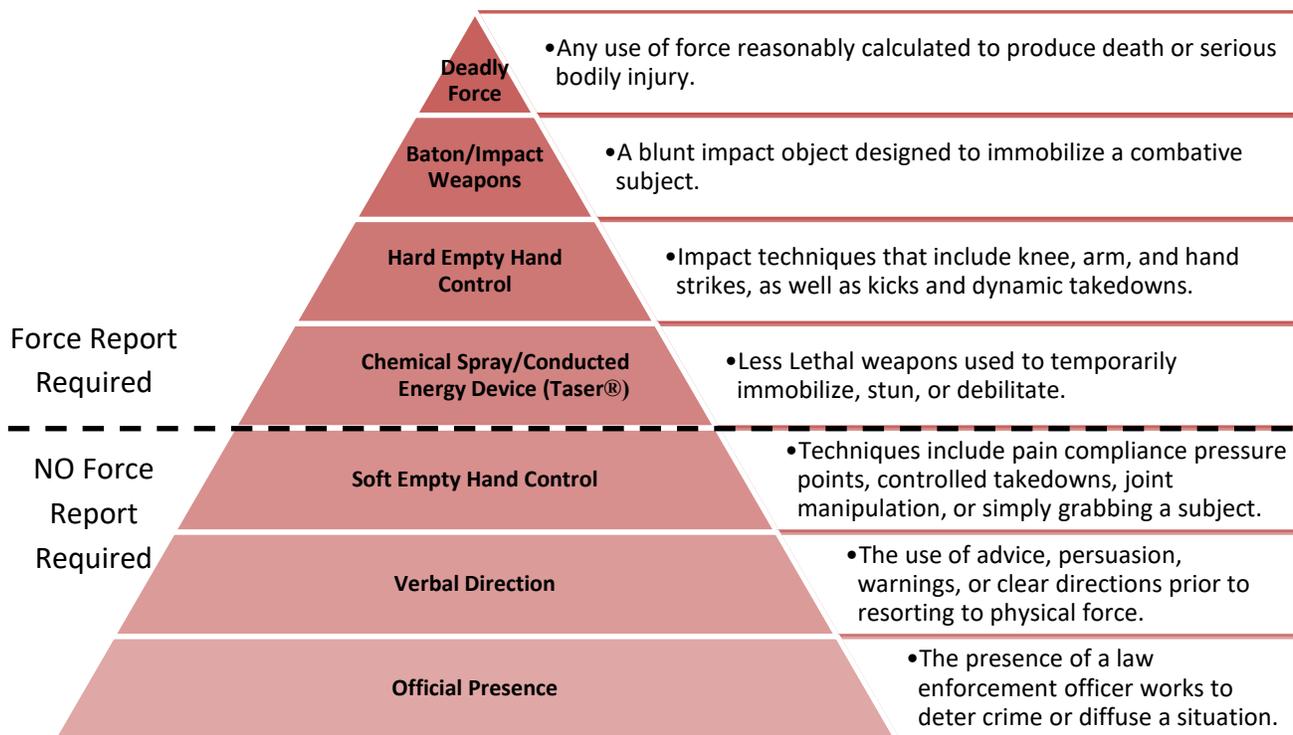
<sup>4</sup> Mitchell, Ojmarrh. "Understanding Police Use of Force via Hospital Administrative Data: Prospects and Problems." JAMA Network Open 1.5 (2018).

and liability while accurately communicating to the public the number and circumstances of incidents where officers use force.

Uses of force are often used as a part of early intervention systems since they can be predictive of officers being at high risk for excessive force or other misconduct.<sup>5</sup> For instance, if an officer has several uses of force in a short time span, an early intervention system may “flag” the officer as being high risk. The department could then intervene with the officer to ensure officer wellness and prevent potential excessive force or misconduct. Tracking soft empty-hand control is an important variable for accurate early intervention. If an officer is engaging in more minor force incidents, that could be a risk factor for escalating force in the future.

