

**Comments from the Maryland Office of the Public Defender for Baltimore City  
Draft Use of Force Policy Training Curriculum  
April 2019**

The Office of the Public Defender (OPD) provides these comments to the Baltimore Police Department (BPD) on its draft training curriculum for the Use of Force Policy. Sufficient training on the parameters of when force may be appropriate, de-escalation techniques and other measures to minimize unnecessary force, the safety and legitimacy principles underlying the limited use of force, and the oversight and accountability measures in place to address inappropriate or excessive force are critical components of the consent decree and urgently needed to garner community trust, improve safety, and prevent avoidable injuries and deaths.

Our recommendations are divided into two sections: general recommendations, which address overarching themes or issues that could use further attention in the curriculum; and specific recommendations, which suggest revisions to portions of the draft curriculum. We recognize that this curriculum is just one portion of a fuller set of training materials and assume that key topics directly related to use of force such as implicit bias, responding to behavioral health issues, and interactions with youth will be addressed more fully elsewhere. However, they are sufficiently important to warrant overlap and reinforcement as relevant in multiple curricula.

The eLearning modules were difficult to evaluate without the script or case studies that will provide context to the PowerPoint pages. As a result, our review primarily focuses on the in-person curriculum. Some of the latter case studies were not available, so we were not able to assess whether they relied upon experiences directly relevant to the BPD.

## **I. General Recommendations**

Ensuring sufficient coverage of a wide range of topics within the limited time available is a common training challenge. While not every example and detail can be provided, there are some broad topics that the materials do not, but should, address. Based on the experiences of our clients, we believe that the following topics merit attention in the use of force curriculum. To the extent that they are addressed more fully in another curricula, reference to those trainings and general reinforcement of the overarching principles would still be worthwhile.

### **A. Address the disciplinary and legal consequences of violating the use of force policies.**

The training materials do not mention the repercussions of violating the use of force policies. While the curriculum rightfully focuses on the benefits of de-escalation and other ways to minimize the risk of excessive force and unnecessary injury, the accountability measures should also be addressed – both so that members are aware of these consequences and to reinforce the value placed on accountability and oversight by the Department.

*Suggested action:* In the policy review (Day 1 Lesson 2) lesson and the use of force (module 1) eLearning presentation, include information about the range of disciplinary measures (up to

termination) and possible criminal charges that can result from policy violations and/or failure to report violations known to be committed by a fellow officer. If there remains a discipline matrix, include that in the PowerPoint slides.

Within case studies throughout the curriculum, particularly where officers used excessive force (or did not report excessive force used by another officer) note the potential disciplinary and legal consequences that could result from those actions under BPD policy.

#### B. More dedicated discussion and experiential learning on de-escalation techniques

De-escalation is the most critical skill development needed to minimize the use of force and improve/increase police legitimacy, but its dedicated session is among the shortest modules. While the general value of de-escalation is addressed, and several case studies throughout the curriculum include a mention of basic de-escalation methods, there is no explicit discussion of the range of de-escalation techniques nor their application to common challenging situations, such as responding to a person experiencing a behavior health crisis or dealing with a crowded environment.

The importance of team response planning; communication with the subject, between members, and other individuals present; nonverbal cues; and control over the larger environment deserve explicit dedicated attention in the discussion, with opportunities to practice these skills, which can then be reinforced through its incorporation into other discussions throughout the curriculum. Given the prevalence of interactions escalating due to mental health issues, theory from a clinician as to what signs to look for, appropriate language to use, indications that a person is escalating, and the effects of force on people in crisis or under the influence would also be beneficial.

There is also little hands-on practice of de-escalating techniques. Experiential training is predominantly focused on proper use of batons and other weapons. Verbal de-escalation is practiced in one exercise, but the participant is pointing a weapon toward the simulation subject, which on its own may potentially escalate a situation. Participants should have opportunities to practice verbal communication and other de-escalation skills without the use of any weapons.

