



BURLINGTON POLICE DEPARTMENT

DEPARTMENTAL MEMO



FOR: PUBLIC DISTRIBUTION
FROM: CHIEF JEFFREY SMYTHE
DATE: JULY 2ND, 2020
SUBJECT: #8CANTWAIT COMPLIANCE RESPONSE

During the aftermath of the tragic murder of George Floyd, the Burlington Police Department received several requests from concerned citizens about an initiative called “8cantwait”. As it is our agency’s mission to improve the quality of life, in partnership with our community, through the delivery of fair and professional police services, we want to express our gratitude to the members of our community who have reached out to our agency with their suggestions, questions, and comments of support.

Our agency made “Trust Through Transparency” a hallmark for our operations in 2014 and this document is intended to share our compliance with the suggested policy and operational goals listed in the #8cantwait campaign. The #8cantwait agenda outlines a set of 8 evidence-based policy solutions that reduce the use of force by police officers. We are proud to announce that the Burlington Police Department currently not only meets, but most often exceeds all the #8cantwait recommendations.

During the last five years, Burlington Police officers have received extensive training to ensure that the values behind the #8cantwait initiative are in the forefront of the minds of our officers when serving our community. Our policies are based on best-practices standards from the Commission on Accreditation for Law Enforcement Agencies, Inc (CALEA), The Police Officers Executive Forum (PERF) and 21st Century Policing.

The summary below explains the #8cantwait policy recommendations and provides an overview of how the Burlington Police Department currently meets these recommendations. I apologize for the length of the document, but felt the additional detail was important to having a comprehensive understanding of these vitally important and lifesaving issues.

SOLUTION #1: “BAN CHOKE HOLDS & STRANGLEHOLDS”

“Allowing officers to choke or strangle civilians results in the unnecessary death or serious injury of civilians. Both chokeholds and all other neck restraints must be banned in all cases”.

The North Carolina Justice Academy (NCJA) is responsible for developing and delivering the lesson plans and training techniques for police officers in North Carolina. The NCJA does not sanction the use of choke holds and/or strangleholds, nor does it include it in their curriculum. In turn, these methods have never been instructed during the Basic Law Enforcement Training academies or at the Burlington Police Department (BPD) in any training capacity.

Additionally, BPD policy specifically prohibits officers from ever intentionally restricting the blood flow or breathing of a suspect. The only exception is in cases where deadly force is justified. An example of this would be during a violent assault against an officer who reasonably believes that his or her life, or the life of another person, is in imminent danger, such as an officer who is being stabbed with a knife. In these situations, an officer may use any reasonably necessary force, such as a firearm or alternative force, to stop the threat to their life.

Current BPD Policy- Response to Resistance (Policy #03-07)

Use of Force Prohibitions

“Officers shall not apply direct pressure to the throat, windpipe or airway of a person with the intent to reduce or prevent the intake of air (chokehold), unless deadly force is justified”.

SOLUTION #2: “REQUIRE DE-ESCALATION”

“Require officers to de-escalate situations, where possible, by communicating with subjects, maintain distance, and otherwise eliminating the need to use force”.

The utilization of de-escalation techniques is mandatory for Burlington officers prior to engaging a person with physical force. Officers are trained in ICAT, which stands for Integrating Communications, Assessment, and Tactics. ICAT is a use-of-force training guide designed to fill a critical gap in training police officers in how to respond to volatile situations in which subjects are behaving erratically and often dangerously, but do not possess a firearm.

This curriculum was created as an industry best practice by the Police Executive Research Forum (PERF) and our agency adopted the philosophies in 2016. The training guide includes model lesson plans in the key areas of decision-making, crisis recognition and response, tactical communications and negotiations, and operational safety tactics. ICAT then integrates these skills and provides opportunities to practice them through video case studies and scenario-based training exercises.

The PERF 30 Guiding Principles on Use of Force suggest:

PERF #4- Adopt de-escalation as formal agency policy

PERF #17-De-escalation should be a core theme of an agency’s training program

PERF #18-De-escalation starts with effective communications

Current BPD Policy- Response to Resistance (Policy #03-07)

“response to resistance options, Verbal Direction/Control: Conversation, advice, commands, or instructions used by the officer to control or de-escalate a confrontation. Verbal communication, when applicable.”

“When time and circumstances permit, officers will use de-escalation tactics to reduce the need for force. When safe and feasible, officers will attempt to slow down or stabilize the situation so that more time, options and resources are available”.

“Consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to; 1. Medical conditions 2. Mental impairment 3. Developmental disability 4. Physical limitation 5. Language barrier 6. Influence of drugs or alcohol use 7. Behavioral crisis”

Furthermore, 70% of Burlington officers are trained in crisis intervention that is intended to deal with emotionally distressed persons. The Crisis Intervention Team (CIT) is a nationally recognized training and certification program for police officers endorsed and supported by the Burlington Police Department in partnership with other agencies and mental health service providers. This training is robust and is used daily in numerous law enforcement encounters that have reduced injuries to the public. The Burlington Police Department also maintains an eleven (11) member Crisis Negotiator Team that can be deployed to deal with citizens in crisis that are threatening to do harm to themselves or others. This team is on call and available 24 hours day, 7 days a week.

Lastly, our agency contracts with a local mental health provider for a Law Enforcement Crisis Counselor (LECC) who responds to calls for service with officers and services as a direct line to local mental health providers (RHA). We have used this process since 2016.

Current BPD Policy- Interactions with Emotionally Distressed Persons (Policy #04-04)

“Crisis Intervention Team (CIT) Officer: The Crisis Intervention Team (CIT) is a nationally recognized training and certification program for police officers endorsed and supported by the Burlington Police Department in partnership with other agencies and mental health service providers.”

“The Crisis Intervention Team concept is a joint effort between the Alamance County Sheriff’s Office, local mental health service providers, and the Burlington Police Department.”

“This team concept will provide law enforcement officers with the essential tactical and processing skills necessary to effectively deal with emotionally distressed persons suffering from a possible mental health-related crisis.”

#3: REQUIRE WARNING BEFORE SHOOTING

“Require officers to give a verbal warning in all situations before using deadly force”.

In all uses of force throughout their response to resistance, officers are directed to provide verbal warnings, when feasible, in order to give individuals time to react and comply with the issued orders from a law enforcement officer. During in-service firearms training, officers are trained to challenge a target at the 10-yard line, by keeping the target covered and issuing loud verbal commands (i.e. “Police, Don’t Move”) in order to simulate giving an individual time to respond and comply. This physical practice every year is designed to increase the likelihood officers will respond in this fashion under stress.

BPD policy clearly states that when feasible officers will verbally warn the suspect before discharging a firearm, unless doing so would place the officer or any other person at additional risk. A verbal warning prior to the use of deadly force can only be accomplished in a real-life deadly force encounter when there is sufficient time and distance for the order to be safely given. An officer may not be able to give a verbal warning to a suspect who is an immediate threat to the life of the officer or another person, such as a suspect who is pointing a firearm at a hostage.

Current BPD Policy- Response to Resistance (Policy #03-07)

“When feasible, officers will verbally warn the suspect before discharging a firearm, unless doing so would place the officer or any other person at additional risk”.

#4: EXHAUST ALL ALTERNATIVES BEFORE SHOOTING

“Require officers to exhaust all other alternatives, including non-force and less lethal force options, prior to resorting to deadly force”.

Burlington officers are trained and expected to exhaust all alternatives before resorting to deadly force. Officers are trained to use physical skills for subject control and arrest techniques (SCAT) and equipped with pepper foam, expandable batons, tasers, and bean bag shotguns. This equipment and training provide the best possible alternatives to safely control a suspect. Burlington officers are trained to utilize de-escalation and respond appropriately to resistance. In 2019, the Burlington Police Department had more than 64,000 interactions with our community members. Of the over 64,000 contacts, 2,933 resulted in a physical arrest (on-view or warrant). Of the 2,933 physical arrests, officers used force during 45 incidents or during only 1.5% of physical arrests.

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“When time and circumstances permit, officers will use de-escalation tactics to reduce the need for force. When safe and feasible, officers will attempt to slow down or stabilize the situation so that more time, options and resources are available”.

“Consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to;1. Medical conditions 2. Mental impairment 3. Developmental disability 4. Physical limitation 5. Language barrier 6. Influence of drugs or alcohol use 7. Behavioral crisis”.

“Officers shall take lawful actions in response to resistance only when no reasonably effective alternative appears to exist and will use only the amount of force that is objectively reasonable and necessary given the totality of the circumstances to bring an incident under control.”

“Officer’s actions are to be “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. Reasonableness is judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Graham vs. Connor*- 490 U.S. 386, (1989). Officers will take into consideration the three prong test when using force: 1. The severity of the crime(s) at issue; 2. Whether the subject poses an immediate threat to the safety of the officer(s) or others; 3. Whether the subject is actively resisting arrest or attempting to evade arrest by flight.”

“Having a strong partnership between the department and the community is essential to establish trust and increase public safety.

1. Use of force, even if lawful and proper, can have a damaging effect on the public’s perception and the department’s relationship with the community. Both the department and the individual officers need to be aware of the adverse effects of use-of-force-incidents and be empowered to take appropriate action to mitigate these effects, such as:

- a. Explaining actions to subjects or members of the public
- b. Offering reasonable aid to those affected by a use-of-force incident
- c. Treating subjects, witnesses, and bystanders with professionalism and courtesy
- d. Conducting departmental follow-ups with neighbors or family to explain police actions and hear their concerns and feedback.”