Tracking all uses of physical force is necessary for a police department to be fully transparent about the force used with community members and the resistance that officers experience while performing their jobs.

**Figure 1. A pictorial representation of MNPD’s use of force continuum.**



<sup>5</sup> Helsby, Jennifer, et al. "Early intervention systems: Predicting adverse interactions between police and the public." *Criminal Justice Policy Review* 29.2 (2018): 190-209.

## Policies of Other Departments

Departments vary as to what level they require officers to complete a written report after using physical force. The Commission on Accreditation for Law Enforcement Agencies (CALEA) certification requires that a written report is submitted whenever an employee “applies weaponless physical force at a level as defined by the agency.”<sup>6</sup> A wide range of reporting thresholds are compliant with CALEA standards.

To determine how common it is for police departments to require written reports for soft empty-hand control techniques, MNCO researchers evaluated the policies for the 50 largest police departments in the United States that are listed in the most recent (2016) Law Enforcement Management and Administrative Statistics (LEMAS) survey conducted by the Bureau of Justice Statistics. Departments vary in how they refer to soft empty-hand control. For consistency, if any of the specific practices included in MNPD’s definition of soft empty-hand control were listed as requiring a written report then the department was listed as requiring a report.

Forty-seven of the 50 largest police departments had policies available online. Twenty-four (51%) departments with available policies required reporting of soft empty-hand control. Twenty-three (49%) departments with available policies—including MNPD—do not require reporting of soft empty-hand control when there is no allegation of injury. *In other words, 51% of the 50 largest police departments have a use of force reporting standard more comprehensive than MNPD.* For a full list of departments, see Appendix A.

## How Common are Soft Empty-Hand Techniques?

It is impossible to gauge how common soft empty-hand control techniques are in Nashville because they are only required to be tracked if there is an injury alleged by the subject, the officer is injured, or if a higher level of force is used in addition to the soft empty-hand use of force. Other departments track whenever soft empty-hand control techniques are used, which can suggest how often soft empty-hand control techniques are used relative to other types of force. MNCO identified four departments with reports or public data that could answer the question of how often soft empty-hand control is the highest force used.<sup>7</sup> *Analysis of these four departments found that between 1 in 6 to as high as 1 in 3 use of force incidents include uses of force that would not be reportable for MNPD.*

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<sup>6</sup> CALEA standard 4.2.1

<sup>7</sup> MNCO reviewed available reports and public data on uses of force in departments where soft empty-hand control is tracked more thoroughly than MNPD to identify how often soft empty-hand control is the highest force used in an incident. Many departments report soft empty-hand controls as a fraction of their total force applications, not as the highest level of force used in an incident. Since multiple applications of force can happen in each incident, many departmental reports were not helpful in identifying the number of incidents where soft empty-hand control is the highest force used. Other departments report the force level and combine soft empty-hand control with firearm or Taser displays, making the data not applicable to this report.

In a study of the Fairfax County Police in Virginia, soft empty-hand control was the maximum force used in 288 (21.2%) of 1,360 use of force cases from 2016-2018<sup>8</sup>. The authors included the following techniques: “carry”, “force to cuff”, “force to hobble”, “force to hold/restrict”, “hands on escort/guide”, “pressure points by hand”, “pressure points with instrument”, and “spit mask”. According to the 2016 LEMAS survey, Fairfax County Police has a similar number of sworn officers (1,369) as compared to MNP (1,403).

Dallas Police Department makes use of force data available through their open data portal with the specific type of force application used in each incident.<sup>9</sup> Soft empty-hand control was the highest force used in 1,037 (35%) of 2,944 total incidents in 2019. MNCO researchers defined soft empty-hand control as incidents with the following techniques: “pressure points”, “held subject down”, “handcuffing take down”, “grabbed”, “pushed”, “tripped”, “joint locks”, and “hand controlled escort.” Another variable was created for all higher force including take downs (other than during handcuffing), less lethal weapons, and hard empty-hand control. Firearm discharges are not included in the data. According the LEMAS data, Dallas had 3,408 officers in 2016.

