

# Law Enforcement Use of Force

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“At the heart of many of these concerns is officer safety, and the fear that any changes to current use-of-force practices could put officers in danger. Concern for officer safety is understandable...But our research has led us to an alternative conclusion: that changing how agencies approach certain types of critical incidents can *increase officer safety* in those situations.” – Police Executive Research Forum<sup>1</sup>

## Legal Framework

- *Tennessee v. Garner*<sup>2</sup> (“fleeing felon” standard): Law enforcement cannot use a firearm to stop a felon from escaping, unless they have reason to believe that he or she was a felon and posed a serious threat of death or serious bodily harm to others.
- *Graham v. Connor*<sup>3</sup>: Use of force must be objectively reasonable – Set forth standard of a “reasonable” use of force by stating that law enforcement interactions with suspects must be “judged from the perspective of a reasonable officer on the scene, rather than 20/20 vision of hindsight.”
  - Outlines broad principles about what police officers *can legally do*, but does not provide specific guidance on what officers *should do*.<sup>4</sup>
  - “...whether the suspect poses an *immediate* threat to the safety of officers or others...”
- *Scott v. Harris*<sup>5</sup> (car chase): If a subject poses a substantial and immediate risk of serious physical injury to others, an attempt to terminate a car chase by forcing subject off the road is reasonable. Holds that there are no clearly constitutionally impermissible uses of deadly force (no “magical on/off switch that triggers rigid preconditions.”)
- *Plakas v. Drinski*<sup>6</sup> (7<sup>th</sup> Circuit): “There is no precedent in this Circuit (or any other) which says that the Constitution requires law enforcement officers to use all feasible alternatives to avoid a situation where deadly force can justifiably be used. There are, however, cases which support the assertion that, where deadly force is otherwise justified under the Constitution, there is no constitutional duty to use non-deadly alternatives first... We do not believe the Fourth Amendment requires the use of the least or even a less deadly alternative so long as the use of deadly force is reasonable under *Garner v. Tennessee* and *Graham v. Connor*.”

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<sup>1</sup> <http://www.policeforum.org/assets/30%20guiding%20principles.pdf>.

<sup>2</sup> <https://la.utexas.edu/users/jmciver/357L/471US1.PDF>.

<sup>3</sup> <http://www1.udel.edu/soc/faculty/parker/GrahamvsConnorCase.pdf>.

<sup>4</sup> <http://www.policeforum.org/assets/30%20guiding%20principles.pdf>.

<sup>5</sup> <https://www.supremecourt.gov/opinions/06pdf/05-1631.pdf>.

<sup>6</sup> [http://lms.policecommunity.net/data/policecommunity/lm\\_data/lm\\_470/Mod/html/cases/plakas\\_v\\_drinski.pdf](http://lms.policecommunity.net/data/policecommunity/lm_data/lm_470/Mod/html/cases/plakas_v_drinski.pdf).

- Wis. Stat. § 939.48(1)<sup>7</sup> states “[t]he actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely to cause death or great bodily harm to himself or herself.”
- Wis. Stat. § 939.48(1m)(ar)<sup>8</sup> gives Wisconsin’s Castle Doctrine.
- Wis. Stat. § 66.0511(2)<sup>9</sup> requires local law enforcement agencies to have a written policy on use-of-force.
- Wis. Stat. § 165.85(4)(d) & (4)(e)<sup>10</sup> lists vehicle pursuit and firearm training as two mandatory areas for annual training.

### International Standards

- UN Code of Conduct for Law Enforcement Officials<sup>11</sup>: In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.
- UN Code of Conduct for Law Enforcement Officials<sup>12</sup>: Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.
- European Convention on Human Rights<sup>13</sup>: Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary.
- International Deadly Force Standard<sup>14</sup>: Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

### Wisconsin Law Enforcement Standards Board

<sup>7</sup> <https://docs.legis.wisconsin.gov/statutes/statutes/939/III/48>.

<sup>8</sup> <https://docs.legis.wisconsin.gov/statutes/statutes/939/III/48>.

<sup>9</sup> <https://docs.legis.wisconsin.gov/statutes/statutes/66/V/0511/3>.

<sup>10</sup> <https://docs.legis.wisconsin.gov/statutes/statutes/165/85>.

<sup>11</sup> <https://www.un.org/ruleoflaw/files/CODEOF-1.PDF>.

<sup>12</sup> <https://www.un.org/ruleoflaw/files/CODEOF-1.PDF>.

