

Public Records Request #3652

The following materials have been gathered in response to public records request #3652. These materials include:

- City Manager's Office Memorandum – May 18, 2020
- CMPD Response to Citizens Review Board Recommendations – Review of Officer Use of Force

This information was provided as a response to a public records request on 5/22/20 and is current to that date. There is a possibility of more current information and/or documents related to the stated subject matter.

Further Information

For further information about this request or the Citywide Records Program, please contact:


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**CITY MANAGER'S OFFICE
M E M O R A N D U M**

May 18, 2020

TO: Citizens Review Board, Mayor, and City Council
FROM: Marcus D. Jones, City Manager 
SUBJECT: Citizens' Review Board Findings regarding Danquirs Franklin appeal

The Citizens' Review Board (CRB) held a review of the officer use of force on March 25, 2019 which resulted in the death of Danquirs Franklin. The review took place in a closed session during an evidentiary hearing upon the request of the family of Mr. Franklin, which appealed the October 14, 2019 decision of Charlotte-Mecklenburg Police Department Chief Kerr Putney that the use of force was justified.

The board's responsibility is to review whether or not Chief Kerr Putney's disciplinary finding is correct based on CMPD directives. Upon review, the CRB recommended that the Chief change his determination. Chief Putney's assessment was that Officer Kerl did not violate CMPD's previous 'Use of Force' directive during this incident.

I have discussed the Chief's decision at length and I greatly value the diligence of the CRB members. The feedback from this board is very valuable as we continually look to improve our services and our relationship with our community.

This is just the second time that the CRB has disagreed with a decision made by the Chief of Police since the CRB's inception in 1997. The first was in 2017 and though Chief Putney and I stood by his initial decision, CMPD did use the CRB review to change some aspects of CMPD operations and training. I point this out to reinforce two aspects: 1) how rare it is for the CRB and the Chief of Police to arrive at different conclusions and 2) the considerable weight we give the input provided by the CRB.

Much of what the CRB has recommended regarding de-escalation training is underway and I have detailed some of those efforts below as well. We will incorporate other recommendations such as incorporating video from the incident into scenario-based training as well as making this document public.



After considerable discussions with Chief Putney and others, and thorough review of both the CMPD investigation and the report filed by District Attorney Spencer Merriweather, I believe Chief Putney's conclusion is a reasonable one considering CMPD directives.

Regardless of my decision in this specific case, we have to do better. We have to do better as a police force, as a government entity and as a society. I say this not just as someone who has dedicated his adult life to public service, but as an African-American man in America and as the father of a young African-American man in America. I understand and share the frustration and sadness that many in Charlotte have about this incident. The particulars of this case do not absolve us from a level of societal responsibility that goes beyond departmental directives or legal statute.

The report developed by District Attorney Spencer Merriweather following his investigation into this incident lays out in great detail the considerations officers must make when using force and the lens by which the law views these decisions. Reasonable certainly doesn't mean perfect and I understand the frustration of many that the legal guidelines based on state and federal precedent seem broad.

This was not a decision that I came to easily or quickly. Officers fulfilling their sworn duty are placed in situations in which they are required to confront dangerous people and dangerous situations. They are forced to make split-second, life and death decisions. In those moments they do not have the benefit of multiple camera angles and slow-motion video. The findings from the CMPD investigation, the District Attorney's investigation, Chief Putney's review and my review, do not change the fact that a man lost his life, and this was a tragic event regardless of the circumstances. There is no doubt or disagreement that everyone wishes this situation had a different outcome. I can say without any doubt that I take the issues of de-escalation and community service very seriously.

CMPD has taken a number of steps over the past several years to reaffirm its commitment to its de-escalation policies and provide more officer training on de-escalation techniques to ensure that all officers are properly equipped to fulfill CMPD's goal of successfully de-escalating every armed encounter:

- All CMPD officers receive extensive de-escalation training including eight hours on communications skills and 16 hours on crisis intervention; recruit classes conduct as many as 16 hours of scenario-based training where they are taught communications skills to de-escalate hostile victims and suspects.
- CMPD is currently constructing a de-escalation training facility that will allow officers to develop de-escalation scenario-based training in a "real time" environment.
- All officers are annually trained on effective methods for gaining compliance from an individual who possesses a weapon that is not visible to officers.



