



CITY OF CAÑON CITY

City Council

City Council Chambers
128 Main St., Cañon City, CO 81212
(719) 269-9011 • www.canoncity.org

VISION COMMITTEE MEETING
July 22, 2020
5:00 p.m.

AGENDA

- 1. CALL TO ORDER: City Council Chambers, City Hall**
- 2. ROLL CALL: COUNCIL MEMBERS DENNEHY, GONZALES, JAQUEZ, MEISNER, REED, B. SMITH, MAYOR PRO TEM HAMRICK, MAYOR SMITH.**
- 3. DISCUSSION:**
 - A. Cañon City Police Department: Senate Bill 217 Use of Force.**
- 4. ADJOURN The next scheduled meeting is date August 29, 2020.**

Posted pursuant to code on Wednesday, July 15, 2020
Cindy Foster Owens, City Clerk



CITY OF CAÑON CITY

City Administrator

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TO: Mayor and City Council
FROM: Ryan Stevens, City Administrator
PREPARED BY: Tammy T. Wagner
DATE: 07/22/2020
RE: Cañon City Police Department: Senate Bill 217 Use of Force

SUMMARY: Due to the passing of Senate Bill 217 (SB 217), the Cañon City Police Department is reconciling department policy against SB 217. Interim Support Services Commander Tim Walsh and Sergeant Tim Bell completed and provided a power point presentation for City Council regarding Senate Bill 217.

The department is in the process of changing our policies that are relevant to SB 217. The Policy Review Committee has met to review those changes and provide those back to Interim Chief Wagner in draft form.

Additionally, the Police Department is providing training to our officers as outlined in SB 217. This training is to be completed by August 31st, 2020 and will be covered in shift briefings. All officers, to include Code Enforcement Officers, are documenting all legal basis contacts as provided within in the new bill.

Should you have any questions, please do not hesitate to call me.

REVIEWED BY LEGAL? Yes No

RECOMMENDED ACTION: N/A

USE OF FORCE
LEGAL PERSPECTIVES
SB20-217
Canon City Police Department

Sgt. Tim Walsh
Sgt. Tim Bell

What parameters must be followed when applying force?

- Constitutional parameters
- State legal parameters
- Agency parameters
- Training parameters
- Ethical parameters

Graham v. Conner
Objective Reasonableness
(Fourth amendment right against unreasonable seizures)

- The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation

Graham v. Conner
Objective Reasonableness
(Fourth amendment right against unreasonable seizures)

- In determining reasonableness, the court will look at the following:
 1. Whether the suspect poses an immediate threat to the officer or others
 2. The severity of the crime committed
 3. Whether the suspect is actively resisting arrest
 4. Whether the suspect is attempting to escape

Johnson v. Glick
(Fourteenth amendment right to substantive due process)

Four Part Test

- 1.) The need for the application of force.
- 2.) The relationship between that need and the amount of force that was used.
- 3.) The extent of the injury inflicted, and
- 4.) Whether the force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm."

Tennessee v. Garner
(The fleeing felon rule)

- 1) The Fourth Amendment prohibits the use of deadly force to prevent escape of a suspected felon, unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious injury to the officer or others.

Deadly physical force

- Force, the intended, natural and probable consequence of which is to produce death, and which does, in fact, produce death.

From Colorado Revised Statutes, 18-1-901(3)(d)

4 Requirements for the use of Deadly Force

- **Ability:** An imminant capacity. It usually manifests itself in the form of a weapon of some sort, but not always. The person you applied deadly force against must have been "able" to kill you or inflict serious bodily harm.
- **Opportunity:** An attacker, in addition to having an "ability," must also be in a position to bring the destructive powers of his ability to bear on effective opportunity. The question is, were you within the effective range of his capabilities?
- **Imminent Jeopardy:** You are in "imminent jeopardy" when the attacker, unambiguously indicates, by words and/or actions, that it is his intention to kill or seriously injure you, and further, that he intends to do so at once.
- **Preclusion:** All other options were precluded. In other words, you used deadly force only as a last desperate resort. This does not mean that you have to use all combat options on the use of force's, situations being resulting to deadly force. It means that the situation made those options unavoidable, unpreventable, uneffective.

FACTORS AFFECTING USE OF FORCE

- Age
- Size
- Strength
- Skill Level
- Injury or Exhaustion
- Special knowledge of Subject
 - Physical location
 - Availability of Back up
 - Proximity to weapons

Use of physical force by peace officers.

- Previously, all use of force law was based on the reasonableness standard outlined in *Graham v. Connor*.
- **Changes:**
- Physical force is permitted only when nonviolent means would be ineffective
- Physical force applied must be consistent with minimizing injury to others
- Medical aid must be rendered as soon as practical.
 - A requirement to render aid has long been in policy.
- Relatives must be notified of serious injuries as soon as practical
- Deadly force may only be used to affect an arrest for a violent felony involving use or threats of deadly force where the suspect presents an immediate threat **and where the force does not create substantial risk of injury to others.**
- Chokeholds including any restriction of breathing or blood flow to the brain are prohibited by law.
 - Chokeholds have long been prohibited by policy.

