



Bill Federice &lt;federicebill@gmail.com&gt;

## Law enforcement review

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Mon, Nov 23, 2020 at 11:07 AM

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From: Wendy Cook &lt;wcook001@luthersem.edu&gt;

Date: Mon, Nov 23, 2020 at 11:02 AM

Subject: Law enforcement review

To: Bill Federice &lt;federicebill@gmail.com&gt;, &lt;Ronald.stevens@co.schoharie.ny.us&gt;

November 21, 2020

To: Sheriff Stevens, Mr. Federice, and Law Enforcement Review Committee Members

I would like to follow up on the Committee meeting of Tuesday, the 17th. (I apologize for my tardiness. I mistakenly went to the Howes Cave facility first.) Please note that this letter represents only my own personal views and suggestions.

I greatly appreciate the professionalism, pride and care evidenced by the law enforcement officers at the meetings I have attended. Your job is not easy. I have great respect for and confidence in the care and commitment you bring to it every day. At the meeting last week I especially appreciated hearing your forthright perspectives, such as on the mostly law-abiding community you serve, the challenges of hiring academically and personally qualified officers, holding officers accountable, distinctions between large urban and small rural departments, and your sincere desire to be the best agency you can be. That's what we all want!

I would like to offer some concerns for consideration as the Committee moves forward on implementing EO203. The first concerns regard Lexipol. Lexipol pitches its policy products as successfully protecting law enforcement departments and governing bodies (i.e. Schoharie County) from lawsuits. One strategy Lexipol uses is to write policies that describe legal standards without providing specific operational guidance. Officers cannot then be held accountable because there is no specific behavior to hold them accountable to; it's all subjective interpretation.

Additionally, I am concerned about research that indicates Lexipol policies do not support de-escalation strategies and regulation of use of force. It seems to me that these are precisely the tools needed to prevent life-threatening situations. I fear it is naive to assume that officers will know, remember and use these tools if that is not an explicit policy. Related to that, I also do not think 3-minute quickie training bites can provide the necessary focus for keeping officers sharp.

The last Lexipol concern I will mention is administrative. I have been told that local departments can "tweak" the Lexipol standard policy. However, the updates that Lexipol issues do not take local changes into account and instead simply replace, and therefore lose, the locally devised clauses.

Secondly, Sheriff Stevens, I believe you asked for specific use of force policy concerns from the public. I invite you to check out the website [useofforceproject.org](http://useofforceproject.org). This project studied policies and correlations to police violence. It found eight components that were effective in reducing occurrences of police-involved killings. To the local community's credit, Cobleskill Police General Orders already include five of the eight. I have not seen Sheriff's Department policies, but I will presume the protocols are similar.



The most imperative use of force component missing from local written policies is a defined force continuum that instructs officers on best practices. This sets a higher standard than the long-held *Graham v. Connor* "objective reasonableness". I believe a higher standard is not only possible, but necessary in these more enlightened times. I therefore suggest for consideration the attached policy (adapted from NAACP and Campaign Zero sources) at the end of this letter.

I offer use of force as a starting point but there are also other policy subjects of concern, including but not limited to:

1. Transparency, including the prompt release of body cam footage, electronic records, reports and officer files, when/if there are incidents of police violence.
2. Officers must be meaningfully trained on department policies and the policies must be enforced by leadership from the top-down, thus establishing a culture of accountability.

In closing, let me repeat that I believe the Sheriff's Department is, on the whole, hardworking, conscientious, and honest, not to mention NEEDED. With the community input mandate of EO203, we have a golden opportunity now to ensure that we have the best possible Department policies, especially given that the previous policy manual was lost in the flood of 2011. Thank you for your attention to my concerns set forth here.

Sincerely,

Wendy Cook  
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## Use of Force Policy

A. *Minimal Reliance on Force.* Law enforcement officers shall only use physical force when no other viable option is available and when all non-physical options are exhausted. In all cases where force is used, only the minimum degree of force necessary shall be employed. The minimum degree of force is the lowest level of force necessary to effect an arrest or achieve a lawful objective. To further the aim of minimal reliance on force, all law enforcement officers must carry on their person at all times at least one less likely to be lethal weapon.