- The circumstances presented in this incident will be incorporated into our training of decision-making and de-escalation scenarios, and the video will be incorporated into the scenario-based training.
- Approximately 600 patrol officers are currently certified in Crisis Intervention, which represents approximately half of the department's patrol force. The national average of crisis intervention-trained officers in major city police departments is approximately 25 percent.
 - CMPD is implementing a Senior Police Officer II (SPOII) program in which these officers are required to complete 40 hours of crisis intervention training.
- In 2019, the CMPD updated the department's Response to Resistance policy.
 - The updated policy outlines CMPD's philosophical commitment to the preservation of human life and to only deploy control methods when reasonably necessary.
 - CMPD sought the perspective of key community stakeholders including the CRB, CMPD's External Advisory Committee, SAFE Coalition NC and the NACCP to ensure independent perspectives were included when updating the policy.

Consistent with its mission to protect and serve the community and residents of the Charlotte-Mecklenburg area, CMPD continues to work collaboratively with community stakeholders with a focus on safety, trust and accountability. In 2019, CMPD had more than 601,000 crime-related interactions with 10,700 of those being with an armed suspect. Of those 10,700 encounters, 99.99 percent were successfully de-escalated.

We will continue to listen to and incorporate feedback from the CRB as well as residents, law enforcement experts and our non-profit, social-service, victim advocacy and faith-based partners to provide our community the best police force and a community-based policing model based on respect and understanding.

I would also like to thank the CRB for its patience as I reviewed the recommendations and Chief Putney's response. Situations like these are very sensitive and require a significant amount of discussion and review. I received CMPD's initial response to the CRB recommendations within the review timeframe but CMPD's response to the specific recommendations took time to complete and submit which added time to my review and response. Additionally, this review was complicated and delayed by the COVID-19 pandemic and subsequent response. I would ask the CRB to assess the current response timeline to allow more flexibility to help ensure thoughtful and complete responses.

Per the CRB's request, this memo, the CRB policy recommendations from their March 6, 2020 confidential communication (sub-section titled "Additional Board Recommendations and Observations), and CMPD's response to those recommendations will be made public after all parties have been informed.

Citizens Review Board Recommendations

Review of Officer Use of Force (04.17.20)

The City of Charlotte Citizens Review Board (CRB) conducted an independent review of the March 25, 2019, officer use of force. This matter was heard in a closed session during an evidentiary hearing of the Board on February 6, 2020, upon the appeal of the family of Danquirs Franklin.

The Franklin family appealed the October 14, 2019, decision of Chief Kerr Putney, that the use of force was justified.

Below is an outline of the CRB's recommendations in addition to responses from the Charlotte-Mecklenburg Police Department:

Recommendation 1

Board Recommendation	Response and Actions
<p>The Citizens Review Board recommends that CMPD reaffirm its commitment to its de-escalation policies and provide more officer training on de-escalation techniques to ensure that all officers are properly equipped to fulfill the Department's goal of successfully de-escalating every armed encounter with a citizen.</p> <p>As discussed above, the Board found that there was no evidence of de-escalation in this situation. If anything, the officers' actions precipitated what the Board believes was a potentially preventable fatal shooting.</p> <p>Accordingly, the Board recommends that officers receive additional training on interacting with</p>	<p><i>Both State and Federal law require that all force be reasonable, as outlined in Graham v Connor. North Carolina state law serves as the basis for the Charlotte-Mecklenburg Police Department's (CMPD) Response to Resistance policy.</i></p> <p><i>The CMPD policy requires officers to employ de-escalation techniques when feasible in encounters with members of the public.</i></p> <p><i>The CMPD Response to Resistance policy defines de-escalation as: Tactics, techniques, actions, verbal, or non-verbal communication exercised by officers during a potential use of control encounter to reduce the imminence of a physical threat to officers or others. These tactics should be used when time,</i></p>

