



September 21, 2016

Re: Comments on draft CDP Use of Force Policies

Dear Mr. Barge and members of the Cleveland Monitoring Team:

Thank you for the opportunity to comment on the draft Cleveland Division of Police “Use of Force” (UF) policies. The Schubert Center for Child Studies at Case Western Reserve University is primarily concerned with how children fare in interactions with law enforcement; however, we offer broad feedback on the full set of UF policies given they have potential implications for children as well. To be clear, by “children” we are referring to all children under the age of 18, including adolescents, youth, juveniles, etc. We offer general considerations first, followed by specific items and recommendations within each of the four draft UF policies.

We appreciate that a considerable effort has gone into the development of these policies and are very encouraged by a number of the changes proposed by these drafts, in particular the inclusion of proportionality, the expanded focus on the use of de-escalation and the duty to intervene and provide medical attention. We also applaud the recognition of “children and juveniles” in these policies and the effort to address some of the unique considerations that arise in use of force situations with children. However, concerns remain about how children may be impacted by these policies and what measures can be taken to better ensure safety for both the youth and officers involved. In the places, for instance, where “age” of subject is considered, there does not appear to be adequate guidance for law enforcement to effectively de-escalate and avoid physical UF tactics, especially in the use of intermediate weapons. Recognizing how important officer discretion is in determining how to respond to a situation involving a child and to minimizing the unnecessary, ineffective and/or harmful use of restraints and other physical UF practices, appropriate training is key. Officer training on child and adolescent development and effective communication and other age-appropriate de-escalation strategies is essential to informing officer discretion for encounters with children. No where is this understanding of child and adolescent development explicit in these proposed UF policies. We offer some specific comments and recommendations below.

### **1. The use of “perceived age,” and “apparent age” throughout the UF policies**

The use of these qualifiers when addressing “age” as a factor for determining the appropriate level of force is ambiguous and inconsistent with the language in the Settlement Agreement (Agreement), which plainly states “age” as one of the categories requiring further protection. The De-escalation policy (I.C.8.) uses “perceived age of a child” as a factor that an officer should consider when a subject is non-compliant. In this instance, perceived age would not measure a child’s ability to comprehend or comply – skills more closely associated with a child’s developmental age and maturity – thus introducing a level of subjectivity that puts children at potential risk.

SCHUBERT CENTER FOR CHILD STUDIES in the College of Arts and Sciences at Case Western Reserve University bridges research, practice, policy and education for the well-being of children and adolescents.

**Recommendation:** Throughout the UF policies, “perceived age” and “apparent age” be replaced with “age.”

## **2. The use of “child(ren),” “small children,” and “juveniles”**

These terms are used interchangeably throughout the policy without any indication of their specific meanings. The use of “small child” is especially ambiguous; does it refer to age i.e. under 6 or the physical stature of the child?

**Recommendation:** Child specific aspects of these policies should be inclusive of all children under the age of 18 and that “child” or “children and youth” be used throughout the UF policies in order to increase clarity and consistency.

## **3. Use of intermediate weapons on children**

We commend the specific requirement in policy that “Officers shall use appropriate responses for children and juveniles at all times.” We urge CDP to provide further clarity here by stating more explicitly, “age-appropriate, developmentally-informed” responses (and offer a definition below).

### *a. Conducted Electrical Weapons (CEW)*

Portions of the policy on the use of CEW are inconsistent with the policy set out in paragraph 66 of the Agreement and we suggest be revised. Specifically, in General section B (4), the Agreement does not make any exceptions to this restriction based on body mass, physical build, or perceived age when using CEW’s but rather sets out a broader limitation regarding the use of intermediate force as it relates to CEW’s on children. While these listed considerations in the draft policy may be appropriate for some intermediate weapons, the serious health risks posed by CEWs on children warrants that they require a higher bar for their use and should only be used on children when deadly force is deemed appropriate.

**Recommendation:** Revise General section (I.B.4.) to read (changes in italics: “*Except where deadly force is authorized, officers shall not use CEWs on children.* Before using *other* intermediate weapons on children officers must consider the following factors: body mass, physical build, age, and emotional condition. Officers shall use *age-appropriate, developmentally-informed* responses for children at all times.”

