



Concord Police Department

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June 16, 2020

Concord Police Department's Response to "8 Can't Wait"

As the new Chief of Police for the Concord Police Department, I am currently reviewing all policies, procedures, tactics, and training. I am listening carefully to the community conversations, and I am mindful of the current climate of frustration and anger related to police abuse-of-power situations, including the inexcusable killing of George Floyd by a Minneapolis police officer. I am also aware of how this sentiment affects our own community engagement and public trust here in Concord.

I understand and fully embrace the notion that the Concord Police Department is created by the community and for the community. It is our responsibility to develop rules, regulations, policies, and procedures which reflect the values of our community and utilize the best practices of our profession. I have heard from many of you who requested Concord's response to the national call for the "8 Can't Wait" policing reforms. In response to your requests, I would like to share the following:

1. Require de-escalation.

Concord PD complies with this request. The Concord Police Department trains officers according to the requirements of state law to employ techniques when dealing with people in crisis. In addition to these state mandates, Concord goes beyond and trains officers on topics such as mental health, crisis intervention, anti-biased-based policing, and de-escalation tactics. Principles of instruction include conflict resolution, active listening, empathy and respect, rapport building, and promoting calm and confidence within the situation. We also utilize our own virtual reality training platform to reinforce the best practices of de-escalation approaches and techniques. We were recently invited to showcase our virtual reality training curriculum to the California Commission on Police Officer Standards and Training (POST) for consideration of a statewide model of de-escalation training.

California Senate Bill 230 (SB 230), which is a law unique to California that was passed in 2019, requires that "officers utilize de-escalation crisis intervention tactics, and other alternatives to force when feasible." SB 230 also mandates that policy requires officers to conduct all duties in a manner that is fair and unbiased. Additionally, SB 230 requires all officers be trained in de-escalation techniques and alternatives to deadly force. The Concord Police Department is fully compliant with SB 230.

2. Require warning by officers before shooting.

Concord PD complies with this request, whenever feasible. The Concord Police Department provides extensive classroom, practical, and scenario-based training for officers to provide

verbal warnings, where feasible, to make reasonable efforts to warn that deadly force may be used.

Additionally, California Assembly Bill 392 (effective January 1, 2020) states: “where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.” This requirement is consistent with federal case law and Concord Police Department policy.

3. Department shall require officers to intervene in the event of excessive force.

Concord PD complies with this request. Concord Police Department policy requires officers to intervene with any observed misconduct including excessive force. In addition to taking immediate action by confronting misconduct, all employees are required to report the incident through their chain of command. Policy also requires every officer to report any use of force to a supervisor. Body worn cameras are required to be activated during nearly every interaction with the community to include incidents where force is used. All uses of force are reviewed by the immediate officer’s supervisor and a review board, made up of department subject matter experts.

Additionally, SB 230 set a “requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances.” This provision is consistent with federal law as well.

4. Require comprehensive reporting of use of force incidents.

Concord PD complies with this request. The Concord Police Department has a robust use of force reporting and review process. All uses of force are immediately reviewed at the scene by a supervisor. Officer body worn camera video is reviewed on every use of force along with witness statements, photographs, and corresponding police reports. Concord PD has a comprehensive body worn camera policy whereby virtually all officer interactions with the public are recorded, including those where use of force options are employed.

Senate Bill 230 already requires “comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident.” Legislation from 2015 (Assembly Bill 71) requires statewide detailed reporting requirements on serious use of force incidents. SB 230 also requires officers to report excessive force they witness.

5. Ban Chokeholds and Strangulations.

Concord PD complies with this request. The Concord Police Department does not authorize chokeholds or strangulations. As of June 2, 2020, the Carotid restraint has been removed from Concord’s policy as a use of force option.

SB 230 requires that “an officer may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense.” Any excessive force beyond this requirement is unreasonable.

6. Ban shooting at moving vehicles.

In most circumstances, Concord PD complies with this request. However, Concord Police Department officers – when under life-threatening circumstances, coupled with an extreme hazard, and overcome by the urgency of the situation – have the discretion to fire at vehicles. Outright prohibitions in all circumstances do not account for situations where the driver of a vehicle may be threatening death or great bodily injury to others (e.g. vehicle driven into a crowd). SB 230 requires “Comprehensive and specific guidelines for the application of deadly force,” which should include guidance on the limited situations that would warrant shooting at moving vehicles.

7. Require use of force continuum.

Concord PD does not support this request, as it relies on an outdated model. The Concord Police Department trains in de-escalation tactics. Our use of force policy provides robust intervention measures, techniques, and tactics within authorized force options.

The use of force continuum is an outdated model that has proven to be impractical, even dangerous, when applied in real-life situations. Instead, policies should focus on requiring officers to create space and separation in an attempt to utilize de-escalation techniques, which are captured in the training and policy requirements within SB 230.

Use of force employed by the Concord Police Department is restricted, by policy, to those circumstances authorized by law and limited to the degree necessary to accomplish a lawful task. To this extent, our officers follow state law with regard to use of force per Penal Code § 835a.ⁱ

8. Require officers to exhaust all means before shooting.

This may be the area in which there is the least amount of common ground with the “8 Can’t Wait” platform. This requirement was rejected in the AB 392 debate as it placed officers and departments in an untenable position by permitting second-guessing of split-second decisions, creating ambiguity, and lacking in objective and clearly defined reasonable force alternatives. The focus should be on training alternatives to deadly force, requirements on proportional force, and de-escalation requirements, all of which are contained in SB 230. An officer’s decision concerning use of force alternatives should be judged based upon the totality of the circumstances and reasonable officer standard in AB 392.

The Concord Police Department policy only permits the use of any deadly force when:

- In the necessary defense of themselves, or someone else, when the officer has reasonable cause to believe they are in imminent danger of death or serious bodily injury.
 - Reasonable cause refers to the set of circumstances the officer is confronted with at the time the decision to use lethal force is made and under which any reasonable officer would conclude that that level of force was appropriate.
 - Imminent danger means that the threat of death or serious bodily injury is immediate.

- Serious bodily injury is an injury, or likelihood of injury that could result in death or serious physical impairment of the officer.
- To effect the arrest, to prevent an escape, or to recapture a suspect when the officer has reasonable cause to believe the suspect has committed or attempted to commit a felony involving the use, or threatened use, of deadly force or serious bodily injury, or when the officer has reasonable cause to believe a substantial risk exists that the felony suspect to be arrested will cause death or serious bodily harm if their apprehension is delayed.

I hope this information helps clarify Concord Police Department policies related to these policing practices. We truly are here to protect and serve you - our Concord community. We will continue to review and study best practices and implement any new policies according to state and federal law.

Additionally, I would like to invite you to participate in a study session about this topic with the City Council and me on **Wednesday, July 15 at 6:30 p.m.** We will share more information about this event in the coming days. In the meantime, feel free to send your comments to me by email at contactcpd@cityofconcord.org.

Sincerely,

Mark Bustillos
Chief of Police

ⁱ Penal Code § 835a specifically states:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use

of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

(4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

(b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

(c) (1) Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.

(B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

(2) A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

(d) A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, "retreat" does not mean tactical repositioning or other de-escalation tactics.