

A close-up photograph of a police officer's uniform and duty belt. The officer is wearing a dark blue uniform jacket. A duty belt is visible, featuring a textured grey fabric holster. A black handgun is holstered on the belt, with a small, square, black device attached to its side. The officer's hand is visible, wearing a black glove. The background is a plain, light blue color.

Police Use of Force

Training, Community Relations Help Township Police Ensure PROPER USE OF FORCE

You can hardly look at a news outlet these days without seeing a story about alleged police brutality. Township police departments see those stories, too, and are taking steps to ensure that they have up-to-date policies and training on use of force, as well as good relations with citizens to build trust and mutual respect.

BY BRENDA WILT / ASSISTANT EDITOR

Do an Internet search for “cops playing basketball with kids” and you’ll find links to several heartwarming videos of police officers taking time to shoot hoops with local children. Some of these videos have become online sensations as viewers share the images on social media and major news outlets replay them.

These scenes stand in stark contrast to videos showing alleged excessive or deadly police use of force that have made headlines over the past few months and made place names like Ferguson, Mo., and North Charleston, S.C., household words. In southcentral Pennsylvania, a veteran police officer in Hummelstown, Dauphin County, just outside of Hershey, has been charged with homicide in the February shooting death of an unarmed man.

Shooting hoops or shooting suspects: Which of these scenes more accurately portray typical police action in the United States? The answer often depends on who you ask, but the reality is that inappropriate use of force is the exception, not the rule.

“These acts are extremely rare,” former Pennsylvania State Police Commissioner Frank Noonan says, “despite what you see in the media.”

Still, given the proliferation of recording devices and 24/7 access to news, a single incident can put a municipality on the map and its police department under the microscope, attorney Christopher Carusone of the Cohen Seglias law firm says. He teamed up with Noonan to present a session on police use of force at the PSATS Annual Conference in April 2015.

“Decisions [to use force] are receiving excruciatingly detailed scrutiny these days,” he says, “and the U.S. Department of Justice (DOJ) has been much more aggressive in going after police departments.”

It is said that the best defense is a good offense. For municipal police departments, experts say that means developing or updating a well-written policy on use of force, educating and training officers, and cultivating a good relationship with the public. These actions will not only help defend officers in a court of law but also, they hope, in the court of public opinion.

‘Use of force’ not easily defined

What constitutes use of force, though? Surprisingly, there is no single, universally agreed-upon definition of the term. The International Association of Chiefs of Police describes use of force as “the amount of effort required by police to compel compliance by an unwilling subject.”

According to the National Institute of Justice, there is no universal set of rules governing when officers should use force and how much they should use. The agency gives the rather subjective guideline that officers should use only the amount of force necessary to mitigate an incident, make an arrest, or protect themselves or others from harm.

“An officer’s goal is to regain control as soon as possible while protecting the community,” the Institute’s website says. “Use of force is an officer’s last option — a necessary course of action to restore safety in a community when other practices are ineffective.”

The Bureau of Justice Statistics states that “the legal test of excessive force ... is whether the police officer *reasonably* believed that such force was *necessary* to accomplish a legitimate

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police purpose” (*emphasis added*). However, as the DOJ’s Office of Community-Oriented Policing Services (COPS) points out, the terms “reasonable” and “necessary” are subjective and may be interpreted differently by various courts of law.

“More to the point,” COPS says, “is an understanding of the ‘improper’ use of force, which can be divided into two categories: ‘unnecessary’ and ‘excessive.’ The unnecessary use of force would be the application of force where there is no justification for its use, while an excessive use of force would be the application of more force than required.”

Good training is essential

With all of these vague definitions

and subjective terms floating around, how can a township police department ensure that its officers act swiftly and appropriately? Through robust policies and training, experts say.

“When dealing with a dangerous — or unpredictable — situation, police officers usually have very little time to assess it and determine the proper response,” COPS says. “Here, good training can enable the officer to react properly to the threat or possible threat and respond with the appropriate tactics to address the situation, possibly including some level of force, if necessary, given the circumstances.”