A different report focusing on a “large urban city in Texas” found that soft empty hand control was the highest force used in 29.5% of the 1,846 studied subject-incidents from 2004-2007<sup>10</sup>. This department required their officers to submit a report for every subject against whom force was used.

Finally, New Orleans Police Department used soft empty-hand control without higher force in 401 (16.4%) out of 2,452 use of force incidents between 2016 and 2020.<sup>11</sup> MNCO researchers calculated this figure by combining force labeled as: “hands,” “Escort Techniques (Level 1),” and “Level 1 Takedown (No Injury).” The data split takedowns into Level 1 or Level 2, where Level 1 takedowns are a form of compliance technique rather than defensive tactic.

These cities show that incidents where soft empty-hand control is the highest force make up between 1 in 6 to as high as 1 in 3 use of force incidents when they are tracked. Failing to track these incidents gives an incomplete picture of uses of force. MNP should require that officers complete a form when using soft empty-hand control so that they can fully understand the force that officers use in the course of their duties. It is with this in mind that we make the below recommendations, which we believe are in the best interest of the department and the public.

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<sup>8</sup> Smith, Michael R., Rob Tillyer, and Robin S. Engel. “An Investigation of the Use of Force by the Fairfax County Police Department”. University of Texas at San Antonio (2021).

<sup>9</sup> Findings based on MNCO calculations. Data available at: <https://www.dallasopendata.com/Public-Safety/Police-Response-to-Resistance-2019/46zb-7qgj>

<sup>10</sup> Fridell, Lorie, and Hyeyoung Lim. "Assessing the racial aspects of police force using the implicit-and counter-bias perspectives." *Journal of Criminal Justice* 44 (2016): 36-48.

<sup>11</sup> Findings based on MNCO calculations. Data available at: <https://data.nola.gov/Public-Safety-and-Preparedness/NOPD-Use-of-Force-Incidents/9mnw-mbde>

## Recommendations to MNPD

The COB believes that tracking all uses of physical force is essential for the police department. MNPD currently has three forms for tracking uses of force: Form 108, Form 108-T, and Form 108-F. Form 108 is the standard use of force form that requires a supervisory investigation. Form 108-T is required when a Taser is displayed or deployed. Form 108-F is required for all firearm displays and is a short version of the Form 108 and includes a brief narrative. Most departments that track soft empty-hand control categorize firearm displays and soft empty-hand control in a similar level of force and use similar forms and procedures to track those actions. The 108-F also includes most of the information necessary for tracking soft empty-hand control.

There are two pathways that would satisfy the following recommendations. The two recommendations, below, could be satisfied by either path. First, MNPD could create a form in addition to the existing forms that would exclusively track soft empty-hand control without injuries (see Figure 2). Alternatively, MNPD could create a form that would replace the Form 108-F that tracks both soft empty-hand control without injuries and firearm displays (see Figure 3). In both instances, a Form 108-S (a short Form 108) would serve an important function for improving use of force tracking. Neither implementation pathway is expected to create additional financial costs to MNPD.

### Recommendation 1:

The COB recommends that all uses of soft empty-hand control techniques used to overcome resistance should be immediately reported to an officer's supervisor and require a written report that is tracked by MNPD. The supervisor should evaluate which reporting and investigation method is most appropriate given the circumstances and determine the appropriate form for each involved officer to complete. Tracking of all uses of soft empty-hand control techniques used to overcome resistance should begin by January 1, 2022.

### Recommendation 2:

Officers using soft empty-hand control techniques to overcome resistance without an allegation of injury should be required to complete a Form 108-S, a form that would be created by MNPD to collect information about soft empty-hand control when the force does not rise to the current Form 108 reporting level.

The form should be an abbreviated version of the Form 108 that collects all relevant information but does not require the same level of investigation as the Form 108. Each officer using soft empty-hand control should be required to complete a 108-S. If any officer involved in the incident uses force greater than soft empty-hand control without injury, all involved officers should be required to complete Form 108.