While possibly not appropriate for this curriculum, but vitally important to officer and public safety, is training on mindfulness. The impact of personal emotions, experiences and thoughts can be overwhelming and negatively impact officer performance. It would also significantly further the priorities and goals of de-escalation while improving officer wellness. Officer mindfulness has been shown to reduce stress, minimize burnout and increase resiliency. The impact is more measured responses, even in highly stressful situations, and a positive role in implicit bias and use of force.<sup>1</sup>

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<sup>1</sup> See, e.g., John H. Kim, *Mindfulness: The Next Frontier of Battling Officer Stress*, 10 *Dispatch* (2017), online at: [https://cops.usdoj.gov/html/dispatch/12-2017/Mindfulness\\_Next\\_Frontier\\_of\\_Battling\\_Officer\\_Stress.html](https://cops.usdoj.gov/html/dispatch/12-2017/Mindfulness_Next_Frontier_of_Battling_Officer_Stress.html); Jennifer Tejada, *Mindful Leadership*, National Police Foundation Blog, online at <https://www.policefoundation.org/mindful-leadership/>.

*Suggested actions:* In the first module, include an example of good communication and effective de-escalation as proper use (or lack of use) of force. The de-escalation IST (and/or other modules) should also incorporate hands-on exercises for participants to practice relying on verbal and nonverbal skills with challenging (but compliant) individuals without displaying a weapon and working together to plan a team response.

The de-escalation IST should also include: (a) discussion and at least one slide listing various types of de-escalation techniques for review; (b) discussion of best practices for de-escalation in situations that are prone to escalation, such as responding to a behavior health crisis, a crowded environment, known individuals with a history of noncompliance, and youth; and (c) de-escalation over time, highlighting that someone who may have been aggressive or resistant should be considered compliant once they are calmer and/or restrained.

### C. Reinforce the value and importance of reporting.

Reporting is only mentioned in one module toward the end of the two-day curriculum that is focused on report writing. Even there, aside from a brief mention of police legitimacy, it does not discuss the role that reports play in furthering BPD's mission, core principles, and professional development of its members.

The training objectives listed on page 175, include "explain[ing] the positive and negative effects report writing has on police legitimacy." This framework suggests that reporting can be a negative action that may not be appropriate in some circumstances.

*Suggestions actions:* In case studies and scenarios throughout the curriculum, reference the reporting that might be needed based on the level of force used.

In the reporting training module, expand the discussion of why reports are needed to include: (a) a more fulsome explanation of how reporting promotes police legitimacy; (b) how failing to provide consistent and accurate reports hinders police legitimacy; (c) how reports help identify patterns, trends, and needs; (d) the benefits of reporting for supervision and professional development; and (e) the potential consequences for failing to fulfill reporting obligations.

In the training objectives slide on page 175, change the third objective to: "In groups, discuss the role of report writing on police legitimacy."

## II. **Specific Recommendations**

Recommendation 1: Promote immediate application of the materials taught, regardless of when the policies are officially published.

The first module begins with an explanation that the new policies will not go into effect until everyone is trained, suggesting that implementation of these practices can wait until then. Regardless of when the policy is enforced, these practices should be implemented right away.

*Suggested action:* On page 6 of the draft curriculum (page 4 of Use of Force & Police Legitimacy Lesson Plan), replace

“Although you will not be accountable for the implementation of the policies until they are officially published, which occurs after members of the Department complete this training, its encouraged that you consider implementing these practices as soon as possible, as they are professional policing practices that many of you already embrace.”

With:

“The use of force policies and practices in this training and the related modules are best police practices and ensure compliance with constitutional, federal and state law. While the revised policies will not be officially published until after all members of this Department complete this training, many of you already embrace these professional policing practices and all members should fully implement these practices as soon as possible.

Recommendation 2: Incorporate public safety into the bases for police legitimacy.

Police legitimacy is a good framework for engaging participants in the need for and importance of the materials covered. The benefits of good decision making and police legitimacy articulated in the script and slides could more explicitly incorporate improved safety, for members and the public alike.

*Suggested action:* For the Police Legitimacy slide on 126 (and reprinted ...) add “Increased safety for members and the public.”

Recommendation 3: On the use of force continuum, remove the arrow suggesting that reasonable, necessary, and proportional analysis escalates.