This further requires revising CEW section (IV.B.3.) to be consistent with the language in the Settlement Agreement, including prohibiting the use of CEWs where “the subject is visibly pregnant, apparently elderly, a child, visibly frail, has obviously low body mass, or is in apparent medical crisis.”

### *b. OC Spray*

Exposure to OC spray presents unique risks for serious injury when used on children. It should only be used after developmentally informed de-escalation strategies have been applied and proven unsuccessful. Further, officers should be prohibited from using OC Spray on children who are restrained or in confined spaces.

**Recommendation:** Add language to OC section (III.B.): “*Officers shall not use OC Spray on child subjects, except when absolutely necessary to stabilize the situation and gain compliance or reduce risk of injury to themselves or others, and other less intrusive means have been attempted. Officers shall not use OC Spray on children in restraints, or in a confined space.*”

#### **4. Required officer communication and identification prior to the use of force**

When encountering child subjects age-appropriate verbalization is important to ensure that officer expectations are known, the subject remains calm, and de-escalation can be achieved. The use of the language “when feasible,” “shall attempt,” and “make an attempt” as it relates to an officer’s obligation to identify himself/herself and warn a subject prior to the use of force (General policy under Procedures I.A. and B.) is concerning. When attempting to apprehend a subject an officer should be required to identify himself/herself as a police officer. Failure to have this as a requirement can lead to confusion, fear and unnecessary escalation of the incident. This risk is especially high for children and youth, who are often victimized and are socialized to distrust strangers. Clear communication and identification increases officer and subject safety. Further, prior to using force, an officer should be required to warn a subject and require that officers allow reasonable time for a subject to comply with the warning.

**Recommendation:** Rather than leading with an exception or limitation on the policy, the General policy sections should be revised: A. *Officers shall identify themselves as police officers, and advise subject of their intent to detain, arrest, or search a subject before using force.* B. *Officers shall use a verbal warning to submit to their authority, and allow reasonable time for compliance under the circumstances, prior to the use of force, except when such warning is not feasible, and to do so would increase the danger to officers or others.*

#### **5. Use of Force Definitions**

**Recommendations:** We suggest adding the following to the definitions, consistent with other recommended changes to address the unique considerations of police-youth interactions:

**Adolescence:** Developmental period when child matures from puberty to adulthood with distinct physical, cognitive and social-emotional attributes.

**Age-appropriate/developmentally-informed:** Terms used interchangeably to reflect a general understanding of child and adolescent development in terms of the social, emotional, physical, neurological, behavioral and moral aspects of development in an individual under 18 years of age.

“Reportable Force” – We recommend that any use of Level 2 or 3 use of force involving children and youth be reported.

“Canine apprehension” is included in the definitions; however, it does not appear to be addressed in the any of the other policies. What is the use of force policy for the use of canines when apprehending a subject and is there a limit on their use with children? We would urge a prohibition or at least a limitation of canine apprehension where children and youth are involved.

It is important that the UF policies also address the broader concern of Ohio’s open carry laws given that Ohio is an open carry state, and also allows for concealed carry licensing. A citizen’s possession of a gun (even in public spaces) is not inherently indicative of an illegal act. What policies and procedures are in place, as well as training, to ensure that the mere presence of a gun either on an individual’s person or in close proximity does not automatically trigger an escalation of force? We recognize that Ohio’s open carry laws largely impact adults, however if officers rely on their discretion when ascertaining a subject’s age, it is possible for a juvenile to be perceived and treated as an adult during an officer encounter. Because of this risk, and particularly in light of the Tamir Rice case, we are concerned that juveniles could be negatively impacted by the absence of clear policy regarding this issue.

Finally, we want to be sure you are aware that our Center was among the organizations who submitted recommendations on the use of force policies to the Community Police Commission, per their request, and we were pleased to see several of our suggestions included in their recommendations. While it is not clear to what extent those recommendations were addressed in these policies, we want to note that our Center also offered recommendations on the bias-free policing policies and we urge the parties to take measures to ensure continuity between the use of force policies and the bias free policing policies. If possible, we would appreciate knowing what the Monitoring Team's process will be for addressing these recommendations.

Thank you again for the opportunity to share these comments and suggestions for your consideration. Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Gabriella Celeste", with a long horizontal flourish extending to the right.

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