<sup>13</sup> [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).

<sup>14</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>.

- **Duties**<sup>15</sup>: Establish minimum educational and training standards for admission to employment as a law enforcement officer and establish minimum curriculum requirements for preparatory courses and programs, and recommend minimum curriculum requirements for recertification and advanced courses and programs.

### Best Practices<sup>16</sup>

- **Adopt policies above the constitutional/case law minimum.**
  - **US DOJ Policy**<sup>17</sup>: “...[A]s a matter of principle, the Department deliberately did not formulate this policy to authorize force up to constitutional or other legal limits.”
  - **Madison PD Policy**<sup>18</sup>: Adopts the *Graham v. Connor* standard.
- **Adopt policies that recognize the duty to preserve life.**
  - **US DOJ Policy**<sup>19</sup>: “The Department of Justice recognizes and respects the integrity and paramount value of all human life. Consistent with that primary value, but beyond the scope of the principles articulated here, is the Department’s full commitment to take all reasonable steps to prevent the need to use deadly force, as reflected in Departmental training and procedures.”
  - **New York PD Policy**<sup>20</sup>: “The primary duty of all members of the service is to protect human life, including the lives of individuals being placed in police custody.”
  - **Eau Claire PD Policy**<sup>21</sup>: “The Department recognizes and respects the value of all human life and dignity without prejudice to anyone.”
  - **Madison PD Policy**<sup>22</sup>: Policy states department “recognizes the value of human life” and Code of Conduct states References “Department recognizes and respects the value of all human life.” However, policy does not impose a duty to preserve human life.
- **Deadly force should only be authorized after all other possible means have been exhausted (necessity).**
  - **US DOJ Policy**<sup>23</sup>: “...[T]he touchstone of the Department’s policy regarding the use of deadly force is necessity. Use of deadly force must be objectively reasonable under all the circumstances known to the officer at the time...The necessity to use deadly force arises when all other available means of preventing imminent and grave danger to

<sup>15</sup> <https://docs.legis.wisconsin.gov/statutes/statutes/165/85>.

<sup>16</sup> Many of these recommendations are adapted from Campaign Zero’s use of force policy solutions, a policy platform that grew out of the Black Lives Matter movement: <http://www.joincampaignzero.org/#vision>.

<sup>17</sup> <https://www.justice.gov/ag/attorney-general-october-17-1995-memorandum-resolution-14-attachment-1>.

<sup>18</sup> <https://www.cityofmadison.com/police/documents/sop/ForceDeadly.pdf>.

<sup>19</sup> <https://www.justice.gov/ag/attorney-general-october-17-1995-memorandum-resolution-14-attachment-1>.

<sup>20</sup> <http://static1.squarespace.com/static/56996151cbced68b170389f4/t/5787449120099e84c6357f41/1468482713030/NYPD+Use+of+Force+Policy.pdf>.

<sup>21</sup> <http://www.ci.eau-claire.wi.us/home/showdocument?id=14766>.

<sup>22</sup> <https://www.cityofmadison.com/police/documents/sop/ForceDeadly.pdf>.

<sup>23</sup> <https://www.justice.gov/ag/attorney-general-october-17-1995-memorandum-resolution-14-attachment-1>.

officers or other persons have failed or would be likely to fail. Thus, employing deadly force is permissible when there is no safe alternative to using such force, and without it the officer or others would face imminent and grave danger. An officer is not required to place him or herself, another officer, a suspect, or the public in unreasonable danger of death or serious physical injury before using deadly force...If force lesser than deadly force could reasonably be expected to accomplish the same end, such as the arrest of a dangerous fleeing subject, without unreasonably increasing the danger to the officer or to others, then it must be used.”

- Colorado Springs PD Policy<sup>24</sup>: Uses “immediate” instead of “imminent.”
  - Cleveland PD Policy<sup>25</sup>: “Officers shall use force only as necessary, meaning only when no reasonably effective alternative to the use of force appears to exist, and then only to the degree which is reasonable to effect the intended lawful objective.”
  - Kenosha PD Policy<sup>26</sup>: “...[F]orce may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances.”
  - La Crosse PD Policy<sup>27</sup>: States use of deadly force should only be used as a last resort.
  - Madison PD Policy<sup>28</sup>: “...[D]eadly force will not be resorted to unless an officer reasonably believes that a lesser degree of force would be insufficient.”
- **Adopt policies authorizing the use of deadly force only if there is an immediate danger.**
    - Colorado Springs PD Policy<sup>29</sup>
    - Philadelphia PD Policy<sup>30</sup>: Requirement for immediate danger adopted per recommendation from U.S. Department of Justice, following collaborative review. Consistent with *Tennessee v. Garner*, which specifies “immediate” danger.
    - Madison PD Policy<sup>31</sup>: Use of deadly force requires “imminent” danger.
  - **Adopt policies requiring an officer’s tactical conduct and decisions leading up to using force be considered in judgements of whether such force was reasonable (i.e., “officer created jeopardy”<sup>32</sup>).**