“Officers shall follow the North Carolina General Statutes governing the Use of Force by Police Officers, NCGS 15A-401 (d) Use of Force in Arrest. Officers shall use only the amount of force necessary, objectively reasonable, and proportionate to effectively bring an incident or person under control while protecting the lives of the officer and others”

SOLUTION #5: “DUTY TO INTERVENE”

“Require Officers to intervene and stop excessive force used by other officers and report these incidents immediately to a supervisor”.

The Burlington Police Department is committed to “Policing with a Purpose.” This philosophy is reinforced regularly by supervisors in the organization and includes:

- preserve the sanctity of ALL life
- nurture and protect democracy
- ensure procedural justice and fundamental fairness
- protect the community from harm
- spirit of service
- treat all individuals with dignity and respect-the ethical foundation of policing

This philosophy is infused into our department’s discipline and internal affairs policy. It is also reiterated in our agency’s response to resistance policy. During ICAT training, officers have been trained to detect warning signs that another officer might be moving toward excessive or unnecessary force and to intervene before the situation escalates. Lastly, the Oath of Office and ethical standards all require action to intervene.

The PERF 30 Guiding Principles on Use of Force suggest:

PERF #6- Duty to intervene: Officers need to prevent other officers from using excessive force.

Discipline and Internal Affairs (Policy #08-11)

“Any employee of the Burlington Police Department who is present during a possible or perceived violation of policy or law has a duty to intervene. The witness employee will immediately take steps to stop the conduct, separate the other employee from the scene, and notify a supervisor or otherwise protect the public and the agency. Failure to do so will constitute a violation by the witness member.”

Response to Resistance (Policy #03-07)

“Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor”.

SOLUTION #6: “BAN SHOOTING AT MOVING VEHICLES”

“Ban officers from shooting at moving vehicles in all cases, which is regarded as a particularly dangerous and ineffective tactic. While some departments may say they restrict shooting at vehicles to particular situations, these loopholes allow for police to continue killing in situations that are all too common. 62 people were killed by police last year in these situations. This must be categorically banned”.

The Burlington Police Department’s response to resistance policy specifically prohibits officers from shooting from a moving vehicle or at a moving vehicle unless someone in the vehicle is using or threatening deadly force by means other than the vehicle itself. For example, a suspect who is actively shooting a member of the public or a police officer. Furthermore, our officers are not trained to shoot into or from moving vehicles.

The PERF 30 Guiding Principles on Use of Force suggest:

PERF #8- Shooting at moving vehicles must be strictly prohibited.

Current BPD Policy- Pursuit (Policy #03-14)

“Firearms shall not be discharged from a moving vehicle or bicycle”

SOLUTION #7: “ESTABLISH USE OF FORCE CONTINUUM”

“Establish a Force Continuum that restricts the most severe types of force to the most extreme situations and creates clear policy restrictions on the use of each police weapon and tactic”.

The Burlington Police Department’s response to resistance (use of force) policy provides guidance to officers on their use of force. The policy describes escalating and de-escalating actions an officer may take to resolve a situation. This continuum has many levels and officers are trained to respond with a level of force appropriate and proportional to the situation at hand, acknowledging that the officer may move from one part of the continuum to another in a matter of seconds. All officers are instructed on the use of the “Critical Decision-Making Model” (CDM). The CDM is an ethics based thought process founded on four elements: police ethics,

the values of the police agency, proportionality, and the sanctity of human life. This model helps officer manage a broad range of incidents effectively and safely.

The PERF 30 Guiding Principles on Use of Force suggest:

PERF #2- Agencies should continue to develop best policies, practices, and training on use-of-force issues that go beyond the minimum requirements of (Graham v. Connor)

PERF #3- Police use of force must meet the test of proportionality

PERF #5 –The CDM provides a new way to approach critical incidents Provides officers with a logical, easy-to-use thought process for quickly analyzing and responding.

Current BPD Policy- Response to Resistance (Policy #03-07):

Purpose of our Policy: “The Burlington Police Department is committed to the sanctity of human life, dignity, and liberty of all persons. An officer’s commitment to public safety includes the welfare of members of the public, the people the officers are dealing with, and the officers. It is incumbent for the department to accomplish the police mission with the cooperation of the public and as effectively as possible. The Department’s value statement, “We respect the rights, liberties, and dignity of all; serving with compassion, respect, and courtesy” shall be the cornerstones of the Burlington Police Department’s response to resistance policy.”

“Officers shall take lawful actions in response to resistance only when no reasonably effective alternative appears to exist and will use only the amount of force that is objectively reasonable and necessary given the totality of the circumstances to bring an incident under control.”