Board Recommendation	Response and Actions
<p>individuals under mental distress and peacefully gaining compliance using effective communication (instead of merely shouting commands at citizens).</p>	<p><i>distance, communication, available resources and circumstances permit.</i></p> <p><i>The CMPD is a learning agency. The department continually works to identify opportunities to keep the community and officers safe.</i></p> <p><i>All CMPD officers receive extensive de-escalation training summarized below:</i></p> <ul style="list-style-type: none"> • <i>CMPD recruits receive (8) hours on Communication Skills and (16) hours on Crisis Intervention.</i> • <i>Recruit classes also conduct as many as (16) hours of scenario based training where they are taught communication skills to de-escalate hostile victims and suspects.</i> • <i>CMPD incorporates a component of communication into training courses, but department recognizes the need to go beyond that and talk specifically about de-escalation strategies.</i> • <i>Several lessons include specific strategies involving the:</i> <ul style="list-style-type: none"> ○ <i>Management of Subjects in Extreme Distress</i> ○ <i>Juvenile Minority Sensitivity Training – Interactions and Communications</i> ○ <i>Use of Force De-escalation</i>

Board Recommendation	Response and Actions
	<ul style="list-style-type: none"> • <i>Classroom Training- Tactical Communication</i> • <i>TAC-7 training that instructs officers how to communicate and de-escalate situations involving subjects with edged weapons and use the appropriate level of control</i> • <i>Weekly Patrol Division de-escalation training</i> • <i>Chaos to Connection training: This course provides officers with skills to connect with people that are in a highly agitated emotional state.</i> • <i>Crisis Intervention Training:</i> <ul style="list-style-type: none"> ○ <i>Approximately 600 patrol officers are currently (CIT) certified which represents approximately 50% department's patrol force</i> ○ <i>The national average of CIT officers in major city police departments is approximately 25%.</i> <p><i>In an effort to provide a humane, compassionate and an effective law enforcement response to crises involving community members with behavioral or substance abuse issues, the CMPD created a Community Policing Crisis Response Team (CPCRT)</i></p> <p><i>The CPCRT involves mental health clinicians that accompany officers to incidents involving a behavioral health and or substance abuse crisis. The CPCRT is responsible for:</i></p> <ul style="list-style-type: none"> • <i>Assigning cases for proactive follow up involving persons with a history of behavioral health issues resulting in police response.</i>

Board Recommendation	Response and Actions
	<ul style="list-style-type: none"> • <i>Providing referral, educational and support services information to family, friends and members of the consumer’s support network</i> • <i>Responding collaboratively to calls for service concerning community members experiencing a behavioral health crisis.</i> <p><i>The CMPD is implementing a Senior Police Officer II (SPOII) program. SPOII’s are required to:</i></p> <ul style="list-style-type: none"> • <i>Complete 40 hours of Crisis Intervention Training</i> • <i>Complete eight hours of Tactical Medical Training for First Responders.</i> <p><i>To further the department’s commitment to de-escalation, the CMPD is currently constructing a “de-escalation training facility” that will allow officers to develop additional de-escalation scenario-based training in a “real time” environment.</i></p> <p><i>In 2019, the CMPD updated the department’s Response to Resistance policy.</i></p> <ul style="list-style-type: none"> • <i>The updated policy underscores the department’s commitment to advancing a culture of guardianship that embraces a warrior spirit in protecting the community and those we serve.</i> • <i>The updated policy also outlines the department’s philosophical commitment to the preservation of human</i>

Board Recommendation	Response and Actions
	<p><i>life and to only deploy control methods when it is reasonably necessary.</i></p> <ul style="list-style-type: none"> • <i>CMPD sought the perspective of stakeholders (CRB, CMPD external advisory committee, SAFE Coalition NC and the NAACP) to ensure independent perspectives were considered when updating the policy.</i> <p><i>The CMPD will continue to routinely assess policy and training to ensure officers master the department's commitment to de-escalation.</i></p>