<sup>24</sup><http://static1.squarespace.com/static/56996151cbced68b170389f4/t/569ad4a2a128e6ffd2bde106/1452987555924/Colorado+Springs+Deadly+Force+Policy.pdf>.

<sup>25</sup> <https://assets.documentcloud.org/documents/3104582/UOF-General.pdf>.

<sup>26</sup> <http://www.kenoshapolice.com/sites/default/files/useofforce.pdf>.

<sup>27</sup> [https://cityoflacrosse.org/filestorage/407/465/6910/POLICY\\_MANUAL\\_\(06.23.2016\).pdf](https://cityoflacrosse.org/filestorage/407/465/6910/POLICY_MANUAL_(06.23.2016).pdf).

<sup>28</sup><http://static1.squarespace.com/static/56996151cbced68b170389f4/t/569abbebf204d58bba6852db/1452981242252/Madison+Use+of+Force+Policy.pdf>.

<sup>29</sup><http://static1.squarespace.com/static/56996151cbced68b170389f4/t/569ad4a2a128e6ffd2bde106/1452987555924/Colorado+Springs+Deadly+Force+Policy.pdf>.

<sup>30</sup> <https://www.phillypolice.com/assets/directives/PPD-Directive-10.1.pdf>.

<sup>31</sup> <https://www.cityofmadison.com/police/documents/sop/ForceDeadly.pdf>.

<sup>32</sup>[http://www.slate.com/blogs/the\\_slatest/2015/12/28/tamir\\_rice\\_s\\_death\\_didn\\_t\\_lead\\_to\\_indictments\\_because\\_of\\_supreme\\_court\\_vagueness.html](http://www.slate.com/blogs/the_slatest/2015/12/28/tamir_rice_s_death_didn_t_lead_to_indictments_because_of_supreme_court_vagueness.html).

- Los Angeles PD Policy<sup>33</sup>: “The reasonableness of an Officer’s use of deadly force includes consideration of the officer’s tactical conduct and decisions leading up to the use of deadly force.”
  - Philadelphia PD Policy<sup>34</sup>: “Police officers shall ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by taking unnecessary, overly aggressive, or improper actions. It is often a tactically superior police procedure to withdraw, take cover or reposition, rather than the immediate use of force.”
  - Madison PD Policy<sup>35</sup>: Not part of their policy.
- **Adopt policies requiring officers give a verbal warning, when possible, before using force and give subjects a reasonable amount of time to comply with the warning.**
    - Las Vegas Metro PD Policy<sup>36</sup>: “When deploying, an officer will, if practical, announce a warning to the subject and other officers of the intent to deploy the OC spray if the subject does not comply with your commands. Example: ‘Do what I am telling you to do, or I will spray you with pepper spray.’ Officer shall give the subject a reasonable opportunity to voluntarily comply.”
    - Madison PD Policy<sup>37</sup>: Requires a verbal warning before using deadly force, if possible. Doesn’t appear to be required for other uses of force.
  - **Adopt policies requiring using minimum force to apprehend a subject, with specific guidelines for the types of force and tools authorized for a given level of resistance (proportionality).**
    - Seattle PD Policy<sup>38</sup>: “It is the policy of the Seattle Police Department to accomplish the police mission with the cooperation of the public and as effectively as possible, and with minimal reliance upon the use of physical force. The community expects and the Seattle Police Department requires that officers use only the force necessary to perform their duties and that such force be proportional to the threat or resistance of the subject under the circumstances.”
    - Cleveland PD Policy<sup>39</sup>: “All force must be proportional to the level of the subject’s resistance. To be proportional, the level of force applied must reflect the totality of the circumstances known to the officer at the time force was applied. Generally, only the amount of force required to control the subject shall be used by the officer.”