Before training can occur, however, a good policy must be in place. Township officials play an important role in ensuring that their police department has both, Noonan says.

“You have a responsibility to know what your police department’s policy on use of force is, or if it even has one,” he says. “You should be asking: How long has it been in effect? Is it known to the officers? Can they prove that? Do they receive training on it?”

Not having an adequate written policy and insufficiently training officers on it can increase the township’s liability, Carusone says.

“You have to protect your officers,” he says, “because the department can be held liable for lack of training. That can be a budget buster.”

“An up-to-date policy should include modern, recognized standards on use of force,” he adds. “Sample policies are available from several sources. You don’t need to re-invent the wheel.” (*See the box on Page 46 for elements of a model policy from the Pennsylvania Chiefs of Police Association.*)

A good use-of-force policy is also a form of risk management, which can result in lower insurance premiums for townships, PSATS Executive Director Dave Sanko says.

“Making sure your police department has a good policy in place is not only the responsible thing to do but also financially prudent,” he says.

Most use-of-force policies describe an escalating series of actions — a continuum — that officers may take to

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resolve a situation. The continuum has several levels, and officers are trained to respond with a level of force appropriate to the situation. Officers may move from one level to another in a matter of seconds.

A sample use-of-force continuum from the National Institute of Justice includes the following levels (*see the adjacent box for a detailed explanation of each step*):

- **Officer presence** — Officers rely on their presence only. This is considered the best way to resolve a situation.

- **Verbalization** — Officers use statements and commands, rather than physical force.

- **Empty-hand control** — Officers use bodily force to gain control of a situation.

- **Less-lethal methods** — Officers use less-lethal implements to gain control, such as a baton, pepper spray, or a Taser.

- **Lethal force** — Officers use lethal weapons to gain control. This step should be used only if a suspect poses a serious threat to the officer or another individual.

When developing or updating a use-of-force policy, a township should make sure the document gets a legal review by someone who is knowledgeable about police operations, says Carusone, who spent seven years as the in-house counsel for the Pennsylvania State Police.

“You don’t want lawyers telling police how to use force, but you want to make sure the policy is legally defensible,” he says.

Townships confront use-of-force issues

The events in Ferguson and other locations have driven home the need for good policies and training to many municipal police departments, such as in Upper Merion Township, Montgomery County.

“As a chief of police, use-of-force issues are always on my mind,” Chief Tom Nolan says. “After Ferguson, we evaluated what we do from top to bottom, including how we recruit and hire.”

Nolan says that his officers receive regular training, from using less-lethal

STEPS TO RESOLUTION

Use-of-force continuum provides steps to resolve a situation

Most police departments have policies that contain a use-of-force continuum describing a series of escalating actions that an officer may use to resolve a situation. The continuum generally has several levels, and officers are trained to respond with a level of force appropriate to the situation, understanding that they may move from one level to another in a matter of seconds.

Following are the steps of a sample use-of-force continuum from the National Institute of Justice. To learn more, go to www.nij.gov.

OFFICER PRESENCE

In this step, no force is used. The mere presence of a police officer works to deter a crime or defuse a situation. The officer’s attitude is professional and nonthreatening.

VERBALIZATION

At this level, officers issue calm, nonthreatening directions, such as, “Let me see your identification and registration.” Officers may increase their volume and shorten commands to try to gain compliance, as in “Stop” or “Don’t move.”

EMPTY-HAND CONTROL

In this step, officers use bodily force to gain control of the situation. They may use soft techniques, such as grabs, holds, and joint locks, or hard techniques, such as punches and kicks, to restrain an individual.

LESS-LETHAL METHODS

At this level, officers use less-lethal technologies to gain control of the situation, including:

- blunt impact, such as a baton or projectile;
- chemicals, such as pepper spray or projectiles embedded with chemicals; and
- conducted-energy devices, such as Tasers, that discharge a high-voltage, low-amperage electrical jolt at a distance.