Use of excessive force.

- Reporting of excessive force has long been required by law and by policy
- **Changes:**
- Duty to intervene is created under the law, with a failure to do so carrying a criminal penalty.
 - Duty to intervene has also long been in policy.
- If any investigation determines excessive force was employed, this must be reported to the District Attorney's Office, and POST.
 - Excessive force cases have always been prosecutable as assault or other crimes.
 - POST is now mandated to discipline officers involved in excessive force with serious bodily injury or death.
 - The department is mandated to discipline officers involved in excessive force.
 - Department use of force cases have long been held without disciplinary action of excessive force.

Qualified Immunity / Indemnification

- Qualified immunity protects a government official from lawsuits alleging that the official violated a plaintiff's rights, only allowing suits where officials violated a "clearly established" statutory or constitutional right. When determining whether or not a right was "clearly established," courts consider whether a hypothetical reasonable official would have known that the defendant's conduct violated the plaintiff's rights
- Qualified immunity has never existed under state law, but affects Colorado as is it included under federal case law (*Harlow v. Fitzgerald*, 457 U.S. 800 (1982)).

Qualified Immunity / Indemnification

- A government official granted qualified immunity can not be sued for the actions in question.
 - Does not only apply to use of force.
- Under SB20-217, qualified immunity does not exist in Colorado law, however, this may be irrelevant based on case law.
 - SCOTUS has rules government officials are entitled to qualified immunity when it applies.

Qualified Immunity / Indemnification

- Historically, use of force suits have been brought in federal courts rather than Colorado state courts due to the Colorado Governmental Immunity Act which prevented such suits in state courts.
- SB20-217 removes the Colorado Governmental Immunity Act protections for suits filed under the Colorado Constitution, Article 2, which mirrors the U.S. Constitution Bill of Rights.
- It is likely that plaintiffs will begin filing suits in Colorado state courts in order to side-step federal qualified immunity.
- The explicit removal of Immunity Act protections and qualified immunity increases the likelihood of civil actions against the city, but can not affect the likelihood that any given suit will result in liability.

Qualified Immunity / Indemnification

- Officers must be indemnified by the city, except when it is determined the officer did not act in good faith.
 - Under these circumstances, the officer shall be personally liable for 5% or \$25,000 of any judgement, whichever is less.
 - Previously, if an officer was found to have acted willfully or wantonly, that officer could be held liable for the entire judgement.
 - The city must still pay the remainder of any judgement.
 - Attorney's fees **MUST** be paid to a prevailing plaintiff.
 - Attorney's fees **MAY** be granted to the city, if the city prevails and the suit was determined to be frivolous by the court.

Qualified Immunity / Indemnification

- If an officer is convicted of a criminal act related to the claim, the city is not **required** to indemnify the officer.
 - It is not clear whether a conviction for a lesser offense (such as may occur in a plea bargain) would constitute a conviction related to the claim of a violation of rights.
- If a claim of personal liability against an officer can not be collected, the city must pay the full claim.

Body Worn Cameras

- SB20-217 requires departments to issue body worn cameras to all officers beginning in 2023.
 - Currently, cameras are issued to all patrol officers, but not investigations or command officers.
 - This mandate is unfunded, and will require the city to purchase an additional 9 cameras based on currently funded staffing levels.
 - The current cost for these additional cameras is estimated at approximately \$8200 for the first year, and \$6705 per year thereafter.

Body Worn Cameras

- Departments must also release video within 21 days after receipt of a complaint of misconduct.
 - Video must be redacted to protect private information of victims or other specified individuals unless those individuals agree to release unredacted video.
 - Redaction is likely to require software and training designed for this purpose.
 - Cost of this software and associated training and personnel (if required) is not yet available.

Body Worn Cameras

- Officers are required to activate body worn cameras on any call or any self-initiated activity.
- If a camera is not activated, the courts may infer that the missing footage would have captured misconduct.
 - Except in a criminal procedure.
 - Cameras may also be shut off when discussing tactical, administrative, and management decisions.
- Intentional failure to activate a camera must result in disciplinary action and must be reported to POST.

Data Reporting

- Demographic information including race, sex, and similar information must be collected and reported to the state.
 - Some information, such as race, is based, by the statute, on the officer's perception, and may or may not coincide with the individual's preferences.
- Additional information such as searches conducted, weapons displayed, and other actions taken must also be collected and reported.
- Procedures to collect this information are already in place.

Anticipated Policy Changes

- Changes to requirements for officers' reports on citizen contacts
- Changes to body worn camera policy
- Changes to internal affairs policy
- Minor changes to record keeping and reporting policy
- Minor changes to use of force policy

Training

- SB20-217 mandates training for all officers on the new force standards no later than 9/1/2020
 - POST may de-certify any officer not complying with this or other training requirements
 - Training regarding this bill is in progress and will be completed on time for all officers
- CCPD Officers also complete a minimum of 4 hours of arrest control and 4 hours of firearms training per year, with most officers far exceeding these minimums
- POST requires regular anti-bias training completed by all officers
- Cultural Awareness training in addition to this requirement was completed by all officers this month

