



PUTTING PEOPLE FIRST

CITY OF BIRMINGHAM INTERNAL REVIEW COMMITTEE REPORT ON 8 CAN'T WAIT POLICY RECOMMENDATIONS



TABLE OF CONTENTS

Executive Summary	3
Table of Authorities	4
Birmingham Police Department Comparable to Other Police Departments	6
#8CantWait Policy Recommendations	7
Task Force Recommendations	8

EXECUTIVE SUMMARY

In light of the discussions and protests sparked by George Floyd's death, the emerging consensus is that the time has come for the City of Birmingham to examine its public safety polices. The first steps in this process have been a 30-day review of how eight key issues are currently handled under the Birmingham Police Department's Use of Force policy and subsequent recommendations to be examined during a 90-day review. Those eight issues examined during the 30-day review were:

1. Ban on chokeholds and strangleholds
2. Require de-escalation
3. Require warning before shooting
4. Exhaust all other means before shooting
5. Require officers to intervene when excessive force is used and report such incidents
6. Ban shooting at moving vehicles
7. Impose requirements on the levels of force allowed based on levels of resistance
8. Require comprehensive reporting of every use of force or threat to use force

The issue of Use of Force by police departments is both a legal issue and a policy issue. However, the actions of government are bound by the law. The City recognizes that the use of force is one of the most exceptional government powers. It is exceptional not only in its potential effects but in the solemn duty it places on government to balance its use against the civil liberties. The City of Birmingham has long worked to uphold this duty by maintaining accreditation by the Commission on Accreditation for Law Enforcement Agencies (CALEA).

The review was conducted by an internal team that included staff members from the Birmingham Police Department; the Office of the City Attorney; Human Resources; and the Office of P.E.A.C.E. & Policy. The review team has met over the last 30 days to compare the BPD's policy in eight key issue areas to those of the policy recommendations of #8CantWait to set a baseline for police reform in Birmingham.

The internal review team was sent eight sets of questions and framing context for the purposes of this review. The deliberation of the eight recommendations was divided among four work sessions. Additionally, the independent research and analysis of team members of existing law, industry best practices, examination of previous litigation, and examination of officer discipline were considered in developing these recommendations.

FACTS AND LEARNINGS

1. As a matter of law, these issues are governed by the Fourth and Fourteenth amendments. This is significant because the legal standard is not clearly articulated in our policies and procedures. The controlling case on the standard for use of force is *Graham v. Connor*, 490 U.S. 386. This creates a constitutional floor that state actors (e.g., the City of Birmingham) cannot go below, but there is no ceiling on how progressive a state actor can be.
2. Liability to a city primarily arises under two federal statutes: 1) 42 USC 1983; and 2) 42 USC 1985. The way in which the city's police policies are written and implemented is the strongest defense against alleged violations of these statutes.
3. Current BPD policies are modeled on the Commission on Accreditation of Law Enforcement Agencies, Inc. (CALEA) standards through CALEA. Thus, all policy changes must be made in consideration of this accreditation standard.

TABLE OF AUTHORITIES

USE OF FORCE

- **Fourteenth Amendment, U.S. Const. amend. XIV** (Incorporation doctrine makes provisions of the Bill of Rights, including the Fourth Amendment, applicable to the states and control when a right fundamental to the American scheme of justice has been violated by state action.)
- **Fourth Amendment, U.S. Const. amend. IV** (Constitutional protection against unreasonable search and seizure places limitations on the state's use of force.)
- **Graham v. Connor, 490 U.S. 386** (1989), No. 87-6571. Argued February 21, 1989. Decided May 15, 1989 (Claim that law enforcement officials have used excessive force, deadly or not, in course of arrest, investigatory stop or other "seizure" of a person is properly analyzed under Fourth Amendment's "objective reasonableness" standard, rather than under substantive due process standard). NOTE: The premise of this qualified immunity case is that, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.")
- **Plumhoff v. Rickard, 572 U.S. 765** (2014), (held, "Where constitutional guidelines seem inapplicable or too remote, it does not suffice for a court simply to state that an officer may not use unreasonable and excessive force, deny qualified immunity, and then remit the case for a trial on the question of reasonableness. An officer 'cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it.'")

FEDERAL STATUTES ENFORCEABLE TO PROTECT INDIVIDUAL CIVIL RIGHTS

NOTE: This list is very limited & is not exhaustive. It lists only selected statutes.

- 42 USC 1983: Civil action of deprivation of rights
- 42 USC 1985: Conspiracy to interfere with civil rights

POLICE POWERS OF MUNICIPALITY AND MAYOR

- The City of Birmingham is a Class 1 municipality and is governed generally by the laws applicable to most municipalities in the State of Alabama which are found in Title 11 of the Code of Alabama. Some of the powers of the City of Birmingham are modified and can be found in The Mayor/Council Act of 1955 which is generally codified in Chapter 37A of Title 45, Code of Alabama. Other provisions may be found in Local Constitutional Amendments and Local Acts.
- Section 11-45-1, Code of Alabama, authorizes municipalities to adopt ordinances to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the inhabitants of the municipality, and may enforce obedience to such ordinances. Most municipalities adopt state misdemeanor offenses by reference as well as pass other ordinances.
(Code 1907, §1251; Code 1923, §1992; Code 1940, T. 37, §455; Acts 1971, No. 2279, p. 3670, §1.)
- Section 11-43-55, Code of Alabama, provides that the City Council shall have power to establish a police force and to organize the same under the general supervision of the chief of police, and to provide one or more station houses and to require all things necessary for the maintenance of an efficient police department. Municipal Officers may arrest for state felony offenses and deliver those arrested to the

TABLE OF AUTHORITIES

County Sheriff or appropriate official.