LETHAL FORCE

In this final step, officers use deadly weapons, such as firearms, to stop a suspect’s actions. This should be used only if a suspect poses a serious threat to the officer or another person.

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methods to making decisions in various staged scenarios. Some of his officers are trained in crisis intervention for the county, and all go through a field training program.

"We don't let them out of field training until they meet all guidelines," he says.

All new officers have a one-year probation and will be let go if they don't meet the department's standards.

"We will not keep a problem employee," Nolan says.

The department has also started keeping statistics on use of force by its officers, including the gender and race of suspects, and capturing data on who files complaints against officers.

"You can't fix a problem if you don't know it exists," Nolan says.

The chief says that the department has pretty strong disciplinary procedures in place to deal with any inappropriate force, as well.

"Police brutality needs to be stopped immediately through swift action," he says.

Like Nolan, the chief of the Millcreek Township Police Department in Erie County has taken note of the recent events involving deadly force by police.

"This is why we have a written policy on all types of force," Chief Michael Tesore says. "It's always in the back of your mind."

Millcreek officers receive regular training during third-shift hours or when time permits, he says. The training constantly touches on use of force, offering different scenarios for officers to think through.

Tesore says that he wants to make sure that his department's training remains up to date, and when he receives notifications about available classes, he considers opportunities that are relevant to the types of crime his officers deal with. For example, he recently sent three officers to participate in active-shooter instruction.

POLICY DECISIONS

Use-of-force policies should contain standard elements

A model policy on use of force developed by the Pennsylvania Chiefs of Police Association contains guidelines for the following actions, situations, or requirements:

- a use-of-force continuum that is authorized only to accomplish lawful objectives;
- use of deadly force;
- prohibited use of weapons (e.g., *warning shots*);
- use of authorized less-lethal weapons;
- medical attention required following the use of force as appropriate;
- written reports, investigations, and reviews required;
- removal of personnel from line-duty assignment pending administrative review;
- weapons and ammunition approval by the chief of police;
- demonstrated proficiency required to carry approved weapons; and
- use of force in-service and weapons proficiency.

For more information, go to www.pachiefs.org. The association also has a downloadable sample policy manual for law enforcement agencies, which includes a section on use of force.

POLICE LINE DO NOT CROSS

Developing a well-written use-of-force policy and training officers on it will help ensure that they don't cross the line into unnecessary or excessive use of force.

"Approaches to situations can change over time," he says. "What may have been considered an appropriate step five years ago may have altered."

The officers who attend training come back and share the lessons they've learned with the other officers in their platoon.

"We feel pretty good here about the policies and steps we take to ensure proper force is used," he says.

Township officials play crucial role

Both Nolan and Tesore say their local government leaders play a crucial role in helping their departments operate at their best.

"A strong relationship between

township officials and the police department is important," Nolan says. "We keep an open line of communication with the supervisors and explain what we're doing in the department."

Of course, the relationship always has a budgetary component.

"If we are allowed to buy the equipment we need, we can do our jobs better," he says.

For example, his department has enough Tasers that every officer can carry one when they are on the street. Having a less-lethal weapon available can reduce the need to draw a firearm, he says.

It is more difficult to convince the board of supervisors about a need for more officers, Nolan says, although hav-

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ing an officer respond to a call alone and waiting too long for backup can be a dangerous situation.

Chief Tesore says that he is upfront about communicating his department's needs and concerns to Millcreek Township officials and expects the same in return. They sit down together each fall to work out a budget, and if he needs funds for equipment or other expenditures, he asks for them.

Township supervisors also have an important role in dealing with accusations of improper use of force, Noonan says.

"Officials should have an idea of what they are going to do if an incident occurs or is alleged," he says. "Someone needs to be designated the spokesperson, whether it's the police chief, solicitor, manager, or supervisor. The town-

ship needs to speak with one voice."

This is especially important when the incident first comes to light.

"There is so much misinformation in the first few hours," Noonan says. "The pressure on the media to get a story is so great that if no information is available, they will report rumors and innuendo. It is imperative that you get accurate information out as soon as possible."

