



Hogan
Lovells

2022 Use of Force Assessment - Quarter 1

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Monitoring Team

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II. Background

Pursuant to the 2022 Monitoring Plan, the Monitoring Team is conducting quarterly compliance assessments of Section VI of the Consent Decree. This effort is to ensure that the intent of the specific reforms detailed in Paragraphs 46-83, 87-92, and 93-109 have been met by the Cleveland Division of Police (“CDP”). The report that follows details the methodology and findings of the first quarterly compliance assessment of 2022.

This assessment follows a preliminary review of use of force cases in which a select team of Monitoring Team members reviewed CDP use of force incidents that occurred between 2018 and 2019 to determine whether officers were applying force in a manner that complies with the Division’s new policies and terms of the Consent Decree. The findings from this assessment were summarized in a memorandum filed with the court on March 22, 2022¹.

In the preliminary review, the Monitoring Team assessed a sample of 130 use of force incidents. The sample consisted of all Level 3 force cases, and a statistically representative sample of Level 1 and Level 2 cases from 2018 and 2019, with an oversample of non-firearm Level 1 cases. Each of the Level 2 and Level 3 cases in the sample were assessed by two Monitoring Team reviewers, while Level 1 cases were each assessed by one reviewer. The Monitoring Team created, tested, and refined a qualitative assessment instrument that was endorsed by the City and DOJ.

The Monitoring Team found that the uses of force reviewed were generally within policy, in most cases the chain of command reviews appropriately identified and addressed problematic uses of force by referring cases to Internal Affairs or the Training Section, and supervisors on scene engaged with officers. That said, the Monitoring Team’s preliminary review revealed deficiencies in tactics, and the ability to deescalate, both of which at times created the need for force. Further, the Monitoring Team concluded that the Division needed to create processes and structures for issues identified during use of force events, such as inadequate de-escalation or problematic tactics, to be addressed in training.

The Monitoring Team was also concerned by the duration of the use of force reviews by the chain of command, which could take several months. In the time since the review was conducted and filed, Policy 2.01.06, which dictates that “each level in the chain of command shall review the [use of force] report within three tours of duty” was enacted. As such, the current, and ongoing Monitoring Team compliance assessments will be reviewing adherence to this timeline.

During the preliminary review, the Monitoring Team found that due to the length of time between when uses of force took place and when the Monitoring Team reviews occurred, the value and utility of the feedback provided to CDP was limited. As such, the Monitoring Team has transitioned to a rolling, quarterly assessment model, reflected here, to ensure more timely feedback is provided to the Division. This ongoing approach also provides the Division with the opportunity to address issues raised by the Monitoring Team, and then be re-assessed soon after. Our hope is that this quarterly approach not only provides more actionable and useful feedback, but also streamlines the process for CDP to make changes necessary to reach full compliance in this area.

¹ Cleveland Monitoring Team. (2022). *Monitor’s 2020-2021 Use of Force Review*.

III. Methodology

To assess compliance with Section VI of the Consent Decree, the Monitoring Team commenced an ongoing review process, in which all Level 1 and Level 2 use of force incidents, as detailed in CDP reports, investigation documents, and wearable camera system (“WCS”) footage, are reviewed on a quarterly basis using a standardized assessment instrument. The assessment instrument was developed for the preliminary use of force review conducted by the Monitoring Team and revised slightly to streamline questions. The methodology and review instrument were both reviewed and approved by the City and Department of Justice (“the Parties”) in advance of the assessment.

The sample for this assessment included all Level 1 and Level 2 uses of force investigations that were closed between January 1 and March 31, 2022. Level 3 uses of force were not included in this assessment, as the Monitoring Team is concurrently engaged in an ongoing review of Force Investigation Team activity and reviewing them here would be duplicative. All reported uses of force were assessed by randomly assigned Monitoring Team subject matter experts (“SMEs”) each of whom has significant experience as sworn law enforcement officers, lawyers, or professional oversight agents.