B. *Continuum of Use of Force.*

1. De-escalation options –

- Placing barriers between an uncooperative subject and a law enforcement officer
  - Containing a threat
  - Moving from a position that exposes law enforcement officers to potential threats to a safer position
  - Decreasing the exposure to potential threat by using:
    - distance
    - cover
    - concealment
  - Communication from a safe position intended to gain the subject's compliance, calm an agitated subject, and promote rational decision-making:
    - verbal persuasion
    - advisements
    - warnings
  - Avoidance of physical confrontation, unless immediately necessary (e.g., to protect a bystander or witness, or stop dangerous behavior)
  - Calling extra resources to assist or law enforcement officers to assist
  - Any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject through less likely to be lethal means
2. Empty-hand control using bodily force to gain control of a situation –
- Soft technique: grabs, holds and joint locks to restrain an individual



- Hard technique: punches and kicks to restrain an individual
3. Less likely to be lethal methods –
    - Blunt impact: use of a baton or projectile to immobilize a combative individual
    - Chemical: use of chemical sprays or projectiles embedded with chemical to restrain an individual (e.g., pepper spray)
    - Conducted energy devices: use of a device discharging a high-voltage, low-amperage jolt of electricity at a distance
  4. Lethal force – a measure of last resort that is permissible only if a suspect poses an immediate threat to life or great bodily injury or to prevent an arrest from being defeated by resistance or escape and the person poses an immediate threat of death or great bodily harm unless arrested without delay
    - Serious bodily injury means bodily injury that involves a substantial risk of death; protracted and obvious disfigurement; or protracted loss or impairment of the function of a body part, organ, or mental faculty.

C. *Factors to Consider in Use of Force.*

1. The seriousness of the crime or suspected offense. It will be presumptively unreasonable for a law enforcement officer to use serious physical force against an individual who the law enforcement officer believes or has reason to believe committed a traffic or ordinance violation, misdemeanor, or non-violent felony. That presumption may be rebutted with evidence that the use of force was justified in light of other factors listed here, among others.
2. The level of threat or resistance presented by the individual. It will be presumptively unreasonable to use serious physical force against an individual that does not pose a current, active, and immediate threat of death or serious bodily injury [defined at B.4. above] to an officer or bystanders, or to use force against an individual that is engaged in passive resistance only.
  - Compliant – subject offers no resistance.
  - Passive resistance – subject does not respond to verbal commands but also offers no physical form of resistance. Expressing an intent to resist is not considered resistance.
  - Active resistance – subject makes physically evasive movements to defeat, avoid, or prevent an officer's attempt at apprehension. Expressing an intent to resist an officer's attempt at control is not considered active resistance.
  - Assaultive – subject is aggressive or combative, actively attempting to assault the officer or another person. Expressing an intent to assault an officer or another person is not considered assaultive.
  - Life-threatening – any action likely to result in serious bodily injury [defined at B.4. above] or death of the officer or another person.
3. The risk of escape. It will be presumptively unreasonable to use physical force against an individual who the officer believes or has reason to believe committed a traffic or ordinance violation, misdemeanor, or non-violent felony.
4. The conduct of the individual being confronted by the officer. Serious physical force may only be used if the individual acts in a manner that poses a current, active, and immediate threat of death or serious bodily injury to the officer or bystanders. Under no circumstances may serious physical force be used to apprehend an individual engaged in passive resistance only.
5. Whether the officer is using force against an individual who appears to be having a behavioral or mental health crisis, a person with a mental illness or a person who is otherwise in distress.
6. The time available to an officer to evaluate the situation and decide on a course of action.
7. The availability of other feasible, less intrusive force options.
8. The ability of the officer to provide a meaningful warning before using force.
9. Whether the officer believes the individual to be in close proximity to a deadly weapon, or a weapon that can inflict serious bodily injury [defined at B.4. above] on the officer or bystanders.
10. The tactical conduct and decision made by the law enforcement officer preceding the use of force.

607-353-2110

Check out the official Town of Conesville Website at:  
<http://www4.schohariecounty-ny.gov/government/town-of-conesville/>