

## MEMORANDUM

TO: Glenn Granitz, Jr., Chief of Police  
FROM: James B. Martin, District Attorney  
DATE: July 28, 2020  
RE: City Council Proposed Resolution

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Glenn:

Thank you for forwarding Resolution R-2020. The following are my thoughts/comments in no particular order.

First, Pennsylvania law is clear, a City Council cannot usurp the Pennsylvania legislature. In short, state law pre-empts any city ordinances/resolutions, etc. which are in conflict e.g., Lost and Stolen Gun Ordinance; Cell Phone Ordinance; “decriminalization of marijuana.”

**Regarding Use of Force Policies, Excessive Force, Discharge of a Weapon; “Mis-use of Force Situation”; “Violating the Use of Force Policy”; “Policy Changes that would Decrease Adherence to Eight Can’t Wait Policy”.**

With regard to all of the foregoing, 18 Pa. C.S.A. §508 states: Use of Force in Law Enforcement (a) Peace Officers Use of Force in Making Arrest

“(1) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. **He is justified in the use of any force which he believes to be necessary to effect the arrest and any force which he believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using deadly force only when he believes that such force is necessary to prevent death or serious bodily injury to himself or such other person** or when he believes both that: (i) such force is necessary to prevent the arrest from being defeated by resistance or escape; and, (ii) the person to be arrested has committed or attempted a forcible felony or is attempting to escape and possesses a deadly weapon, or otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay. ...”

The “belief” required of a law enforcement officer is that he “reasonably believes” or holds a “reasonable belief.”

Thus, any attempt by City Council to limit the use of force in law enforcement cannot be sustained. The Crimes Code controls. Further, it is not for City



Council to interpret whether use of force is proper. It is for the investigating law enforcement agency and the District Attorney of the jurisdiction.

On that point, the Resolution provision that states **“Requiring misuse of force situations immediately given to the Attorney General (third party)”** is not possible under the Commonwealth Attorney’s Act, 71 P.S. §732-206 and 205. Under that statute, **the Attorney General does not have jurisdiction, either original or concurrent**. Jurisdiction is with the District Attorney. The only way that the Attorney General could be brought into a case is at the request of the District Attorney. As long as I am District Attorney, I will rule on whether excessive force was used in any local incident, unless I determine to request the assistance of the Attorney General under the provisions of the aforesaid Act.

Further, in my opinion, it is short-sighted of the proponents to suggest giving this power to the Attorney General. The Attorney General is a state-wide elected official, while the District Attorney is a county elected official. I submit that a local District Attorney is much more likely to be responsive to the mores of the local community, which will hold him or her responsible at the polls.

Dissemination of information to **Council Public Safety Committee or to City Council generally or to a “Citizens Review Board”** is likely to be barred by the Criminal History Record Information Act, 18 Pa. C.S.A. §9101, et seq., which places constraints upon law enforcement agencies/criminal justice agencies in the secondary dissemination of both intelligence and investigative information. To the extent any information may be secondarily disseminated, the Act requires redaction. Violation of the Criminal History Record Information Act may subject the violator to civil penalties and other remedies including an action for damages and perhaps even criminal penalties. Accordingly, those provisions of the proposed Resolution which require sharing information are likely to be meaningless because sharing most information is likely a violation of the law. See: In Re: Pittsburgh Citizens Police Review Board, 36 A.3d 631 (2011) Pa. Commonwealth Court, attached.

**Banning of No Knock Warrants.** This is not really an issue. No Knock Warrants are not favored in the law of Pennsylvania. In my opinion, if we were to seek one, it would require extraordinary, compelling circumstances, and would require court approval. In the 22-1/2 years that I have been District Attorney, we have never sought one. In my experience, police agencies in Lehigh County knock and announce. But, as in most other areas, City Council has no ability to ban No Knock Warrants—only the state legislature could effectively enact such a ban.

**Release of Body Camera Audio/Video footage** would also be violative of the Criminal History Record Information Act if it pertained to investigative information, **which it almost always will**. Further, it is not subject to

disclosure under the Pennsylvania Right to Know Law. See: pp 14-22 of Senate Bill 560 attached. Once again, the state pre-emption doctrine applies.

Regarding the **“Quarterly reporting to Council’s Public Safety Committee identifying the nature of calls, etc.”** as long as the information released is generalized and not specific as to any information which would disclose the subject of the call or subsequent investigation, I suppose it would be okay.

**“Banning Stop and Frisk.”** The Fourth Amendment controls this. It is not employed as a general proposition within the City of Allentown or Pennsylvania; however, it is permitted under the law in certain very limited circumstances, e.g., if an officer has reasonable suspicion that a person is armed and dangerous. Council does not have the power to further constrain the police.

I will leave the rest of it to you and the City Administration to deal with.

Thank you.

Jim Martin