All Level 1 uses of force were reviewed by a single SME, whereas all Level 2 uses of force were reviewed separately by two randomly assigned SMEs. Each pair of Level 2 assessments were compared to ensure SMEs reached consensus on the key areas of force, namely the proportionality, necessity, and objective reasonableness of force use. Reporting is at the incident level for Level 1 incidents and at the request of the CDP, the Level 2 incidents are reported by the number of reviews.

A total of 19 Level 1 and 18 Level 2 use of force cases were closed in the first quarter of 2022, resulting in a total of 56 Monitoring Team reviews.

IV. Results

Timeliness²

Reviews of both Level 1 and Level 2 incidents continue to require an extensive amount of time by the Division’s chain of command. On average, Level 1 cases closed in the first quarter of 2022 were from incidents that occurred 76.6 days prior. This includes six use of force with investigations that took over 100 days to close. The force applied in each of the cases with lengthier investigations was determined by the Monitoring Team to be necessary, reasonable, and proportional. Nearly 60% (n = 11) of Level 1 investigations took 30 or more days to complete.

Level 2 reviews completed in the first quarter of 2022 were, on average, from incidents that were 100 days old. This includes six cases that were open for over 100 days, two of which were open for over 200 days. Only 17% of the Level 2 cases closed during this period were from incidents within 30 days.

² The Monitoring Team utilized CDP’s occurred and completed dates to calculate days to completion.

Table 1: Length of Time from Use of Force Incident to Investigation Closure

Duration (in days)	L1 (n=19)	L2 (n=18)
Shortest	11	12
Longest	231	297
Average	76.6	100.3

Key Elements and Tactics

In nearly all cases reviewed, the Monitoring Team reviewers determined the use of force was necessary (95%, n=35), proportional (92%, n=34), and objectively reasonable (95%, n=35). The one case where force was determined not to be necessary (Level 2 case, 20211-325453), was appropriately identified by the chain of command review and referred to training staff. There was also one Level 1 case where the reviewer indicated that they were unable to determine if the force was necessary or proportional. One of the two instances identified by the Monitoring Team as not proportional was identified during the chain of command review and referred to training. Similarly, one of the two instances in which the Monitoring Team determined the force was not reasonable was identified during the chain of command review and referred to training.

Monitoring Team reviewers also assessed whether involved officers took reasonable efforts to deescalate prior to using force. In 53% of cases, Monitoring Team reviewers found that the officers took reasonable efforts to deescalate. In 45% of cases it was determined not to be feasible and/or safe under the circumstances to do so, and in 3% of the cases, the reviewer was unable to make a determination. In only 8% of cases did reviewers indicate that there were other means of de-escalation that the officer(s) should or could have used under the circumstances; none of these cases were identified by CDP for additional training.

Generally, the Monitoring Team reviewers found officers acted appropriately in most of the cases that were reviewed (Table 2). Importantly, in every case the reviewers found that the level of force was reduced as the nature of the threat diminished, except for one instance in which the reviewer determined it not applicable under the circumstances.

Table 2: Involved Officer Tactics

Did the Officers:	Level 1 (<i>n</i> = 19)*	Level 2 (<i>n</i> = 36)		
		Yes	No	Unable to Determine
Conduct an appropriate threat assessment	79%	89%	6%	6%
Maintain sufficient distance	89%	92%	6%	3%
Make a safe approach	74%	86%	6%	8%
Employ clearly inappropriate tactics	5%	3%	97%	
Use profanity	21%	17%	78%	6%
Appear to use effective communications between officers	89%	81%	8%	11%
Reduce the level of force applied as the nature of the threat diminished	95%	94%	3%	3%

* One Level 1 case was reviewed by two separate reviewers. There are no material disagreements in the two reviews.

* For Level 2 cases, *n*= the number of reviews, rather than the number of cases. Each level 2 case was reviewed by two reviewers.

General Requirements and Prohibited Force

Reviewers found that in most use of force cases, officers adhered to general requirements, including identifying themselves as police officers, providing verbal warnings, and avoiding unnecessary risks to others. Additionally, in every instance in which a reviewer indicated that CDP policy necessitated an EMS response, EMS was requested. That said, there were still numerous instances flagged in which basic requirements were not met (Table 3). Despite these shortcomings, very few of these problematic cases were referred for training or flagged during the chain of command review process.

