

Recommendation xx: Firearms shall not be discharged at a moving vehicle unless: (1) A person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or (2) The vehicle is operated in a manner that reasonably appears deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical). To prevent the threat of being struck by a vehicle, officers should make every effort to avoid putting themselves in the path of any moving vehicle and, when such positioning is unavoidable, to move out of the vehicle's path as soon as practical. [OIR 99, CRT 17]

This recommendation reflects a modification of both the original MPD policy on shooting at a moving vehicle and the OIR recommendation related to that policy.

The original MPD policy reviewed by OIR stated:

Deadly force is never authorized:

.... 3. At a moving vehicle unless an officer has reasonable cause to believe that one's self or another is in imminent danger of death or great bodily harm or Deadly Force Authorized, paragraph 3, regarding certain felons applies.

Paragraph 3:

The use of deadly force is only authorized when, under any of the following circumstances, an officer reasonably believes a lesser degree of force would be insufficient:

.... 3. To effect the arrest or prevent the escape of a suspect who the officer has reasonable cause to believe has committed, or attempted to commit, a felony involving the use or threatened use of deadly force, when a high probability exists that the suspect, if not immediately apprehended, may cause death or great bodily harm.

As the OIR report notes:

Shooting at a moving vehicle is widely considered by experts in police tactics to be both ineffective and inherently dangerous for officers and the public. A bullet is not designed to stop a 3,000-plus pound vehicle, but commonly ricochets off and could strike a bystander. And if the bullet penetrates a vehicle's window and somehow strikes the driver, the risks of the vehicle veering out of control are high.

An article in Vox, summarizing expert opinion, makes similar and additional points:

Imagine a case in which an officer is in front of a car that's speeding toward him. If the cop decides to shoot, that could put him in harm's way, since, instead of getting out of the way, he'll be focused on shooting. That could get the officer seriously injured. The other issue is that shooting a moving vehicle is a very ineffective way of actually stopping it. Most of the time, officers will miss...They might even hit the wrong target, like a passenger or a passerby near the car. But even if they do hit the driver, that in no way guarantees that the car will actually stop. A wounded driver or dead body could lean into the pedal harder, causing the car to spiral out of control — and maybe hit more people and do more damage.

Furthermore, OIR notes that in the original MPD policy, "The 'fleeing felon' exception completely swallows the prohibition," undermining it. Accordingly, OIR originally recommended the following:

MPD should modify its prohibition on shooting at moving vehicles to make it clear that discharging a firearm at a moving vehicle is prohibited unless an individual in the car poses an immediate threat of death or serious bodily harm by means other than the vehicle, and that officers have a duty to move out of the path of a moving vehicle.

The Police Executive Research Forum (PERF) advocates a policy identical to this in “30 Guiding Principles on Use of Force.” Chuck Wexler, Executive Director of PERF, argues that “[y]ou can’t stop a moving vehicle. You shouldn’t shoot at moving vehicles. Period. No exceptions. ... If it isn’t a strong prohibition, then what happens is officers will put themselves in a position in which they do feel their life is in danger, and they have no choice.” Many major city police departments (e.g., New York City, Boston, Philadelphia, San Francisco, etc.) have adopted policies along these lines. The Washington, D.C., Metropolitan Police Department had a similar policy, but recently added a narrowly crafted exception, specifically allowing officers to fire at a vehicle being used in a terrorist ramming attack against a crowd of people.

MPD argued that a policy with a strict prohibition would be unwise, given “the potential for the intentional use of a vehicle as means of killing or as a terroristic tool.” It advocated for a broader exception to the general prohibition than the exception in the Washington D.C. policy, allowing an officer to fire at a vehicle if “[t]he vehicle is operated in a manner that reasonably appears deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical).” OIR consultant Samuel Walker has argued against an exception of this nature, stating that this specific policy language “opens a door that most departments have for years felt it best to keep closed.”

The CRT proposed that, at a minimum, the policy should include a sentence, crafted by OIR consultant and police regulatory expert Seth Stoughton, stating that, “To prevent the threat of being struck by a vehicle, officers should make every effort to avoid putting themselves in the path of any occupied vehicle and, when such positioning is unavoidable, to move out of the vehicle’s path as soon as practical.”

The Ad Hoc Committee took all of these factors into account, and settled on a policy combining the policy language proposed by MPD and the additional sentence proposed in CRT 17, but with the latter modified by substituting the term “moving vehicle” for “occupied vehicle” (since officers sometimes, for example, approach parked vehicles and need to be able to move about or look at the front of the vehicle).