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<sup>33</sup><http://static1.squarespace.com/static/56996151cbced68b170389f4/t/569ad9950ab377ab2b43b066/1452988824996/Los+Angeles+use+of+force+policy.pdf>.

<sup>34</sup> <https://www.phillypolice.com/assets/directives/PPD-Directive-10.1.pdf>.

<sup>35</sup><https://www.cityofmadison.com/police/documents/sop/ForceDeadly.pdf>.

<sup>36</sup><http://static1.squarespace.com/static/56996151cbced68b170389f4/t/569ad92b57cb8d0f11460ead/1452988719385/Las+Vegas+Use+of+Force+Policy.pdf>

<sup>37</sup><https://www.cityofmadison.com/police/documents/sop/ForceNonDeadly.pdf>.

<sup>38</sup> <http://www.seattle.gov/police-manual/title-8---use-of-force/8000---use-of-force-core-principles>.

<sup>39</sup> <https://assets.documentcloud.org/documents/3104582/UOF-General.pdf>.

- Madison PD Policy<sup>40</sup>: No minimum force or proportionality language. Policy on non-deadly force states “officer may use only the amount of non-deadly force that is reasonably necessary to secure control or to gain compliance and is consistent with Department Training” and deadly force policy states “deadly force will not be resorted to unless an officer reasonably believes that a lesser degree of force would be insufficient.”
- **Adopt polices requiring de-escalation.**
  - Seattle PD Policy<sup>41</sup>: Devotes an entire page of policy to defining and giving detailed instructions for de-escalation. States “De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, which seek to minimize the likelihood of the need to use force during an incident. When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.”
  - Denver Sheriff Department Policy<sup>42</sup>: Defines de-escalation in detail and repeatedly specifies a requirement to use de-escalation. States that “If time and circumstances permit, prior to using force, deputies shall use de-escalation techniques in an attempt to resolve the situation through voluntary compliance.”
  - Cleveland PD Policy<sup>43</sup>: “De-escalation tactics and techniques are proactive actions and approaches used by officers, when feasible, to gain the voluntary compliance of subject(s) and reduce or eliminate the need to use force.”
  - Madison PD Policy<sup>44</sup>: Is not mentioned in use-of-force procedures. States that “officers may escalate the degree of force based on the actions of the person they are attempting to control or make an affirmative decision to disengage. Once a person is under control, officers are required to revert to the lowest degree of force necessary to maintain that control.” Did recently create a free-standing de-escalation standard operating procedure.<sup>45</sup>
- **Adopt policies banning use of force on a person for talking back or as punishment for running away.**
  - Cleveland PD<sup>46</sup>: “Officers shall not use retaliatory force.”

<sup>40</sup><https://www.cityofmadison.com/police/documents/sop/ForceNonDeadly.pdf>.

<sup>41</sup> <http://www.seattle.gov/police-manual/title-8---use-of-force/8100---de-escalation>.

<sup>42</sup> <https://www.denvergov.org/content/denvergov/en/sheriff-department/news-events/denver-sheriff-press-release---de-escalation-focus-of-new-police.html>.

<sup>43</sup> <https://assets.documentcloud.org/documents/3104580/UOF-De-Escalation.pdf>.

<sup>44</sup><https://www.cityofmadison.com/police/documents/sop/ForceNonDeadly.pdf>.

<sup>45</sup> <https://www.cityofmadison.com/police/documents/sop/Deescalation.pdf>.

<sup>46</sup> [http://www.nytimes.com/2015/05/27/us/cleveland-police-accept-use-of-force-rules-in-justice-dept-deal.html?\\_r=0&mtref=www.joincampaignzero.org&assetType=nyt\\_now&mtref=undefined&assetType=nyt\\_now](http://www.nytimes.com/2015/05/27/us/cleveland-police-accept-use-of-force-rules-in-justice-dept-deal.html?_r=0&mtref=www.joincampaignzero.org&assetType=nyt_now&mtref=undefined&assetType=nyt_now);  
<https://assets.documentcloud.org/documents/3104582/UOF-General.pdf>.