Recommendation 2

Board Recommendation	Response and Actions
<p>The Board recommends that CMPD support the CRB's effort to petition local and state legislators for the Board to have subpoena power.</p> <p>Specifically, the Board should have the power to subpoena witnesses to appear at any evidentiary, fact-finding hearings convened by the Board. The Board stresses that use of any such subpoena power would be rare.</p> <p>In support of this recommendation, the Board notes that Charlotte City Ordinance §16-60(f)(5) empowers</p>	<p><i>The CMPD rejects the proposal to support legislation granting the Board or any other party subpoena power which will compel officers to attend and testify at evidentiary hearings.</i></p> <p><i>Currently, the Board is provided the opportunity to review CMPD internal investigations which includes statements of officers and independent witnesses provide in the internal investigation.</i></p>

Board Recommendation	Response and Actions
<p>the Board to request additional information or further investigation at any point during the evidentiary hearing process.</p> <p>The Board has only used this authority on a few occasions since its inception in 1997. Moreover, subpoena power for the Board could potentially benefit CMPD as well as the CRB.</p> <p>For instance, if a witness who does not voluntarily want to attend a hearing could demonstrate that an officer's actions were appropriate or justified, it would be helpful to have that witness give testimony at the evidentiary hearing.</p>	<p><i>It is the findings of both the internal and criminal investigations that guide the Chief's decision on potential disciplinary measures that that the Board is authorized to review.</i></p> <p><i>The CRB, as an advisory board, reviews the Chief's decision on discipline. The CRB's scope of review does not allow the board to conduct an independent fact finding inquiry.</i></p> <p><i>The Board has the ability to request additional information concerning Chief's decision and the ability to make recommendations to the department.</i></p> <p><i>It is the CMPD's position that subpoena power is neither necessary or prudent.</i></p>

Recommendation 3

Board Recommendation	Response and Actions
<p>The Board recommends that CMPD adopt a new policy requiring all officers who are the subject of a complaint heard by the CRB to attend the evidentiary fact-finding hearing, should one be held, related to that appeal.</p>	<p><i>The CMPD rejects the recommendation requiring officers who are the subject of a complaint to attend evidentiary hearings.</i></p>

Board Recommendation	Response and Actions
<p>The Board notes that Mr. Franklin’s appeal is the 94th case the CRB has heard since its establishment in 1997. This appeal, however, is unprecedented because it marks the first instance when the CMPD officer(s) involved in the incident did not attend the evidentiary hearing.</p> <p>The Board is gravely concerned that Officer Kerl’s voluntary decision not to attend the evidentiary hearing in this matter has set a bad precedent for officers in future appeals. To be clear, when an officer is accused of misconduct and subsequently chooses not to attend the evidentiary hearing related to that conduct, their absence undermines the Board’s purpose and its role as an advisor to the Chief of Police, the City Manager, and the City Council. A policy requiring CMPD officers to attend evidentiary hearings, and for which there are repercussions for violating, would demonstrate that the Department is committed to holding officers accountable for their actions. A failure to enact such a policy could communicate the opposite message.</p>	<p><i>An officer should be afforded the legal right to decide whether or not they will attend and testify at the full evidentiary hearing.</i></p> <p><i>The CMPD cannot and should not require an officer who is the subject of a CRB review to attend evidentiary hearings.</i></p> <p><i>Plaintiff’s attorneys frequently leverage the evidentiary hearing process to seek a legal opportunity to file civil action against an officer.</i></p> <p><i>Requiring the Officer to attend and provide testimony against the advice of their private legal counsel denies the officer his or her right to due process.</i></p> <p><i>Regardless of an officer’s attendance at an evidentiary hearing, the CRB has access to the complete investigation including the interviews and statements of the officer, secondary officers and independent witnesses who were present at the time of the incident.</i></p> <p><i>Additionally, the CRB currently has the authority to seek additional investigatory information from the department for further information they may need to conduct their review.</i></p> <p><i>The CMPD rejects the position that the department’s failure to adopt a policy requiring officers to attend evidentiary hearings undermines the Board’s purpose.</i></p>

