

Policy 414



Subject

LESS-LETHAL MUNITIONS AND CHEMICAL AGENTS

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By Order of the Police Commissioner

POLICY

This policy provides guidance regarding the Baltimore Police Department's (BPD) deployment of certain Less-Lethal Force options including certain munitions and Chemical Agents.

While members must at all times comply with the minimum legal standard requirements governing the use of force, they must also comply with even stricter standards set forth by Departmental policy (See Policy 1115, *Use of Force*).

CORE PRINCIPLES

Use of Force: Less-Lethal Munitions and Chemical Agents. Less-Lethal Munitions and Chemical Agents can be effective and lawful tools when used properly and in the correct situations. As more fully set forth in this policy and in Policy 1115, *Use of Force*, the authorized use of Less-Lethal Munitions and Chemical Agents are restricted.

Sanctity of Human Life. Members shall make every effort to preserve human life in all situations.

Value and Worth of All Persons. All human beings have equal value and worth and members shall respect and uphold the value and dignity of all persons at all times.

Peaceful Resolutions. Members shall avoid the Use of Force unless it is not possible to do so.

De-Escalation. Members shall use de-escalation techniques and tactics to reduce any threat or gain compliance to lawful commands without the Use of Force or with the lowest level of force possible (See Policy 1107, *De-Escalation*).

Avoiding Escalation. Members shall not do or say anything that escalates an encounter unless necessary to achieve a lawful purpose.

Assessment. Members shall continuously assess each situation and change the member's response as the circumstances change. Members may be justified in using force in one instance, but not justified in using force an instant later. This duty to assess includes the continuous assessment of circumstances before and after the member uses force.

Use of Force: Reasonable, Necessary, and Proportional. Members shall use only the force Reasonable, Necessary, and Proportional to respond to the threat or resistance to effectively and safely resolve an incident, and will immediately reduce the level of force as the threat or resistance diminishes.

Reporting Use of Force. Each member who uses force, or observes another member or members use force, shall immediately notify their supervisor, and will accurately and completely report the Use of Force by the end of their tour of duty (See Policy 725, *Use of Force Reporting, Review, and Assessment*).

Duty to Intervene. Members shall intervene to prevent the abusive conduct or the use of excessive force by another member (See Policy 319, *Duty to Intervene*).

Duty to Provide Medical Assistance. After any Use of Force incident, members shall immediately render aid to any injured person consistent with the member's training and request medical assistance. If restrained, persons are not to be positioned facedown as it may cause positional asphyxia, and placing restrained persons on their back may lead to radial nerve damage to the wrists and forearms. Restrained persons are to be placed in a seated position or on their sides.

Accountability. Members shall be held accountable for uses of force that violate law or policy.

Retaliatory Force. Members are prohibited from using force against persons engaged in First Amendment protected activities or to punish persons for fleeing, resisting arrest or assaulting a member, or for any other punitive reason (See Policy 804, *First Amendment Protected Activity*).

DEFINITIONS

Active Aggression — Active Aggression is when a person attacks or attempts to attack a member or another person. Strikes, kicks, or attempted strikes or kicks with hands, fists, the head, elbows, knees, or an instrument, constitute Active Aggression.

Aggravated Aggression — Aggravated Aggression is when a person presents an Imminent Threat of death or Serious Physical Injury to the member or another person based on the Totality of the Circumstances. Aggravated Aggression represents the least encountered but most serious threat to a member or other person. Even when confronted with Aggravated Aggression, the member is required to make every reasonable effort to de-escalate and to continuously assess the member's Use of Force.

Area Dispersal — A projectile hitting a hard surface 3-5 feet before the targeted individual(s), or delivering a Chemical Agent by other means, for the purpose of moving an individual, group, or groups of individuals from one location to another (e.g., 40MM munitions, PepperBall rounds, handheld delivery systems, etc.).

Area Denial — An area that is deliberately contaminated with a Chemical Agent to make the area uncomfortable and/or to deny individuals that ability to gather at that location (e.g., 40MM munitions, PepperBall rounds, handheld delivery systems and MK-9 Pepper Fogger).

Chemical Agents — Substances designed to irritate the eyes and mucous membranes (e.g., CS gas, PepperBall, Mk-9 Pepper Fogger, smoke, etc.).

Civil Disturbance/Unrest — A breach of the peace by a gathering where there is a threat of collective violence, destruction of property, or other unlawful acts. Such a gathering may also be referred to as a riot or unlawful assembly. Only a command member ranked Major or above may declare an assembly unlawful, and the declaration must be documented in writing. If such a commander is unavailable, the declaration may be made by a Lieutenant or Captain who is serving as a Shift Commander or District Commander.

Direct Impact — (Point Target) Launching a less-lethal projectile so that it strikes an individual in a specific intended target area (e.g., bean-bag rounds, FN-303, PepperBall and 40MM projectiles).

First Amendment Assembly/Demonstration — An assembly of persons engaging in First Amendment activity. These may be scheduled events that allow for law enforcement planning, but also may include spontaneous assemblies. They include, but are not limited to, marches, protests, and other assemblies (See Policy 804, *First Amendment Protected Activities*).

Incident Commander (IC) — The person responsible for overseeing the response to First Amendment Assemblies or Demonstrations and Civil Disturbances, including the development of strategies and tactics and the ordering and release of resources. If no IC has been designated, the most senior ranked member on the scene shall act as the IC until relieved.

Imminent Threat — A person presents an Imminent Threat when the person has the means and ability to harm the member or another person, and the member reasonably believes the person intends to deliver that harm.