- Madison PD Policy<sup>47</sup>: Using pepper spray or a Taser is not allowed against subjects offering “passive resistance.”
- **Adopt policies requiring officers to intervene to stop other officers who are using excessive force and report them to a supervisor.**
  - Las Vegas Metro PD Policy<sup>48</sup>: “Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, safely intercede to prevent the use of such excessive force. Officers shall promptly report these observations to a supervisor.”
  - Cleveland PD Policy<sup>49</sup>: “Each officer at the scene of a use of force incident has a duty to intervene by taking all reasonable actions to stop any use of force that is perceived to be unauthorized by this policy.”
  - Kenosha PD Policy<sup>50</sup>: “The failure of an officer to prevent the use of excessive force by another officer or failure to report the use of excessive force by another officer may subject the officer to disciplinary action, criminal and civil liability.”
  - Milwaukee PD Policy<sup>51</sup>: “Any officer who personally observes another officer using force, which the observing officer believes to be beyond that which is objectively reasonable under the circumstances, shall reasonably attempt to intervene to prevent the use of such excessive force, if the observing officer is in a position to do so, and if any such intervention does not jeopardize safety.”
  - Eau Claire PD Policy<sup>52</sup>: “Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force.”
  - Madison PD Policy<sup>53</sup>: Not mentioned in use of force policy. In Code of Conduct, says “Any officer present and observing another officer using excessive force, or engaged in unlawful conduct, or in violation of the Madison Police Department’s Code of Conduct has an affirmative obligation to intercede and report.”
- **Adopt policies mandating reassessment after firing shots.**
  - San Francisco PD Policy<sup>54</sup>: Reassess situation after each discharge.
  - Madison PD Policy<sup>55</sup>: Not in policy.

<sup>47</sup><https://www.cityofmadison.com/police/documents/sop/ForceNonDeadly.pdf>.

<sup>48</sup><http://static1.squarespace.com/static/56996151cbced68b170389f4/t/569ad92b57eb8d0f11460ead/1452988719385/Las+Vegas+Use+of+Force+Policy.pdf>.

<sup>49</sup><https://assets.documentcloud.org/documents/3104582/UOF-General.pdf>.

<sup>50</sup><http://www.kenoshapolice.com/sites/default/files/useofforce.pdf>.

<sup>51</sup><http://city.milwaukee.gov/ImageLibrary/Groups/mpdAuthors/SOP/460-USEOFFORCE.pdf>.

<sup>52</sup><http://www.ci.eau-claire.wi.us/home/showdocument?id=14766>.

<sup>53</sup><https://www.cityofmadison.com/police/documents/sop/ForceDeadly.pdf>; <https://www.cityofmadison.com/police/documents/sop/ForceNonDeadly.pdf>; <https://www.cityofmadison.com/police/documents/codeConduct.pdf>.

<sup>54</sup><http://www.sfoxaminer.com/sfpds-use-force-policy-reforms-unanimously-passed-police-commission/>.

<sup>55</sup><https://www.cityofmadison.com/police/documents/sop/ForceDeadly.pdf>.

- **Adopt policies comprehensively addressing “emotionally disturbed” individuals, including resistant “emotionally disturbed” individuals.**
  - New York PD Policy<sup>56</sup>
  - Madison PD Policy<sup>57</sup>: No policy provisions for handling resistant emotionally disturbed individuals. Do have 5 full-time mental health officers.
  
- **Adopt policies mandating more frequent training and use reality-based training (scenario roleplay training, as realistic as possible, ideally based on actual incidents).**
  - Richmond PD Policy<sup>58</sup>: Require their officers to undergo firearm training monthly and role-playing scenarios for disarming suspects 4 times a year (much greater than state mandate).
  - Dallas PD Policy<sup>59</sup>: Every 2 months instead of every 2 years. Uses rigorous reality-based training.
  - Madison PD Policy: Unclear if they’ve adopted training standards more rigorous than the state requires.

#### Representative Police Departments<sup>60</sup>

- **Cleveland PD**<sup>61</sup>
  - Can only use force when absolutely necessary and it must be proportional.
  - Officers are required to use de-escalation before using force.
  - Officers have a duty to intervene if they see an unreasonable use of force.
  
- **Dallas PD**<sup>62</sup>
  - Revamped foot chase policy to discourage officers from making risky decisions if alone on a foot chase.
  - Publicly fires/calls out officers who use excessive force and commends those officers who intervene when they witness excessive force.
  - Improved quality of reality-based training and increased mandatory officer use of force training from every 2 years to every 2 months.

<sup>56</sup> <http://www.nyc.gov/html/ccrb/downloads/pdf/2016pg/pg221-13-mentally-ill-emotionally-disturbed-persons.pdf>.

<sup>57</sup> <https://www.cityofmadison.com/police/documents/sop/MentalHealth.pdf>; <https://www.cityofmadison.com/police/documents/sop/IntoxIncapPersons.pdf>.