Board Recommendation	Response and Actions
	<p><i>The CRB is an advisory Board and the Board's purpose is to review the Chief's decision which is based on the internal investigation.</i></p> <p><i>It is not the Board's purpose to conduct a separate and independent fact finding investigation. The board has neither the necessary training or expertise to conduct such an investigation.</i></p> <p><i>The Board should not undervalue its power to advance change by making objective recommendations to the CMPD.</i></p> <p><i>The Charter allows the Board the opportunity to make these recommendations. There have been several occasions that the CMPD implemented significant changes based on the Board's recommendations.</i></p>

Recommendation 4

Board Recommendation	Response and Actions
<p>The Board recommends that CMPD add language to its Response to Resistance directive stating that secondary officers, or those who have become de facto secondary officers based on the actions of another officer on the scene, should take control of an encounter when the primary officer’s attempts to de-escalate a situation or gain compliance prove ineffective.</p> <p>The Board believes such a policy could have helped prevent this incident. The Board previously recommended that CMPD adopt a similar policy when it presented to Chief Putney its suggestions for revising the Department’s former use of force policies. The Board recalls and appreciates CMPD’s concerns with imposing an affirmative duty on officers to intervene, but the Board nevertheless recommends that CMPD enact some version of this policy.</p> <p>The Board suggests including the following language: Officers should intervene if they witness another officer engaging in any of the following conduct:</p> <ol style="list-style-type: none"> 1. Failing to use time, distance, or shielding when it would be objectively reasonable for the officer to do so based on the totality of the circumstances; 2. Using ineffective communication; 3. Escalating an interaction; or 	<p><i>The CMPD respects the integrity and value of human life. The department believes that human life is sacrosanct and the goal of any encounter with the public is reinforced with the unwavering commitment to the preservation of life.</i></p> <p><i>CMPD officers are provided extensive training in tactics, techniques, actions, verbal and non-verbal communication to de-escalate potential violent encounters with the public.</i></p> <p><i>A directive requiring secondary officers to intervene presents a multitude of challenges. It would be unrealistic and potentially dangerous to require secondary officers to intervene during an armed encounter and determine whether a primary officer’s control methods are reasonably necessary in every situation.</i></p> <p><i>Requiring officers to immediately intervene and assess whether a lesser degree of force would be appropriate is not practical, as frequently, circumstances are tense, uncertain, and rapidly evolving.</i></p> <p><i>In 2015, The CMPD updated its Courtesy Policy to include a provision that advances greater opportunities for de-escalation and utilizes less than lethal options.</i></p>

Board Recommendation	Response and Actions
<p>4. Using force that a reasonable officer would deem excessive or unnecessary to gain compliance.</p> <p>If an officer observes any of the conduct listed in 1-4 above, then the observing officer may intervene and/or take control of the encounter and assess whether a lesser degree of force is reasonably necessary to prevent an imminent threat against the officer(s) or another person.</p>	<p><i>The provision prohibits officers from:</i></p> <ul style="list-style-type: none"> • <i>Taunting</i> • <i>Verbally baiting</i> • <i>Initiating needless or unnecessary physical contact with a subject</i> <p><i>Additionally, the CMPD's Response to Resistance Policy which was updated in November of 2019, re-emphasized the policy's provision requiring an officer who witnesses another officer engage in a use of force to immediately report the incident to a supervisor.</i></p> <p><i>The CMPD will continue assessing policy and training to advance the department's commitment to the preservation of life.</i></p>