(Code 1907, §1192; Code 1923, §1908; Code 1940, T. 37, §429; Acts 1961, No. 666, p. 910, §4.)

- The Mayor is the chief executive officer of the city and is charged with the duty of supervision of the affairs of the city under policies fixed by the council. AGO to Hon. A.J. Cooper, August 15, 1973. Municipal councils are responsible for establishing policies which will be followed by municipal departments. Department heads may not set policies unless the council has delegated the authority to them. A council may delegate authority to set policy to the mayor, who may authorize department heads to determine policies which their departments will follow. Where the council has not acted, department heads may set informal procedures to be followed until the council acts. AGO 92-00289.

BIRMINGHAM POLICE DEPARTMENT COMPARABLE TO OTHER POLICE DEPARTMENTS

Police Department Survey of Comparisons

	DEPARTMENT BUDGET	DEPARTMENT SIZE (SWORN)	NUMBER OF CALLS FOR SERVICE	GEOGRAPHICAL LAND COVERAGE	POPULATION SERVED
Tampa	\$160,414,366	950	557,691	175.2 mi ²	377,165
San Jose	\$404,943,712	927	598,433	280.5 mi ²	1,025,350
Pittsburgh	\$104,545,326	892	250,536	58.44 mi ²	303,625
Portland	\$200,195,112	881	359,335	145.2 mi ²	637,301
Tucson	\$179,811,586	876	341,427	226.7 mi ²	530,706
Omaha	\$135,530,912	848	242,777	141.8 mi ²	446,970
Minneapolis	\$162,435,748	841	425,857	57.49 mi ²	413,651
Birmingham	\$93,944,712	904	540,522	148.6 mi ²	210,378

#8CANTWAIT POLICY RECOMMENDATIONS

A national movement known as #8CantWait has evaluated and challenged 100 police departments across America to meet specific standards for “use of force.” The Birmingham Police Department (BPD) meets or exceeds all eight standards of #8CantWait. This should be noted in the context that the Birmingham Police Department is certified by the Commission on Accreditation of Law Enforcement Agencies (CALEA) and its Use of Force Policy is written in accordance with these national standards. There is an immediate opportunity to strengthen our existing — and already strong — policies pertaining to use of force. An internal review by the City of Birmingham found two immediate opportunities.

The remaining BPD policies meet the recommended #8Can’tWait standards. Over the next 90 days, we will take a deeper dive into our public safety policies and see what other opportunities emerge.

OPPORTUNITIES TO STRENGTHEN

1. **“Ban on chokeholds and strangleholds”:** “NECK HOLDS PROHIBITED. Law enforcement officers shall not use chokeholds, strangleholds, Lateral Vascular Neck Restraints, Carotid Restraints, chest compressions, or any other tactics that restrict oxygen or blood flow to the head or neck.”
5. **“Require officers to intervene when excessive force is used and report such incidents”:** It is recommended that the following language be added to the Use of Force policy. “I. Back-up officers and support police personnel at the scene are responsible for addressing or reporting observed violations that were not handled by the primary officer. These violations may include but not be limited to: 1. If the incident is of a minor procedural nature, the back-up officer shall bring it to the attention of the primary officer so that the officer may correct the violation. Failure to correct the violation shall be reported to their supervisor. 2. If the incident is of a moderate to serious procedural nature, the back-up officer shall bring it to the attention of the primary officer and take immediate action to correct or remedy the problem. The back-up officer’s supervisor shall be notified immediately of incidents of this nature. 3. If the incident is a violation of ethics or of a criminal statute, the back-up unit shall immediately intervene to stop the series of events from continuing. A supervisor shall be notified immediately and will respond to the scene.”

OPPORTUNITIES TO EXPLORE

The remaining six #8CantWait policies all meet the current BPD Use of Force Policy. Any changes would have to be done with consideration for accreditation. The following policies will be explored by the task force over the next 90 days:

2. **“Require de-escalation”**
3. **“Require warning before shooting”**
4. **“Exhaust all other means before shooting”**
6. **“Ban shooting at moving vehicles (and high-speed chases)”**
7. **“Impose requirements on the levels of force allowed based on levels of resistance”**
8. **“Require comprehensive reporting of every use of force or threat to use force”**

TASK FORCE RECOMMENDATIONS

GOVERNANCE ISSUES

- Coordination of Services
- Coordination of government contacts
- Budget and Expenditures
- Adopting and monitoring changes in law, policy, and best practices
- Intergovernmental Agreements

KEY QUESTIONS

- Does this policy expand and/or better coordinate city dollars focused on public safety?
- Does this policy expand our understanding of public safety to explicitly include public health, social services, courts, and key intergovernmental partners (e.g., HABD, BCS, etc.)?
- Do policies concerning police tools, tactics and technologies uphold standards of civil liberties/ constitutional rights?
- Does this policy promote the highest and best use of police resources?

PRIMARY POLICY ISSUES FOR REVIEW AND RECOMMENDATION

1. Structure of BPD policies, procedures, and training keys
2. Publication and Accessibility to BPD Rules & Regs
3. Training (use of force, racial bias, mental health, etc.)
4. Process for investigating officer-involved deaths
5. Data collection and reporting (particularly around use of force and officer complaints)
6. BPD Use of Force Policy
7. BPD Complaint Procedure
8. Civilian Oversight of BPD
9. Qualified Immunity
10. Body-worn cameras, dashboard cameras, use of surveillance technology and public access to data
11. Community-Based Trauma-Informed investments and services in support of community safety

IF YOU HAVE QUESTIONS, PLEASE EMAIL PEACE@BIRMINGHAMAL.GOV.

