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## 2022 Use of Force Compliance Assessment - Quarter 3

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Monitoring Team

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## 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 third 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, 2022.

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 the 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 Department of Justice (“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 several deficiencies in tactics, and the ability to deescalate, both of which at times created the need for more force<sup>1</sup>. Further, the Monitoring Team concluded that the Division needs 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 assessment 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 actionably and useful feedback, but also streamlines the process for CDP to make changes necessary to reach full compliance in this area. While there are limitations to this approach as well, including limitations in Monitoring Team resources and review time by the City, the Monitoring Team still believes this is a superior approach to providing timely and helpful feedback on this important

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<sup>1</sup> Cleveland Monitoring Team, *Monitor’s 2020-2021 Use of Force Review*, (2022).

area of the Consent Decree. This report is the third submitted following this new methodology and addressed use of force reviews completed by the CDP in the third quarter of 2022.

## **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 systems (“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 the DOJ (“the parties”) in advance of the assessment.

The sample for this assessment included all Level 1 and Level 2 use of force investigations that were completed between July 1 and September 30, 2022. While Level 3 uses of force are not intended to be included in this assessment, there was one case in the third quarter that CDP reviewed as a Level 1, and the Monitoring Team determined to be a Level 3 (Incident # 2021-098089) that is included and discussed here. The Monitoring Team is concurrently engaged in an ongoing review of Force Investigation Team (“FIT”) activity, which is a review of all Level 3 cases. Reviewing the Level 3 cases here would be duplicative. All uses of force were assessed by randomly assigned Monitoring Team subject matter experts (“SMEs”) each of whom have significant experience as sworn law enforcement officers or professional oversight experience.

Most Level 1 uses of force were reviewed by a single SME. One case was reviewed by two SMEs but there were no major disagreements between reviewers. All Level 2 uses of force were reviewed separately by two randomly assigned SMEs. Each pair of Level 2 assessments were compared to ensure that SMEs had no major disagreements on key indicators such as proportionality, necessity, objective reasonableness of the use of force and tactical issues.

A total of twenty-eight Level 1 and twenty-five Level 2 uses of force were closed in the third quarter of 2022. In addition, one case (previously mentioned) was reviewed by CDP as a Level 1, however the Monitoring Team reviewer determined this case should have been classified as a Level 3 case.

## **Results**

### ***Timeliness***

Reviews of both Level 1 and Level 2 incidents continue to require an extensive amount of time by the Division’s chain of command. While the average time to close incidents was roughly the same as time to close in the second quarter, a higher number of cases were closed in the third quarter. The Monitoring Team commends the CDP for working diligently to review and close cases yet remain concerned that a number of lower level force cases are taking nearly a year to review and close.

On average, Level 1 cases closed in the third quarter of 2022 took 43 days from incident to final closure. The range of days to closure was nine days on the low end, to 328 days on the high end. Level 2 reviews completed in the third quarter of 2022, were, on average from incidents that were 73 days old. This includes two cases that were open for over a year (2021-199932 and 2021-280121).

**Table One: Timeliness of Case Review and Closure**

<b>Duration (in days)</b>	<b>Level 1 (n = 28)</b>	<b>Level 2 (n = 25)</b>	<b>Level 3 (n = 1)</b>
<b>Shortest</b>	9	22	529
<b>Longest</b>	328	373	529
<b>Average</b>	43	73	529
*Discrepancies between the <i>n</i> of cases and the level of cases between CDP and MT quarterly data are discussed later in this report.			

***Discrepancy in Use of Force Levels***

It is worth highlighting that this report includes a reference to Level 3 use of force that was designated as Level 1 by CDP. In Incident # 2021-098089, the subject complained of injury, (making this at least a Level 2 use of force) though the applied force was forcible handcuffing. At the time of the incident, Level 2 force against a ‘handcuffed’ individual is prescribed as a Level 3 use of force. The subject in this case was shackled rather than handcuffed, an ambiguity in policy that the investigating sergeant did note. The policy has since been changed, perhaps at the recommendation of the investigating sergeant in this case. However, this case was noted by CDP as a Level 1. Regardless, the force was investigated as a Level 3, and the Monitoring Team notes that Level 3 is the more appropriate classification. The Monitoring Team reviewer that assessed this case also notes that this is a technical issue, and that it has been addressed by CDP. Finally, the Monitoring Team reviewer commends CDP on the thorough and comprehensive review, and notes that issues with the case were addressed through comprehensive policy review and change.