“Officer’s actions are to be “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. Reasonableness is judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. Graham vs. Connor- 490 U.S. 386, (1989). Officers will take into consideration the three prong test when using force: 1. The severity of the crime(s) at issue; 2. Whether the subject poses an immediate threat to the safety of the officer(s) or others; 3. Whether the subject is actively resisting arrest or attempting to evade arrest by flight.”

03-07 Definitions in our policy-

“De-escalation: Actions or communications (verbal and non-verbal) used by officers in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to safely resolve the situation without the use of force or with a reduction in force used.”

“An officer will use only the degree of force that is objectively reasonable, necessary, and proportional to the threat or resistance of a subject.”

“Each officer is responsible for explaining, articulating, and documenting the specific facts which justify the officer’s use of force.”

“The department is committed to upholding lawful, professional, and ethical standards through assertive leadership and supervision before, during, and after every use of force incident. The department will continue to maintain standards and transparent oversight to ensure compliance and accountability to the community to

maintain their trust. Oversight includes de-escalation efforts, effective tactics, policy review, and objective review and analysis of all incidents where force is used.”

“Having a strong partnership between the department and the community is essential to establish trust and increase public safety.

1. Use of force, even if lawful and proper, can have a damaging effect on the public’s perception and the department’s relationship with the community. Both the department and the individual officers need to be aware of the adverse effects of use-of-force-incidents and be empowered to take appropriate action to mitigate these effects, such as:
 - a. Explaining actions to subjects or members of the public
 - b. Offering reasonable aid to those affected by a use-of-force incident
 - c. Treating subjects, witnesses, and bystanders with professionalism and courtesy
 - d. Conducting departmental follow-ups with neighbors or family to explain police actions and hear their concerns and feedback.”

“Officers shall follow the North Carolina General Statutes governing the Use of Force by Police Officers, NCGS 15A-401 (d) Use of Force in Arrest. Officers shall use only the amount of force necessary, objectively reasonable, and proportionate to effectively bring an incident or person under control while protecting the lives of the officer and others”

Current BPD Policy on the Critical Decision-Making Model-

“The five steps are: 1. Collect Information and intelligence 2. Assess situation, threats, and risks 3. Consider police powers and agency policy 4. Identify options and determine the best course of action 5. Act, review, and re-assess”

SOLUTION #8: REQUIRE ALL FORCE BE REPORTED

“Require officers to report each time they use force or threaten to use force against civilians. Comprehensive reporting includes requiring officers to report whenever they point a firearm at someone, in addition to all other types of force”.

The BPD requires all officers involved in a use of force or a show of force (pointing a Taser or firearm at a person) to immediately notify their supervisor and complete a detailed written report. All uses of force and show of force reports are reviewed by a committee chaired by an executive and staffed with subject matter experts in the use of force. Any deviations from agency training or policy are addressed appropriately through remedial training and/or disciplinary action.

Response to Resistance (#03-07) Reporting (Policy #03-10)

“All reported crimes (incidents) and requests for police services are accurately documented in a timely manner. All reported incidents are reviewed by a supervisor to ensure they are complete and accurate.”

“When a member of the department is involved in a vehicle pursuit or use of force incident(s), officers will complete the required information in “Blue Team” software. These incidents are reviewed by a committee chaired by an executive staff member and staffed with subject matter experts in those fields.

“Officers will immediately notify Communications anytime force is used on a suspect.”

“Officers will advise their shift supervisor when they are involved in a use of force. When possible, officers who are involved in a reportable use of force will remain on-scene until the supervisor arrives.”

“All officers who are involved in a reportable use of force shall document only the details of the use of force or pursuit.”

Reported involvements include:

1. discharging a firearm, for other than training or recreational purposes (CALEA 1.3.6a)
2. taking an action that results in or is alleged to have resulted in injury or death of another person (1.3.6b)
3. hard hand techniques (1.3.6d)
4. the force applied through lethal or less lethal weapons (1.3.6c)
5. a show of force, such as pointing of a firearm (pistol, rifle or shotgun) or arcing a Taser

The Burlington Police Department remains forever committed to partnering with the community to learn, grow, and improve the quality of life for the residents and visitors to the City of Burlington. We encourage the community to continue to have open dialogue with our department so that we can explore and collaborate on ways to improve our delivery of professional police services and ensure accountability for all.

For further information on the #8cantwait initiative, please visit <https://8cantwait.org>.

As you continue to learn more about police reform and become involved in our community, we invite you to attend one of our Community Police Academy sessions that happen twice per year or join us for a ride along to learn more about the realities of policing in Burlington. Each of these programs can be found on our webpage at <http://www.burlingtonnc.gov/559/Community-Relations>.