At a minimum, the Form 108-S should collect the following information<sup>12</sup>:

- The incident number, time and date of incident, address of incident,
- The race, ethnicity, sex, and age of the subject and the officer,
- Checkboxes for the force techniques used (including pain compliance pressure points, controlled takedowns, joint manipulation, or grabbing a subject),
- Checkboxes for the type of resistance the subject displayed,
- Checkboxes for the type of weapon a subject had,
- A checkbox of whether the subject alleged an injury (if yes is checked, the officer should complete a Form 108),
- A checkbox for whether the incident was in response to a call for service or an officer-initiated action,
- A checkbox indicating whether Body Worn Camera footage was taken,
- The size and build of the subject in relationship to the officer,
- Reason for initial contact between the subject and officer, including any suspected unlawful or criminal activity,
- Whether the officer was:
  - Readily identifiable as law enforcement, including whether they were in uniform or plain clothes; operating a marked or unmarked law enforcement vehicle or on foot patrol; on or off duty; and accompanied by other officers,
- A narrative describing the incident, the justification for the force used, any de-escalation attempts made, and details about the circumstances leading up to the use of force.

A supervisor must review the 108-S as soon as possible, but no later than the end of their shift.

In the same fashion that MNPd provides the COB Database Access to 108, 108T, and 108F forms (as outlined in Section 4.D.1 of the Memorandum of Understanding between the COB and MNPd), MNPd shall provide the COB access to 108-S forms.

With this addition, the use of force reporting structure would adhere to one of the following paths, depending on which implementation pathway MNPd chooses to follow:

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<sup>12</sup> These recommendations are based off the IACP Law Enforcement Policy Center's 'Reporting Use of Force' report, as well as MNPd's Form 108-F.

Figure 2: If 108-S and 108-F are separate forms:

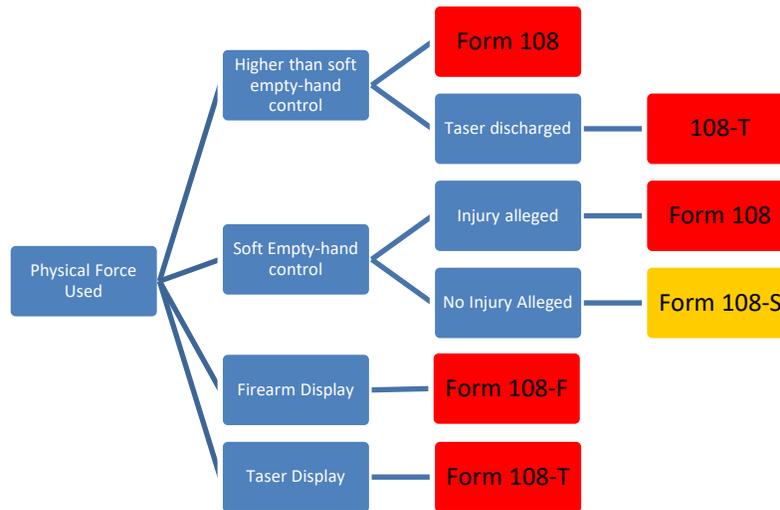
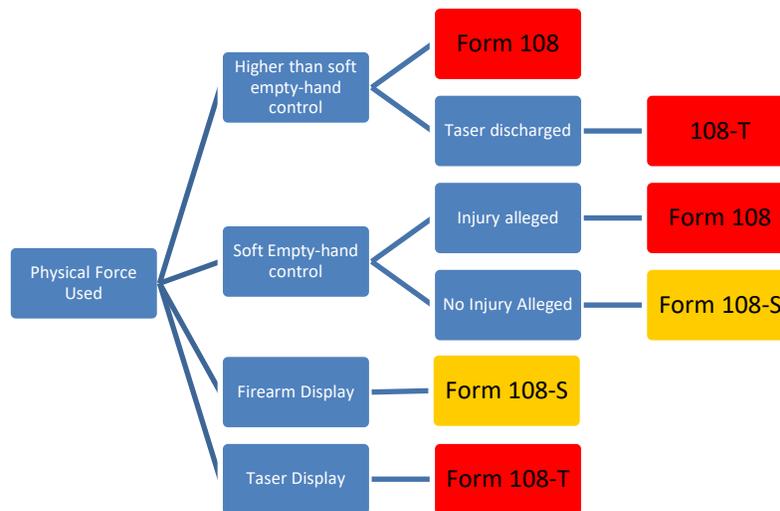