<sup>58</sup> [http://www.eastbaytimes.com/news/ci\\_26482775/use-deadly-force-by-police-disappears-richmond-streets](http://www.eastbaytimes.com/news/ci_26482775/use-deadly-force-by-police-disappears-richmond-streets).

<sup>59</sup> <https://www.washingtonpost.com/news/the-watch/wp/2016/07/08/what-dallas-pd-does-right-and-why-doing-those-things-could-now-be-more-difficult/>.

<sup>60</sup> Links to the 100 largest police department use of force policies can be found here: <http://useofforceproject.org/database>.

<sup>61</sup> <https://assets.documentcloud.org/documents/3104580/UOF-De-Escalation.pdf>;

<https://assets.documentcloud.org/documents/3104582/UOF-General.pdf>.

<sup>62</sup> <http://static1.squarespace.com/static/56996151cbced68b170389f4/t/569ad58a0e4c1148e6b1079b/1452987794280/Dallas+Use+of+Force+Policy.pdf>; <https://www.washingtonpost.com/news/the-watch/wp/2016/07/08/what-dallas-pd-does-right-and-why-doing-those-things-could-now-be-more-difficult/>.



- Emphasis on de-escalation tactics.
- The level of control used must be necessary and reasonable considering the subject's resistance.
- Officers will treat the arrest of a subject exhibiting symptoms of drug-induced psychosis/excited delirium, or a psychotic episode as a medical emergency.
- Says priority is preserving life.

Results<sup>63</sup>: Number of excessive force complaints and officer-involved shootings have dropped dramatically since 2010. 13 excessive force complaints in 2015 (down from 147 in 2009). 11 officer-involved shootings in 2015 (down from 23 in 2012).

- **Las Vegas Metro PD**<sup>64</sup>

- Give verbal warning before using force and give subjects a reasonable amount of time to comply.
- Duty to stop excessive force.
- Says priority is preserving life.
- Requires de-escalation.
- “No Hand On” Policy – Prevents a pursuing officer from being the same officer to physically apprehend a suspect.

Results<sup>65</sup>: Resulted in use-of-force reports dropping from 1400 in 2005, to 842 in 2012, to 734 in 2013.

- **Los Angeles PD**<sup>66</sup>

- Consider tactical conduct and decisions leading up to use of force.
- Duty to stop excessive force.<sup>67</sup>
- Says priority is preserving life.
- Implemented a “Preservation of Life” award.<sup>68</sup>

- **New Orleans PD**<sup>69</sup>

- Says priority is preserving life.
- Duty to stop excessive force.

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<sup>63</sup> <http://www.dallasnews.com/news/crime/headlines/20151116-dallas-police-excessive-force-complaints-drop-dramatically.ece>.

<sup>64</sup> <http://static1.squarespace.com/static/56996151cbced68b170389f4/t/569ad92b57eb8d0f11460ead/1452988719385/Las+Vegas+Use+of+Force+Policy.pdf>.

<sup>65</sup> [http://www.policylink.org/sites/default/files/pl\\_police\\_use%20of%20force\\_04292015\\_rev.pdf](http://www.policylink.org/sites/default/files/pl_police_use%20of%20force_04292015_rev.pdf).

<sup>66</sup> <http://static1.squarespace.com/static/56996151cbced68b170389f4/t/569ad9950ab377ab2b43b066/1452988824996/Los+Angeles+use+of+force+policy.pdf>.

<sup>67</sup> [http://www.lapdonline.org/lapd\\_manual/volume\\_1.htm](http://www.lapdonline.org/lapd_manual/volume_1.htm).

<sup>68</sup> <http://www.latimes.com/opinion/editorials/la-ed-use-of-force-20151111-story.html>.

<sup>69</sup> <http://static1.squarespace.com/static/56996151cbced68b170389f4/t/569adafed82d5e0d876a81b2/1452989185205/NOLA+use+of+force+policy.pdf>.

- “The degree of force used must be reasonable, and necessary, and in a manner that avoids unnecessary injury to officers and civilians. The officer may only use enough force to overcome the amount of resistance met. When such resistance or aggression is reduced, the officer must correspondingly and immediately reduce the degree of force he/she is applying, or the use of force is NOT legal.”

- **Philadelphia PD**<sup>70</sup>

- Says priority is preserving life.
- Requires de-escalation.
- Duty to stop excessive force.
- Required to use the minimum force necessary.
- Deadly force can only be used given immediate danger.
- Increased quality and quantity of reality-based training.