Recommendation 5

Board Recommendation	Response and Actions
<p>The Board recommends that CMPD use the videos from this incident in as much CMPD officer training as possible.</p> <p>Lieutenant Mitchell noted during his testimony that CMPD does not currently provide training on effective methods for gaining compliance from an individual who possesses a weapon that is not visible to the officer(s), which is precisely the scenario the officers faced here.</p> <p>Deputy Chief Jennings also stated near the conclusion of the Shooting Review Board hearing that “[y]our incident, trust me, will be also used to train our other officer [sic] in our tac training as well. Because we want to be able to get better from anytime we have an incident, a shooting, or anything like that.”</p> <p>Notwithstanding Deputy Chief Jennings’s statement, Lieutenant Mitchell confirmed during the evidentiary hearing that to his knowledge officer training has not changed since this shooting occurred.</p> <p>Undoubtedly, several teachable moments and training opportunities for officers emerge throughout this incident. CMPD should use the various videos in training officers so that any such incidents could be better avoided in the future.</p>	<p><i>The CMPD continually reviews, identifies, and archives Body-Worn Camera (BWC) video footage for training material. The department’s Professional Standards Unit as well as patrol division supervisors are required to consistently audit videos to ensure oversight and accountability.</i></p> <p><i>Identified videos are bookmarked and archived in a library of training videos. The videos are incorporated into training plans to elevate the understanding of options available during these types of dynamic and rapidly evolving encounters.</i></p> <p><i>CMPD already incorporates scenario-based training for recruits and officers at every available opportunity.</i></p> <p><i>All officers are annually trained on effective methods for gaining compliance from an individual who possesses a weapon that is not visible to the officer(s).</i></p> <p><i>One challenge in developing training scenarios is trying to account for every variable and dynamic of human interaction.</i></p> <p><i>The circumstances presented in this incident (presumed armed subject) will be incorporated into our selection of decision-making and de-escalation scenarios.</i></p> <p><i>The videos from this incident will be incorporated in to the scenario based training.</i></p>

Recommendation 6

Board Recommendation	Response and Actions
<p>The Board recommends that CMPD adopt a policy and emphasize to officers during training that a citizen's possession of a weapon, standing alone, does not relieve them of their duty to attempt to de-escalate armed encounters, whenever possible.</p> <p>In this situation, Officer Kerl's actions appeared to be guided by the notion that her belief that Mr. Franklin was armed was sufficient for her to dispense with all attempts to de-escalate the situation. While the Board appreciates that law enforcement officers regularly face tough situations, officers should still make reasonable efforts de-escalate armed encounters when possible.</p> <p>The Board cannot help but wonder if this situation would have ended differently if the officers would have attempted to gain Mr. Franklin's compliance using communication strategies other than shouting for him to drop his weapon.</p>	<p><i>CMPD will continue to train officers in de-escalation beginning with recruit training and continue to identify opportunities to enhance and modify our training to benefit the safety of community members and officers.</i></p> <p><i>CMPD will continue to prioritize de-escalation when reasonable as an option when encountering armed people, or when the subject has the immediate means to injure an officer, another person, or his or herself.</i></p> <p><i>In managing incidents involving an armed person, CMPD will continue to emphasize that officers are to assess the totality of the circumstances, including actions taken by the suspect.</i></p> <p><i>For de-escalation to be effective, the armed individual must comply with an officer's commands.</i></p> <p><i>CMPD will encourage other levels of response to resistance as defined in the policy, to include de-escalation, realizing it will not be effective in all instances.</i></p>

Recommendation 7

Board Recommendations	Response and Actions
<p>The Board continues to understand that state confidentiality laws prevent the Board from making these recommendations public as part of the CRB process and Officer Kerl’s personnel file.</p> <p>The Board also believes, however, that the public has an ongoing interest in this matter, particularly given the publicity that Officer Kerl’s body worn camera video and Mr. Franklin’s appeal already have received.</p> <p>Accordingly, the Board encourages CMPD to take appropriate and available steps to determine whether these recommendations, even in some redacted or revised form, may lawfully be made public, either in whole or in part.</p>	<p><i>The CMPD recognizes that public trust is a critical element in maintaining strong communities and crime prevention. The department is committed to cultivating both trust and accountability by advancing responsible transparency whenever possible.</i></p> <p><i>CMPD is committed to making the outlined recommendations and responses available to the public.</i></p>