The Use of Force Continuum chart is utilized throughout the trainings to visualize what is permitted at what levels of action. Given its prominence throughout, its details are very important. The top two lines, which are both highlighted in different color arrows, suggest that they move in the directions of those arrows. For the second one (“BPD Members must continually evaluate situation and attempt to de-escalate”) the arrow is an accurate reflection of the point made by the text. For the top line (“BPD Members may use force that is reasonable, necessary, and proportional.”), the arrow suggests that that analysis should escalate consistent with the direction of the arrow. The point would be more properly and clearly made if the arrow was not present.

*Suggested action:* On the use of force continuum slide (pages 129, 137, 149) continue to highlight “BPD Members may use force that is reasonable, necessary, and proportional” but not with an arrow pointing to increased levels of force.

Recommendation 4: Define compliance so that it is clear it addresses the full range of behaviors that do not constitute resistance or aggression.

The materials with the use of force continuum discuss the levels of resistance without any explanation or discussion of the full range of compliance. Compliance is not limited to the people who are acting in accordance to officer preference. Individuals who are discourteous or otherwise taking lawful action (such as using their phone to film a police interaction) are also compliant. Likewise, once a subject is in handcuffs or otherwise restrained, they should almost always be considered compliant. Clear instruction is needed that actions not favored by officers are not necessarily resistant or aggressive, and do not warrant an escalated response.

*Suggested action:* Include a full explanation about compliance, making clear that some actions which may be undesirable to members are not resistant or aggressive. Include specific examples of actions that in the past have resulted in inappropriate escalation of force, such as: a subject who is verbally agitated but cooperative; an individual who elects to leave or not answer questions when there is no grounds to detain them; someone peacefully filming a police encounter; handcuffed individuals, even if previously resistant or aggressive.

Recommendation 5: Be clear that strikes are limited to active aggression and aggravated aggression, and note the potential consequences for improper strikes.

The first module in the curriculum relies on two case studies to show improper uses of force. The first one, as described, is clear that the person is compliant and should not be subject to hand/foot strikes. The script rightly notes that the force was inappropriate, but could further reinforce that hand/foot strikes are always limited to aggressive subjects and that other uses, beyond escalating the interaction and potentially causing unnecessary injury, can have disciplinary and legal consequences.

*Suggested action:* On page 12 of the curriculum, revise the script to say: “Force within Policy: ... Hand/Foot strikes can **only** be used on a subject displaying Active Aggression or Aggravated Aggression”

Also add a comment that the use of strikes in other circumstances is dangerous, violates the policy, and could result in the disciplinary consequences resulting from failing to comply with the policy and potentially criminal charges.

Recommendation 6: Rely on a case study that includes proper police communication to discuss levels of resistance.

The second case study in the first module, discussed in the curriculum at pages 14-19, clearly shows improper use of CEW, since there is no indication of aggression. However, it is unclear, as the outline suggests, that the subject was resistant merely because he was agitated. While the subject’s comments and actions may have been counter to the officers’ interests, at no point was any order given that the subject did not obey. Nor was it clear that the officers had a proper reason to insist that the subject stop for questioning. Interpreting this as resistance suggests that chemical agents or baton use may have been appropriate, or that the response on its own would be a grounds for arrest. While the materials note that communication would have been more appropriate for de-escalation, it should further be emphasized that communication is needed to determine that someone is resistant and to ascertain whether any use of force is appropriate.

*Suggested action:* Either change the second case study to one that includes clear orders that resulted in resistance or, in the discussion of this case study, classify the resistance level as compliant because, without clear orders, a person should not be considered resistant.

Recommendation 7: Within the Critical Decision-Making Model (CDMM) lesson plan, emphasize communication and note how biases may impact the perception of risk.

Effective critical decision-making requires ongoing communication, in order to gather information needed for good decision-making, to effectively implement the decision chosen, and to appropriately “spin the model” through reassessment of the situation, and fine-tuning of the response. The discussion should explicitly incorporate the communication needed at each step.

This module is also an important place to recognize implicit bias and reinforce measures to minimize its impact. That biases and improper assumptions will negatively impact CDMM if they are not acknowledged should also be addressed.

*Suggested actions:* Revise the discussion of Step 1 of CDMM (page 33) as follows:

Step 1: Collect Information- Gathering information and intelligence is an ongoing process **that should include asking for information from BPD sources , such as dispatch, supervisors, and other officers, as well as from outside of BPD, such as family members and others on the scene.** If you’re not getting the information you need, keep asking/probing. Information collection **and related communication are is a common threads** throughout Steps 2-5.