Results<sup>71</sup>: Number of officer-involved shootings have dropped from 59 (with 15 fatalities) in 2012 to 23 (with 2 fatalities) in 2015.

- **Richmond PD**

- Mandates more frequent training and uses highly realistic scenario training.
- Bi-monthly use of force review meetings.

Results<sup>72</sup>: Number of officer-involved shootings have dropped (have occurred less than 1/year). Only one fatal officer involved shooting since 2007.

- **San Francisco PD**<sup>73</sup>

- Police Commission passed use of force policy reform in June 2016.<sup>74</sup>
- Officers shall reassess the situation after each discharge.
- Says priority is preserving life.

- **Seattle PD**<sup>75</sup>

- Minimum force to apprehend required.
- Requires de-escalation.
- Duty to stop excessive force.<sup>76</sup>

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<sup>70</sup><https://www.phillypolice.com/assets/directives/PPD-Directive-10.1.pdf>.

<sup>71</sup> <http://www.nbcphiladelphia.com/news/local/police-dept-of-justice-philadelphia-update-deadly-force-shootings-report-363240041.html>; <https://www.phillypolice.com/ois/>.

<sup>72</sup> [http://www.eastbaytimes.com/news/ci\\_26482775/use-deadly-force-by-police-disappears-richmond-streets](http://www.eastbaytimes.com/news/ci_26482775/use-deadly-force-by-police-disappears-richmond-streets).

<sup>73</sup><http://static1.squarespace.com/static/56996151cbced68b170389f4/t/569bec901115e0984d2386af/1453059253964/SF+Use+of+Force+Policy.pdf>.

<sup>74</sup> <http://www.sfexaminer.com/sfpds-use-force-policy-reforms-unanimously-passed-police-commission/>.

<sup>75</sup> <http://www.seattle.gov/police-manual/title-8>.

<sup>76</sup> <http://www.seattle.gov/police-manual/title-5---employee-conduct/5002---responsibilities-of-employees-concerning-complaints-of-possible-misconduct>.

- Force must be necessary and proportional.

Results<sup>77</sup>: Won praise from the U.S. DOJ for its department-wide tactical de-escalation training program.

### Community-led Efforts

- Maplewood City Council<sup>78</sup>
  - Voted to convene a “diverse work group made up of Maplewood residents” that will be asked “to review the department’s use-of-force policies and make recommendations for identified additions, deletions or modifications to the department’s current policies and practices.”
  - Ultimate decision about what to adopt is left to police chief.
- San Francisco Mayor<sup>79</sup>
  - Director the Police Commission and Department to present a new plan to fundamentally re-engineer the way police officers use force.
- New York City Council<sup>80</sup>
  - Passed bill requiring police officers to report use of force.
- Seattle Community Police Commission<sup>81</sup>
  - Created as part of a settlement agreement with US DOJ.
  - The only civilian body in the nation to have a role in the formulation of a use of force policy.

### State Statutes

- WI is one of 9 states that have no laws on use of lethal force by law enforcement officers.
- Not a lot of good model statutes.<sup>82</sup>
  - No state statutes require that the use of lethal force may only be used as a last resort with non-violent and less harmful means to be tried first.
  - No state limits the use of lethal force to only those situations where there is an imminent threat to life or serious injury to the officer or to others.
  - Only three states provide by statute for training on the use of lethal force.

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<sup>77</sup> <https://www.justice.gov/opa/pr/justice-department-applauds-adoption-police-department-wide-tactical-de-escalation-training>.

<sup>78</sup> <http://www.twincities.com/2016/07/12/maplewood-to-convene-community-panel-to-examine-use-of-force-policies/>.

<sup>79</sup> <http://sfmayor.org/index.aspx?recordid=1087&page=846>.

<sup>80</sup> <http://ditmasparkcorner.com/blog/crime/city-council-passes-bill-requiring-cops-report-use-force/>.

<sup>81</sup> <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1060&context=mjrl;>

<http://samuelwalker.net/2015/08/community-voice-in-police-policy-in-seattle/>.

<sup>82</sup> [http://www.amnestyusa.org/pdfs/AIUSA\\_DeadlyForceExecutiveSummaryJune2015.pdf](http://www.amnestyusa.org/pdfs/AIUSA_DeadlyForceExecutiveSummaryJune2015.pdf).