***Necessary, Proportional and Objectively Reasonable***

The force applied in all but one incident was deemed by the Monitoring Team to be necessary, proportional and objectively reasonable. In one Level 2 case (2021-199932), the Monitoring Team found the force to be unnecessary. In this case, a taser was used on a fleeing subject, in violation of CDP policy. The Monitoring Team reviewers found that the taser was used in a grassy area, where the risk of injury due to fall was low, and given the totality of the circumstances was proportional and reasonable. Both Monitoring Team reviewers concluded that the officer could have chosen a different method of force, and that the tactics in this stop were poor from the beginning. Officers’ tactics put them in jeopardy and created the situation where they had to use force. In addition, this case sat in the sergeant’s review queue for nearly five months, with no explanation in the chain of command review to explain the delay. The chain of command determined that this case was necessary, proportional and reasonable due to the mitigating factors associated with the force, but those mitigating factors are not articulated in the review. Ultimately the involved officer in this case was retrained, but nearly a year after the incident. The Monitoring Team suggests that CDP review their process for determining who is responsible for reviewing uses of force resulting from special deployments when officers are not in their normally assigned areas. We believe this could help address delays in addressing policy violations and could ultimately assist in overall speed of review and closure of use of force incidents.

## ***Key Elements and Tactics***

Monitoring Team reviewers have also assessed various tactical questions and de-escalation practices. Overall, the Monitoring Team in reviewing the 54 cases in this quarter determined that officers generally make attempts to de-escalate the situation prior to using force. In 37% of the cases, the MT determined that the officers had affirmatively made steps to de-escalate the situation prior to using force. In an additional 27 cases (50%) the MT determined that de-escalation was not feasible. However, in two incidents during the third quarter (one Level 1, one Level 2), the reviewers determined that attempts at de-escalation were not taken when they should have for the safety of all involved parties. In the Level 1 case (Incident # 2022-187318), the officer views a vehicle stolen earlier in an aggravated robbery, pulls next to the vehicle and points his firearm at the subject. This firearm point is the totality of the force utilized, but the officer exhibited poor tactics and a lack of de-escalation by failing to call for more units, and pulling directly next to the subject putting himself at serious risk of harm. These tactical issues were not addressed by the reviewing chain of command.

In the Level 2 case (Incident # 2022-113349), an officer detained a suspect and placed him in handcuffs in the back of the patrol vehicle. The subject was able to slip his cuffs and attempted escape necessitating the deployment of a CEW to prevent his escape. After the CEW application, the subject was able to remove the probes and flee through the neighborhood. The officer broadcast the subject's location, but neglected to advise of the CEW deployment. The force in this case was directly related to poor handcuffing and tactics. CDP appears to have overlooked the tactical and decision making issues in this case. While the investigating sergeant did a good job identifying several issues, corrective counseling was cancelled by the chain of command and there is no discussion of the issues being addressed, either individually, or through training.

In a particularly good example of use of de-escalation techniques (Incident # 2022-153459) officers responded to a shelter for reports of a subject in crisis. After contact, the subject became aggressive and assaultive toward responding officers. Despite multiple attempts to calm the situation by officers, a CIT officer, a sergeant and shelter staff, the decision was made to deploy a Taser to bring the subject into custody. The subject was taken into custody, assessed by EMS and was not injured, nor were officers or staff. The officers at the scene were patient, talked calmly to the subject trying to let him know they were there to help. When officers determined that one officer was not making progress with the subject, another would step in and engage. They were able to gain knowledge of other persons that could assist and were able to involve the subject's social worker who also responded to the scene. This was a great example of approaching persons in crisis and working together as a team.<sup>2</sup>

Generally, Monitoring Team reviewers found officers acted appropriately in a very high percentage of the incidents reviewed (see Table Two below). In nearly all cases officers maintained sufficient distance, made safe approaches to the scene, used appropriate tactics and communicated well with each other.

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<sup>2</sup> It is noteworthy that members of the Monitoring Team observed a Force Review Board meeting in February 2023 where this case was discussed. Conversation among the FRB members reveals that its members did not conduct a full and complete review of this case consistent with their obligations under ¶126 and ¶127 of the Consent Decree. This is specific to the presence of a specialized CIT officer on scene and tactics to create a set of individual and system-wide recommendations.



**Table Two: Compliance with Key Tactical Provisions**

Did the Officers:	Level 1 (n = 29)*	Level 2 (n = 50)				Level 3 (n = 1)
		Yes	No	Unable to Determine	Not Applicable	
Conduct an appropriate threat assessment (Yes)	79%	68%	16%	16%		100%
Maintain sufficient distance (Yes)	90%	80%	14%	6%		100%
Make a safe approach (Yes)	93%	78%	16%	6%		100%
Employ clearly inappropriate tactics (Yes)	0%	4%	90%	6%		0%
Use profanity (Yes)	28%	22%	70%	8%		0%
Appear to use effective communications between officers (Yes)	83%	78%	8%	14%		100%
Reduce the level of force applied as the nature of the threat diminished (Yes)	93%	94%		4%	2%	100%
<p>* One Level 1 case was reviewed by two reviewers; there were no material differences in reviews.</p> <p>* For Level 2 cases, n= the number of reviews rather than the number of cases.</p>						

The Monitoring Team has taken a fairly generous lens when reviewing the subject of the use of profanity during highly stressful and complicated force incidents. We noted in our second quarter review that in nearly a third of cases reviewed officers used profanity during the incident. While the percentage of cases where profanity was present in the third quarter is lower, the Monitoring Team reviewers consistently flag the use of profanity as an issue to which CDP should be mindful. In discussion with Monitoring Team reviewers, they feel that the use of profanity is primarily an issue among specialty units and supervisors in those units while noting that patrol units appear to be very patient and calm in their interactions with subjects.