Figure 3: If 108-F and 108-S are consolidated into one form:



### Recommendation to the Metropolitan Council

The COB recommends that the Metropolitan Council amend section 2.44.115 of the Metropolitan Code to require quarterly and annual use of force reports be posted to the MNPD website, sent to Metro Council, and sent to the Executive Director of the COB that include the number of use of force incidents where soft empty-hand control is the highest force used and there is no allegation of injury. Appendix B gives an example ordinance that the COB recommends passing.

## Appendix A:

Analysis of the 50 largest police departments' policies regarding requiring a written report when officers use soft empty-hand control techniques. Information on department size comes from the Bureau of Justice Statistics, Law Enforcement Management and Administrative Statistics Survey, 2016 (Indianapolis, Miami, and New Orleans did not respond to LEMAS in 2016).

City	Population	Officers	Officers per 10,000 residents	Requires Report for Soft Empty-Hand Control	Does Not Require Report for Soft empty-Hand Control
New York (NY) Police	8,537,653	36,008	42		X
Chicago (IL) Police	2,704,958	11,965	44	X	
Los Angeles (CA) Police	3,976,322	9,870	25		X
Philadelphia (PA) Police	1,567,872	6,031	38	X	
Houston (TX) Police	2,254,546	5,203	23	X	
Washington (DC) Metropolitan Police	681,170	3,712	54		X
Dallas (TX) Police	1,236,028	3,408	28	X	
Miami-Dade (FL) Police	1,345,983	2,723	20		X
Phoenix (AZ) Police	1,615,017	2,689	17		X
Las Vegas (NV) Metropolitan Police	1,592,178	2,566	16		X
Baltimore (MD) Police	614,664	2,524	41	X	
Nassau County (NY) Police	1,065,674	2,462	23		X
Suffolk County (NY) Police	1,320,309	2,385	18		X
San Francisco (CA) Police	870,887	2,356	27		X
Detroit (MI) Police	672,795	2,250	33	X	
San Antonio (TX) Police	1,492,483	2,244	15		X
Boston (MA) Police	673,184	2,099	31		X
Memphis (TN) Police	652,717	2,012	31	X	
Honolulu (HI) Police	992,605	1,962	20	X	
Milwaukee (WI) Police	595,047	1,879	32		X
Baltimore County (MD) Police	831,026	1,869	22		X
San Diego (CA) Police	1,406,630	1,857	13	X	
Columbus (OH) Police	841,563	1,838	22	X	
Austin (TX) Police	947,890	1,807	19	X	
Charlotte-Mecklenburg (NC) Police	892,705	1,743	20	X	
Atlanta (GA) Police	439,856	1,730	39		X
Prince George's County (MD) Police	693,100	1,650	24	X	
Fort Worth (TX) Police	845,237	1,541	18		X