Table 3: General Requirements

Did the Officers:	Level 1 (n = 19)*	Level 2 (n = 36)			
		Yes	No	Not Applicable	Unable to Determine
Identify themselves as police officers and advise of their intent	47%	47%	8%	33%	11%
Provide a verbal warning	42%	42%	17%	39%	3%
Avoid unnecessary risk to others	74%	42%	17%	39%	3%
* One Level 1 case was reviewed by two separate reviewers. There are no material disagreements in the two reviews. * For Level 2 cases, n=the number of reviews, rather than the number of cases. Each level 2 case was reviewed by two reviewers.					

Reviewers also assessed whether any of the Level 1 or Level 2 cases included prohibited uses of force. Of the 37 cases reviewed, there were no instances of most prohibited types of force, including using force to subdue a subject not suspected of criminal conduct, in retaliation, to overcome passive resistance, or against those exercising their First Amendment rights.

Reviewers did identify two instances in which force was used against individuals who were handcuffed or otherwise restrained. However, in both instances the reviewer indicated that the force was in fact appropriate, and not problematic.

Similarly, in every situation in which a firearm was pointed at a subject, Monitoring Team reviewers determined that a reasonable officer would have believed that the situation might escalate to create an imminent threat of serious bodily injury or death to the officer or someone else, under the circumstances.

V. Chain of Command Review

In addition to the concerns regarding the timeliness of the review process described earlier, the Monitoring Team also found on many occasions that the chain of command review did not proceed as expected. In particular, numerous cases were reviewed by a sergeant on behalf of the Deputy Chief, meaning that the sergeant was reviewing and approving the work of more senior officers. Further, many reviewers indicated that the chain of command review skipped the captain level and went directly from the lieutenant to commander. Lastly, many of the reviews terminated at the commander level, and did not reach the Office of the Chief. CDP should ensure that the chain of command completes reviews as required by policy and refers critical issues for close supervision or necessary retraining.

a. Select Cases for Review

There were two specific cases in which Monitoring Team reviewers indicated that the responses by officers were particularly commendable and should be recognized:

- An officer responding to a kidnapping call drew his weapon but did not point; he was tactically ready and ultimately was successful in safely recovering the victim and apprehending the suspect without incident. (*Incident No. 2022-035232*)
- Officers were dispatched to the residence of a woman in crisis who was barricaded with multiple weapons. They quickly called in CIT-trained officers, the Mobile Response team, a crisis worker, and a supervisor. Over an hour was spent negotiating with the subject, and once the crisis worker agreed that negotiations were not progressing, the supervisor devised and executed a plan to disarm the subject. The subject was apprehended by CDP and brought in by EMS, and no injuries were sustained by anyone involved. (*Incident No. 2021-384450*)

Additionally, the Monitoring Team review identified a case in which the force and supervision were problematic, but the chain of command review was effective in recognizing the issue and referring the involved officer to training though did not do the same for the supervisor's failure to adhere to policy.

- In lieu of de-escalating, an officer gave verbal commands that he was going to deploy his CEW and used profanity numerous times; the reviewer noted that under the same circumstances another officer might have continued to give commands to stop, or waited the subject out. Ultimately the officer used the CEW on the subject as he was fleeing, in violation of Policy 2.01.04 (Use of Force – Intermediate Weapons). The sergeant on scene failed to intervene or instruct the officer not to tase the subject as he was fleeing; instead, the sergeant repeated the officer's call "taser, taser." CDP's force investigation accurately determined that the officer violated policy by deploying a CEW on a fleeing subject who did not pose a threat to officers, civilians, or himself. The officer received a 15-day suspension for the Group III violation, and the incident was referred to training staff. The reviewer did not find documentation indicating that the profanity, or inadequate supervision were specifically addressed. (*Incident No. 2021-090470*)

Reviewers also identified three Level 1 cases and two Level 2 cases where there were substantial issues that did not appear to be identified or addressed by the chain of command. The Monitoring Team would like to see the Division reconsider and assess these cases for referrals to Training.

