CFLJ COMMENTARY

What Exactly Does the APD’s Use of Force Policy Prohibit?

The average citizen’s understanding of exactly what use of force is prohibited by Albany Police Department policy is hampered by the lack of transparency of the APD in disseminating its policies; the arcane manner in which the policies are written; and the absolute secrecy in which APD Office of Professional Standards’ investigations are held. A critical examination of the APD’s Use of Force policy reveals why the department’s Office of Professional Standards finds so few officers to be in violation of police policy.

The Use of Force policy is nebulously-worded, obfuscating precisely which tactics are prohibited. It is also riddled with escape clauses that help absolve an officer (in the eyes of the APD’s Office of Professional Standards) if he/she does employ a questionable tactic. In conducting this examination of policy, the Center is relying on the two “general orders” that the APD emailed to CFLJ as one document in April 2020, in response to the Center’s request for the department’s Use of Force policy. Those orders are “Use of Force – Less Lethal Weapons,” General Order No: 1.3.00, and “Use of Force – Lethal Weapons,” General Order No: 1.3.05.” These two orders govern police officer physical control tactics without weapons, with various types of batons, with chemical agents, with dogs, with Conducted Energy Weapons (Tasers), and with firearms. Let’s take just one example to demonstrate the policy’s vagaries: “choke holds.”

After George Floyd was killed by a Minneapolis police officer who knelt on his neck for eight minutes and forty-six seconds, Mayor Kathy Sheehan heeded local calls for reform by signing an executive order that bans both choke holds and knee-to-neck holds by the Albany Police Department. The APD’s spokesperson, Steve Smith, responded that while the department supports the Mayor’s reforms, “It should be noted that choke holds and knee-to-neck holds are already prohibited by the Albany Police Department’s use of force policy.” Parsing that statement, let’s take a look at the terms “choke holds, and “prohibited.”

The term “choke hold” does not appear in either of these “use of force” general orders, the only orders provided by Police Chief Eric Hawkins in response to the Center’s request for the department’s use-of-force policies. Given that the “choke hold” tactic involves no weapons, one might speculate that the “prohibition” on “choke holds” could be found in the less-lethal-weapon order, perhaps using different terminology. Weaponless contact by a police officer is covered in a subsection of the order (italics added by CFLJ):

III. B. 1.c. Sworn officers may use department approved open hand control tactics as a response option in the application of physical force.

i. Soft open hand control tactics include, but are not limited to the following:
   a) Escort holds;
   b) Joint locks; and
   c) Pressure point control techniques that generally involve the application of pain compliance.

ii. Hard open hand control techniques include, but are not limited to the following:
   a) Striking techniques; and
b) Take down measures that consist of the forceful direction of the subject to the ground.
   1) All strikes, kicks, punches, etc. shall be targeted at a subject’s major muscle mass areas and muscle structures.

It does not appear that this subsection “prohibits” choke holds, given the “but are not limited to” clauses. Perhaps the department is relying on the “authorized use of force” and “authorized use of deadly force” sections of the policy in claiming that choke holds are prohibited. Those sections read as follows (italics added by CFLJ):

I. Authorized Use of Force
   A. Use of reasonable force:
      1. While in the performance of official duties, officers shall only employ the degree of physical force that is reasonable and necessary, based on the totality of the circumstances, to accomplish lawful objectives, as established by Article 35 of the New York State Penal Law and the policies and procedures set forth by this department.

   ... 

II. Authorized Use of Deadly Force
   A. While in the performance of official duties, an officer may use deadly force only when the officer reasonably believes that the action is in defense of human life, including the officer’s own life, or in defense of any person in imminent danger of serious physical injury...

Neither of these two sections “prohibits” choke holds. It may be the case that APD training directs that choke holds are not to be used, but the APD statement that choke holds are prohibited by the Use of Force policy (as emailed to CFLJ by the APD) is not accurate. The determination of whether the degree of force is reasonable and necessary, based on the totality of the circumstances, is made by the accused’s fellow officers in the APD’s Office of Professional Standards, all but precluding objective accountability. According to J. Scott Thomson, former ten-year Chief of Police in Camden, New Jersey and past president of the Police Executive Research Forum, “To change the culture around the use of force, you have to have continuous training, systems of accountability and consequences.”

Given the APD’s imprecisely-worded Use of Force policy, it is unrealistic to expect that an officer accused of a policy violation would not be accorded the benefit of the doubt by his/her fellow officers in the Office of Professional Standards. Says Thomson, “Within a Police Department, culture eats policy for breakfast.” To prohibit choke holds and knee-to-neck holds, the Common Council must codify Mayor Sheehan’s Executive Order. To hold Albany police officers truly accountable for all instances of misconduct, the Common Council must give the Albany Community Policing Advisory Committee (ACPAC) and/or another independent body the authority to review and approve APD policies to ensure clarity. Additionally, the Council must authorize subpoena powers and other investigatory techniques for the Community Police Review Board, to ensure accountability and appropriate consequences.

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