<b>Cleveland (OH) Police</b>	385,809	1,475	38		X
<b>Denver (CO) Police</b>	693,060	1,464	21	X	
<b>Metropolitan Nashville (TN) Police</b>	661,658	1,403	21		X
<b>Seattle (WA) Police</b>	704,352	1,373	19		X
<b>Fairfax County (VA) Police</b>	1,073,627	1,369	13	X	
<b>Kansas City (MO) Police</b>	311,095	1,364	44		X
<b>Louisville (KY) Metro Police</b>	679,291	1,246	18		X
<b>Montgomery County (MD) Police</b>	881,932	1,230	14	X	
<b>St. Louis (MO) Police</b>	311,404	1,175	38	X	
<b>Oklahoma City (OK) Police</b>	516,201	1,101	21	X	
<b>Cincinnati (OH) Police</b>	298,800	1,032	35	X	
<b>El Paso (TX) Police</b>	683,080	1,026	15	No Public Policies	
<b>Newark (NJ) Police</b>	281,764	955	34	X	
<b>Tampa (FL) Police</b>	377,165	950	25	X	
<b>San Jose (CA) Police</b>	1,025,350	927	9	X	
<b>Pittsburgh (PA) Police</b>	303,625	892	29	X	
<b>Portland (OR) Police</b>	637,301	881	14	X	
<b>Tucson (AZ) Police</b>	530,706	876	17		X
<b>Jersey City (NJ) Police</b>	264,152	854	32	No Public Policies	
<b>Omaha (NE) Police</b>	446,970	848	19		X
<b>Minneapolis (MN) Police</b>	413,651	841	20		X
<b>Birmingham (AL) Police</b>	210,378	830	39	No Public Policies	

## Appendix B: Sample Ordinance

### ORDINANCE NO. BL \_\_\_\_\_

**An ordinance amending section 2.44.115 of the Metropolitan Code of Laws to require the Metropolitan Police Department to provide use of force reports to Metropolitan Council.**

WHEREAS, in 2006, the Metropolitan Council amended Chapter 2.44 of the Metropolitan Code of Laws to require quarterly and annual crime reports to be submitted to the public safety committee of the Metropolitan Council, pursuant to Ordinance No. BL2006-1261; and

WHEREAS, in 2016, the Metropolitan Council amended Chapter 2.44 of the Metropolitan Code of Laws to require an annual traffic stop report to the Metropolitan Council, pursuant to Ordinance No. BL2016-483; and

WHEREAS, the Community Oversight Board recommends that the Metropolitan Police Department track and submit quarterly and annual reports on physical force used by officers; and

WHEREAS, transparency about the full range of physical force used and demographic information about community members who experience physical force during an encounter with MNPd is in the best interests of the citizens and residents of Nashville and Davidson County and the Metropolitan Council should be further provided reports regarding use of force.

THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That section 2.44.115 of the Metropolitan Code of Laws is hereby amended by changing the title of the section from "2.44.115 - Crime and traffic stop reports to be submitted to the metropolitan council." to "2.44.115 - Reports to be submitted to the metropolitan council."

Section 2. That section 2.44.115 of the Metropolitan Code of Laws is hereby further amended by adding new subsections as follows:

D. Quarterly Use of Force Report. The police department shall submit a quarterly use of force report to the Metropolitan Council and the Executive Director of the COB and post the quarterly use of force report to the departmental website within thirty days of the end of the months of March, June, September and December, which report shall include, but not be limited to:

1. The number of subjects with whom physical force was used as defined in subsection (3) below
  - a. Disaggregated by highest physical force used.

- b. Disaggregated by highest force used and demographic category of subject as defined by section 2.44.115C(2).
    - c. Disaggregated by highest force used and demographic category of officer as defined by section 2.44.115C(2).
    - d. The percentage of calls for service, incidents, and arrests where physical force was used.
  2. The number of subjects who resisted officers
    - a. Disaggregated by the type of resistance displayed by the subjects.
    - b. Disaggregated by demographic category of subject as defined by section 2.44.115C(2).
    - c. Disaggregated by demographic category of officer as defined by section 2.44.115C(2).
  3. Physical force refers to all the following in ascending order: soft empty hand control used to overcome resistance without an injury alleged, soft empty hand control with an allegation of injury, display of a Taser® or conducted energy device, display of firearms, Taser® or conducted energy device discharge, oleoresin capsicum (OC) spray or other chemical spray, all other less lethal weapons, hard empty hand control, baton strikes or other impact weapons, and firearm discharge.
- E. Annual Use of Force Report: The police department shall submit an annual use of force report to the Metropolitan Council and the Executive Director of the COB and post the annual use of force report to the departmental website within thirty days of the end of the month of January, which report shall include all items under Subsection D.