Level 1 Cases for Review

- Officers attempted to awaken an armed individual who was sleeping in a car with a firearm visibly protruding from their pocket. The Monitoring Team reviewer found that an officer placed themselves at a tactical disadvantage by being positioned at the driver's window. Had the subject reached for their gun or taken other aggressive action upon waking up, the situation could have escalated to a deadly use of force. Because there was no exigency to awaken the subject, alternative means, such as using a PA system, could have been utilized. These issues were not identified during the chain of command review. (*Incident No. 2022-013494*)
- Officers came across a stolen vehicle that was stuck in a snowbank. The subject was revving the engine at a high speed, attempting to emerge from the bank lot, and refused to open his window or door for the officers. One officer pointed a firearm at the vehicle with commands to stop the car but withdrew when her partner was visible through the window. While the pointing was likely justified, given the reckless nature of how the subject was operating the vehicle, the Monitoring Team reviewer highlighted that there was confusion amongst officers about how they should proceed. The primary concern in this case came from the video of a backup unit which ran lights and sirens, even after the sergeant indicated that no pursuit was authorized, and when no description of the subject vehicle was provided. The backup unit only ended their emergency response when they heard the original unit clear from the scene. (Incident No. 2022-021541)
- Officers received a call to assist another officer searching for a subject that fled from a stolen vehicle. The officer located the individual and pointed his firearm at the subject while ordering him to stand. The officer re-holstered his firearm after the subject was taken into custody by other officers. While the Monitoring Team reviewer found that the officer acted reasonably, the reviewer identified other steps that the officer might have taken, such as immediately identifying himself as a police officer, and instructing the subject to remain on the ground, rather than stand up, so that the possibility of the subject fleeing again did not escalate the situation. (*Incident No. 2022-009539*)

Level 2 Cases for Review

- Officers allowed a suspect to flee from their control, across a major street, and enter an uninvolved bystander's car without intervening. The officers are seen on WCS laughing as the subject fled across the street. This situation could have resulted in a bad outcome and was not addressed in training or via supervisory counseling. (*Incident No. 2021-369628*)
- An officer observed a subject driving recklessly near an elementary school dismissal. The officer attempted to detain the suspect, who fled in his car at a high rate of speed. When the suspect, who was visibly intoxicated, was later located near his vehicle he disregarded commands, became argumentative, and attempted to return to the vehicle. As he did so, the officer discharged his CEW into the subject's back. The subject was unaffected and drove away. The Monitoring Team flagged this incident for additional review by the Division for several reasons:
 - The officer told his sergeant that he had been advised the subject may have a gun. However, the officer did not treat the subject as possibly armed, intentionally separated from his partner prior to the arrest, and did not make any notifications of a possibly armed suspect.
 - The officer ordered the subject to the ground and stood between him and the vehicle because he was intoxicated and did not want him to reenter the vehicle (a reasonable assessment). However, the officer initiated this contact without his partner who was in a patrol car nearby. Additionally, the officer did not attempt to arrest or stop the suspect from reentering the car or prevent him from driving away, apparently because of his relative size. Instead, he stepped aside and fired his CEW as the suspect was entering the driver's side to leave.
 - The use of the CEW was objectively not within policy, however no one in the chain of command review identified any issues or concerns with the use of the CEW. (*Incident No. 2021-327667*)

VI. Conclusion

Overall, this first installment of the quarterly compliance reviews pertaining to use of force determined that CDP and its officers are generally operating in a manner consistent with policy and the requirements of the Consent Decree. The Monitoring Team remains concerned with the timeliness and adherence to the administrative processes involved. Specifically, in future reviews we anticipate the average time from the use of force event to the investigative case closure will go down measurably and align with Policy 2.01.06. Additionally, we anticipate greater consistency in the chain of command review process.

Lastly, the Monitoring Team looks forward to seeing how the lessons learned from the cases highlighted above, and both the positive and negative cases captured in future quarterly assessments are handled internally by the Division, and are used to inform training and policy.

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