### ***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 (see Table Three below). There remain some instances in which these basic requirements were not met. Table Three below indicates that in nearly all cases, officers either did identify themselves, provide verbal warnings and avoid risk, or that the Monitoring Team reviewers could not determine. For example, in Level 1 cases, in only two out of twenty-eight cases the Monitoring Team reviewers determined that the officer *did not* identify themselves or advise those on scene of their intentions.

**Table Three: Compliance with General Force Principles**

Did the Officers:	Level 1 (n = 29)*	Level 2 (n = 50)				Level 3 (n = 1)
		Yes	No	Unable to Determine	Not Applicable	
Identify themselves as police officers and advise of their intent (Yes)	62%	58%	12%	12%	18%	100%
Provide a verbal warning (Yes)	41%	68%	8%	6%	18%	100%
Avoid unnecessary risk to others (Yes)	97%	88%	8%	4%		100%
<p>* One Level 1 case was reviewed by two reviewers; there were no material differences in reviews.  * For Level 2 cases, n= the number of reviews rather than the number of cases.</p>						

Reviewers also assessed whether any of the cases reviewed included prohibited uses of force. In one case, discussed previously, Monitoring Team reviewers determined that officers used force on a handcuffed individual (#2021-098089) which is not within policy, but was technically complicated and CDP addressed prior to our review. In one other case in the quarter, also previously discussed (#2021-19932) Monitoring Team reviewers believed that the CEW application against a fleeing subject was out of policy, not necessary, but given the totality of the circumstances, does not warrant further discussion.

### ***Chain of Command Review***

In addition to the concerns regarding timeliness of the review process described earlier, the Monitoring Team also found on several occasions that the chain of command review either did not proceed as expected or was not as thorough in scope as expected. In four cases the chain of command did not address missing information such as details about the applied force, injuries sustained, or follow-up regarding complaints of injuries from involved subjects. In one case, there are no chain of command reviews present in Blue Team (Incident # 2022-230649) which is a problematic oversight. Additionally, there are seven instances this quarter where deputy chief level review was delegated to a sergeant.

In one particularly concerning incident (#2022-161324), a sergeant involved in the use of force also reviewed the force. The review itself was non-existent. No investigation was undertaken, the review includes only an opinion about whether the force was necessary, proportional and objectively reasonable, none of which are supported by context or documentation in the review.

The Monitoring Team has concerns about the overall training in the Division regarding the proper articulation of facts and circumstances in use of force reporting across the board. The chain of command should be mindful of the importance of these details when reviewing use of force and preserving specific facts and context for further review up the chain of command.

### ***Select Cases for Review***

There are a number of cases in which Monitoring Team reviewers indicated that officer's efforts were particularly commendable and should be recognized as examples:

- Incident number 2022-175307 is a great example of how to use time and other de-escalation techniques coupled with the use of a less lethal forcing when facing potential deadly force from a subject brandishing a knife.
- Monitoring Team reviewers called out Incident # 2022-205305 as a particularly good example of de-escalation techniques.
- Finally, Monitoring Team reviewers highlighted Incidents # 2022-177215 and 2022-246242 as good examples of comprehensive and thorough on-scene investigations by the sergeants.

Reviewers also identified cases where the reviews were particularly troublesome and while the force used was not exceptional, the reviews should be noted for discussion.

- In the review of this incident, the incident can be understood through the review of the body worn camera, though the investigation includes no witness statements. Monitoring Team reviewers note at least two known CDP witness on scene and these statements are required as per CDP policy. No level of the chain of command noted the missing statements. (Incident # 2022-239177).
- In the de-brief from Incident # 2022-182431, the chain of command notes that the involved officers are young and were instructed in other options rather than the tactics ultimately utilized, including leave two handcuff subjects alone as a third subject fled. The Monitoring Team reviewer was particularly concerned about the disproportional aggressiveness by Officer #2 when the subject fled the scene, and in the extreme amount of profanity used when addressing the subject that fled.

### ***Conclusion***

Overall, this quarterly review pertaining to use of force determined that CDP and its officers are operating in a manner consistent with policy and the requirements of the Consent Decree the majority of the time. In almost all cases, the force used is reasonable, and while there are a few incidents where officers utilized problematic tactics, the resulting force was reasonable. In most cases, the force is well documented and reviewed, however, the Monitoring Team remains concerned with the timeliness and overall detail of the chain of command review. The Monitoring Team recommends that CDP determine and follow a method to ensure that cases do not linger un-reviewed in Blue Team for months at a time. We also recommend basic refresher training on proper articulation of the details, facts and contexts for all levels of use of force reporting and reviewing. Finally, a general reminder to the department about the use of profanity when interacting with citizens is advised.



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