In the discussion of Step 2 (pages 33-34) add:

**The factors to consider are based on observations of the subject at that time, not their race, gender, age, language ability, religion, sexual orientation or other demographic characteristic. A separate training will go into more detail on how to counteract implicit biases and avoid escalating a situation based on assumptions.**

Revise the script on Step 5 of CDMM (page 35) as follows:

Step 5- Act, review, and re-assess. In this step, the officer takes an action and then assesses whether the action had the desired effect. **Communicating with other members before taking action is vital to a consistent and appropriate response that promotes safety. Where practicable, the subject should also be informed of how to comply and, if resistant or aggressive, the consequences for failing to do so.** If the action did not resolve the issue what other things might the officer consider? If necessary, the officer “spins the model” and goes back to an earlier step of gathering additional information

Revise the corresponding slides as follows:

- Step 1 slide (page 151): “Ask Dispatch, **Members, Civilians on Scene,** and Others (\*keep asking)”
- Step 2/Threat Assessment slide 1 (page 153) revise the last bullet point: “Guard against officer complacency **and biases.**”
- Step 2/Threat Assessment slide 2 (page 154) add: **Level of Compliance/Resistance/Aggression**

Recommendation 8: In the CDMM training, clarify what is meant by “success.”

Both the script discussion and slides for CDMM Step 4 (pages 35, 160) emphasize determining the “greatest likelihood of success against the least harm.” At no point, however is “success” ever defined. The curriculum should make clear that “success” is promoting safety and lawful behavior, not necessarily making an arrest.

*Suggested action:* Revise the script on page 35 and the slide on page 160 as follows: “Greatest likelihood of ~~success~~ **promoting safety and lawful behavior** against the least harm.”

The case studies included in this module provide less detail than in other modules. In addition to not providing the videos of the case studies, there is no outline of the key points for discussion. The case study timelines provide a general impression of their content, but in the second case study it is unclear why a taser was deployed when the subject appears to be compliant and conversant. The curriculum should clearly specify that the officer’s decision was not an appropriate use of CDMM, or provide further details on why the taser deployment was needed.

Recommendation 9: Provide a brief review the entire use of force continuum at the start of baton training, rather than just mention no force to firearm.

The curriculum effectively refers to the use of force continuum at various points, reinforcing its general principles and how to consider it in assessing the appropriate response. At the start of the baton training, however, there are references to minimal force and firearms without a clear indication of how rare firearm use should be.

*Suggested action:* Revise the second paragraph on page 57 as follows:

“Always keep in mind that your objective as a police officer is control, to ensure the safety of the officer, the subject and the public. In most situations, the officer can control a subject with no force or with minimal amount of force (i.e. empty hands, CEW, pepper spray). **In the most extreme circumstances** ~~Other times, unfortunately,~~ the firearm **is may be** the only option.”

Recommendation 10: In the simulation and discussion scenarios at the start of Day 2, consistently reinforce turning a body-worn camera on in response to a call.

The Force Simulator T.I. Machine training is among the most experiential for participants. That exercise as well as the accompanying discussion scenarios should replicate and reinforce required and preferred practices as much as possible. Two of the four scenarios include turning on the body worn camera when appearing on the scene. The others, particularly when responding to a call, should include this instruction as well.

*Suggested action:* On page 88 of the curriculum, add turn on BWC to the target response for scenario 2. If practicable, students should practice turning on the BWC at the start of the simulated exercise as well.

Recommendation 11: In Scenario 3 for discussion during the simulated exercise, discuss implicit bias and make clear that the youth have not done anything to give rise to arrest.

In the third scenario, detailed on page 89, an officer approaches three African American youth for questioning. At no point (including the hypothetical situations in the follow up questions), do any of the youth take any action that would give rise to arrest or any other detention/restraint. The discussion should make clear that, when a subject (or subjects) are entitled to leave, uncooperative behavior is within their right.

*Suggested action:* Amend the target responses on page 89 to include that the youth are free to leave at any time and that, even when uncooperative, there is no grounds for arrest without an observed criminal action.