That comes with a cautionary note, however. Township supervisors and staff should be sure to communicate only facts, rather than conjecture.

"From a lifetime of experience, jumping to conclusions is always a mistake," he says. "Township officials have to be the ones to wait for the facts before condemning anyone."

Once the township has reliable information to share, it should use whatever channels it has to communicate with residents, from websites to social media to mass phone call systems.

Good community relations are key

Maintaining good communication

with the public should not be reserved for moments of crisis, however. Good public relations can go a long way toward minimizing accusations of improper use of force.

"A police department that has a good relationship with its citizens is more likely to be given the benefit of the doubt when an incident occurs," attorney Chris Carusone says.

In Millcreek Township, the police department responds to every single call or complaint it receives, Tesore says.

"If you contact us, we'll give you attention," he says. "We focus on community service and try not to shortchange that, even though it becomes more difficult because of the number of calls and the severity of crimes we're seeing."

If the department receives a complaint about an officer, it follows a specific process.

"Sometimes, a simple check into the situation puts it to rest," Tesore says, "but we will do an internal investigation if necessary. If a citizen complains, we look into it and handle it appropriately."



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The Upper Merion Township Police Department has several programs in place to foster good community relations, Nolan says. They include:

- a chaplains program that pairs local religious leaders with the department to help handle such tasks as death notifications;
- a cop camp, for 11- to 13-year-olds, which teaches youngsters about all aspects of police operations;
- a citizens police forum that fosters discussion between police and citizens about different types of crime;
- a middle school class taught by two officers to reach at-risk kids; and
- a cops and kids program that assigns an officer to each school to give presentations.

After the school shooting in Newtown, Conn., the department began having an officer walk through each school every day. This was done as much to reduce the panic that parents naturally felt seeing a cop at their child's school as to "police" the schools.

"We wanted to make children and parents comfortable with seeing an officer at the school," Nolan says. "If you build that rapport when they're young, it carries through to adulthood."

The chief says that concern over children getting the wrong image of police has led to another opportunity for outreach.

"Parents would see an officer at [the King of Prussia Mall, one of the largest shopping venues in the country] and say to their child, 'If you don't behave, that officer will arrest you,'" he says. "The last thing we want is for kids to be afraid of a police officer."

The department developed a card to hand to the parent discreetly that asks them to not threaten arrest to get their child to behave. The card allows the officer to communicate the request to the parent without saying anything in front of the child.

Nolan says his officers will also be participating in a program through the Montgomery County public defenders' office called Safer Streets Task Force, which brings police and youth together to talk and, hopefully, improve how they perceive each other.

Even police officers' appearance can have an effect on their relationship



Police departments that cultivate a good relationship with the community, especially its young people, are more likely to receive citizen support if someone makes an accusation of improper use of force. (Photo courtesy of Upper Merion Township.)

with the community, Nolan believes. In many departments, officers have begun to dress in a more militaristic manner, which can put people on the defensive.

"I have tried to maintain a professional police appearance for my officers," he says. "I am very conscious about how we appear to the public."

'Struggling to do their jobs'

Thanks to images that have been splashed across the media and Internet, police officers' actions are being scrutinized like never before. Cops must balance protecting the safety and welfare of the public with protecting their own skin.

"Because of the heightened media scrutiny, regardless of how the law is written, police are struggling to do their jobs without being accused of improper use of force," attorney Chris Carusone says.

Townships, therefore, must make

sure their police departments have strong, legally defensible policies in place on use of force and that officers are being properly trained to follow them.

"The more scrutiny there is and the less training an officer receives, the more it endangers the officer's life," Carusone says. "If an officer needs to make a split-second decision and hesitates because of inadequate training, the consequences could be disastrous."

Those in the trenches say one of a cop's best weapons is a good relationship with the people he or she serves.

"A lot of it involves taking the time to explain things to people, why you did what you did when you handcuffed someone, for instance," Nolan says. "We are focused on having more of a dialogue with people."

And who knows? Maybe shooting a few hoops, too. ♦



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