- Ohio<sup>83</sup>
  - State standards for use of deadly force
    - “Preservation of human life is of the highest value in the State of Ohio.”
    - Adopts *Tennessee v. Garner* and *Graham v. Connor*.
  - \$15 million in budget to boost police training.
- Connecticut
  - Requires training for all police on use of force and for records to be kept detailing use of force incidents.
- New York<sup>84</sup>
- Minnesota<sup>85</sup>

### Statutory Remedies

- Add use-of-force and de-escalation training as a state-mandated topic for annual recertification, and require the LESB to establish model standards.
  - Under Wis. Stat. § 165.85(4)(a)7.b.<sup>86</sup> and Wis. Stat. § 165.85(4)(a)7.c.<sup>87</sup>, 4 hours of training in vehicle pursuit based on model standards established by the LESB and handgun training are state-mandated topics for recertification.
  - Connecticut passed a bill in 2015 requiring training for all police on use of force.<sup>88</sup>
  - Congresswoman Gwen Moore recently proposed a similar bill.<sup>89</sup>
- Add more detail to Wis. Stat. § 66.0511<sup>90</sup>, which requires law enforcement agencies to have a written policy regulating the use of force.<sup>91</sup>
- Require certain data be collected and published.
  - The National Statistics on Deadly Force Transparency Act of 2015<sup>92</sup> proposed that data concerning the following should be collected:
    - Identifying the characteristics of the person who was the target of the use of deadly force and the officer who used deadly force;
    - Time, date, and location of the use of deadly force;
    - Alleged criminal activity of the person who was the target of deadly force;
    - Nature of the deadly force used, including the use of a firearm;

<sup>83</sup> <http://www.daytondailynews.com/news/news/crime-law/ohio-adopts-first-ever-police-standards-on-deadly-/nnSyT/>.

<sup>84</sup> <http://codes.findlaw.com/ny/penal-law/pen-sect-35-30.html>.

<sup>85</sup> <https://www.revisor.mn.gov/statutes/?id=609.066>.

<sup>86</sup> <https://docs.legis.wisconsin.gov/statutes/statutes/165/85>.

<sup>87</sup> <https://docs.legis.wisconsin.gov/statutes/statutes/165/85>.

<sup>88</sup> <https://www.cga.ct.gov/2015/act/pa/2015PA-00004-R00HB-07103SS1-PA.htm>.

<sup>89</sup> <https://www.congress.gov/bill/114th-congress/house-bill/5221/text>.

<sup>90</sup> <https://docs.legis.wisconsin.gov/statutes/statutes/66/V/0511/3>.

<sup>91</sup> <https://docs.legis.wisconsin.gov/statutes/statutes/66/V/0511>.

<sup>92</sup> <https://www.govtrack.us/congress/bills/114/hr306/text>.

- Explanation, if any, from the relevant law enforcement agency on why deadly force was used;
  - Copy of deadly force guidelines in effect at the time deadly force was used; and
  - Description of any non-lethal efforts employed to apprehend or subdue the person who was the target of the use of deadly force before deadly force was used.
- The Police Reporting, Information, Data, and Evidence Act of 2015<sup>93</sup> proposed that data concerning the following should be collected:
  - Gender, race, ethnicity, and age of each individual who was shot, injured, or killed;
  - Date, time, and location of the incident;
  - Whether the civilian was armed, and, if so, the type of weapon the civilian had;
  - The type of force used against the officer, the civilian, or both, including the types of weapons used;
  - Number of officers involved in the incident; and
  - A brief description regarding the circumstances surrounding the incident.
- Mandate external and independent criminal investigations in cases of police use of force resulting in injury (much like the investigation that happens in WI when an officer-involved death occurs<sup>94</sup>).
  - Recommendation of the President’s Task Force on 21<sup>st</sup> Century Policing.<sup>95</sup>
- Mandate the use of external and independent prosecutors in cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths.
  - Recommendation of the President’s Task Force on 21<sup>st</sup> Century Policing.<sup>96</sup>
  - Introduced version in 2015.<sup>97</sup>

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<sup>93</sup> <https://www.govtrack.us/congress/bills/114/s1476/text>.

<sup>94</sup> <https://docs.legis.wisconsin.gov/2013/related/acts/348>.

<sup>95</sup> [http://www.cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

<sup>96</sup> [http://www.cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

<sup>97</sup> <https://docs.legis.wisconsin.gov/2015/proposals/ab953>.