



October 19, 2016

**Via Email and U.S. Mail**

Matthew Barge, Monitor  
Cleveland Monitoring Team  
c/o Lutheran Metropolitan Ministry  
4515 Superior Ave., First Floor  
Cleveland, OH 44103  
[matthewbarge@parc.info](mailto:matthewbarge@parc.info)

**Re: ACLU of Ohio Comments on Use of Force Reporting**

Dear Matthew,

I write to provide feedback on the "Use of Force Reporting" policy you released recently. As we discussed in our October 4<sup>th</sup> meeting and our October 5<sup>th</sup> letter, we want to highlight the need for strong implementation policies to ensure the efficacy of the Use of Force General Policy.

The ACLU of Ohio regards the current draft reporting policy as a strong step toward constitutional policing in Cleveland. In particular, we commend the requirement to report all uses of force except *de minimis* force; the requirement that *all* officers on the scene must report; the requirement for witnessing officers to report allegations of unreported or out-of-policy uses of force; and the prohibition on conclusory statements, "boilerplate," or "canned" language in officers' reports.

There remain, however, several provisions that we view as insufficient or unclear. Please consider our recommendations for addressing these, below.

**Section I: Use of Force Notification Guidelines**

As to subsection B, we recommend creating a mechanism for making required notifications independent of the police chain of command, to encourage officers to report their fellow officers without fear of retaliation. We address this, and similar ways of ensuring the integrity of required reporting, further in our discussion of Sections IV and VI below.

**Section IV: Witness Reporting**

We strongly recommend that, to ensure accurate reporting, the policy establish protections against retaliation for officers who report fellow officers' violations. Providing an option to make reports to an actor outside of the police chain of

AMERICAN CIVIL  
LIBERTIES UNION  
OF OHIO FOUNDATION  
4506 CHESTER AVENUE  
CLEVELAND, OH 44103-3621  
T/216.472.2220  
F/216.472.2210  
WWW.ACLUOHIO.ORG  
contact@acluohio.org

a member of  
**SHARES**



command would help to accomplish this. Creating a penalty for retaliation against officers who make accurate reports would also help.

#### Section V: Additional Reporting Requirements

The policy makes pointing a gun at an individual a reportable use of force, a provision that we strongly support. But we are troubled by the further provision in subsection C, 1 that “[u]n-holstering a firearm or un-holstering and keeping the firearm at the low ready position, high ready position, or ‘SUL’ position, without pointing it at an individual, is not a use of force.” This exception creates an impracticably blurred line for officers and undermines the seriousness of drawing a weapon. In our view, any un-holstering of a weapon should be a reportable use of force.

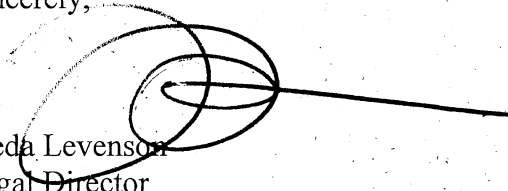
We also seriously question the exemption of SWAT officers from the requirement to report the pointing of a firearm at a subject (C 2). We recommend removing this exemption. At minimum, this exemption must be heavily qualified, as is the exemption for other tactical units in C 2 a iii.

#### Section VI: Failure to Report Use of Force

We recognize that any policy that relies on intra-culture reporting stands to suffer from the potentially corrupting dynamic of “if I don’t report my colleague, he won’t report me.” Only the most serious consequences for non-reporting can counteract that obstacle. We seriously question the distinction between *failure* to report (which is a terminable offense) and omissions and misrepresentations in reporting (which are non-terminable offenses). We recommend that Parts A and B be combined so that the same potential penalties apply equally to both categories of offenses.

We look forward to providing feedback on the forthcoming investigations policies as well. Please do not hesitate to contact us if we can offer any further explanation or discussion of the points made in this letter.

Sincerely,



Freda Levenson  
Legal Director  
ACLU of Ohio

cc: Mr. Mario Clopton; Dr. Rhonda Williams; Mr. Charles See