Less-Lethal Force — Force that, when employed as designed, intended, and consistent with policy and training, is not likely to cause death or Serious Physical Injury. Devices of Less-Lethal Force may include, but not be limited to, a DS-3027 bean bag, FN-303, Pepper Ball rounds, batons/impact weapons, O.C. spray, and CEW. The way a Less-Lethal Force device is used and the circumstances in which it is used could constitute Deadly Force/Lethal Force.

Lower Center Mass — The area four (4) inches above the belt line down to the lower extremities, avoiding the groin.

Less-Lethal Launchers/Munitions — A delivery tool that, when used as designed and intended, is less likely to cause death or Serious Physical Injury than a conventional lethal weapon such as a firearm. Less-Lethal Launchers/Munitions are only approved for use by certified members.

Reasonable, Necessary, and Proportional — The review of every Use of Force shall be to determine whether it was reasonable, necessary, and proportional in light of the Totality of the Circumstances that were known, or should have been known, to the member, and in light of the mandates of BPD Policies.

Reasonable — A member uses Reasonable force when the member uses no more force than required to perform a lawful purpose.

Necessary — Force is necessary only when no reasonably effective alternative exists. When force is Necessary, members shall use force in a manner that avoids unnecessary injury or risk of injury to members and civilians.

Proportional — Proportionality measures whether the force used by the member is rationally related to the level of resistance or aggression confronting the member.

NOTE: Members who use force that is not Reasonable, Necessary, and Proportional will be subject to possible discipline, possible criminal prosecution, and/or civil liability.

Resistance — Members may face the following types of Resistance to lawful directives:

Active Resistance — Active Resistance is when a person moves to avoid detention or arrest but does not attack or attempt to attack the member or another person. Attempts to leave the scene, fleeing, hiding from detection, physical resistance to being handcuffed, or pulling away from the member's grasp are all examples of Active Resistance. Verbal statements, bracing, or tensing alone do not constitute Active Resistance. A person's reaction to pain caused by a member or purely defensive reactions to force does not constitute Active Resistance.

Passive Resistance — Passive Resistance is when a non-assaultive person fails to comply with the member's commands without attempting to flee. Passive Resistance may include, but not be limited to, going limp, standing stationary and not moving based upon lawful direction, and/or verbally signaling an intention to avoid or prevent being taken into custody.

Totality of Circumstances — The Totality of Circumstances consists of all facts and circumstances surrounding any event. The facts and circumstances may include but are not limited to:

- Whether an offense has occurred;
- The nature of the offense;
- The seriousness of the offense;
- The size and strength of the person;
- The number of persons;
- The availability of weapons;
- Whether the person is exhibiting signs of mental illness or is experiencing a behavioral health crisis;
- Whether a person suffers from a medical or behavioral health disability, physical or hearing impairment, is impaired by alcohol or drug use, or may be non-compliant due to a language barrier;
- Other force options;
- Availability of non-force options, including tactical repositioning, going to cover, or other De-Escalation Techniques;
- Environmental factors;
- Availability of back up and specialized units.

Use of Force — Any Use of Force or threat of force that falls within Level 1, Level 2, or Level 3 force as defined in Policy 1115, Use of Force, regardless if these techniques make contact or result in visible injury.

GENERAL

1. BPD Policy 1115, Use of Force, does not change during periods of Civil Disturbance/Unrest and members must adhere to the guidelines set forth therein for using and reporting force at all times. Any Use of Force must be preceded by an analysis, to the greatest extent possible, applying the above Core Principles. These principles must be an ever-present priority as a member is making

the serious decision of whether to use any type of force. Use of LL Launchers/Munitions and Chemical Agents qualifies as a Use of Force, and may only be used when Reasonable, Necessary, and Proportional.

2. The IC shall approve/disapprove the decision to deploy LL Launchers/Munitions and/or Chemical Agents to disperse groups of individuals in situations of Civil Disturbance/Unrest.
3. Members may deploy LL Launchers/Munitions and Chemical Agents as appropriate:
 - 3.1. When use of LL Launchers/Munitions and Chemical Agents is Reasonable, Necessary, and Proportional, to effectively and safely resolve an Imminent Threat to a member or person; and
 - 3.2. When an IC declares an event a Civil Disturbance/Unrest based on the Totality of Circumstances and in accordance with the department's use of force policy (See Policy 1115, *Use of Force*).
4. Members shall, whenever possible, issue a verbal warning prior to using LL Launchers/Munitions or Chemical Agents on a subject or a crowd, give clear directions about the location for safe egress for members of the crowd, and allow a reasonable amount of time for the subject(s) to comply with the warning.
5. Members shall ensure that subsequent uses of LL Launchers/Munitions and/or Chemical Agents are Reasonable, Necessary, and Proportional, by re-evaluating the Totality of Circumstances.
6. BPD will conduct assessments of its practices related to First Amendment protected activity in accordance with Policy 804, *First Amendment Protected Activities*, in addition to all Use of Force incidents being reviewed following Policy 725, *Use of Force Reporting, Review, and Assessment*.

DIRECTIVES

Permitted Use

LL Launchers/Munitions

7. The IC shall approve/disapprove the decision to deploy LL Launchers/Munitions for dispersing groups of individuals in situations of Civil Disturbance/Unrest.
8. Only members trained and certified to deploy LL Launcher/Munitions shall deploy such equipment.
9. Any member may deploy "bean-bag" rounds from the green handle Remington 870 shotgun upon successful completion of LL Shotgun Training and with current certification.
10. Minimum and maximum recommended deployment distances are unique for each Less-Lethal Force Option (See Appendix A). Members may deploy Less-Lethal Force Options only in accordance with recommended deployment distances consistent with BPD training. Unless the use of deadly force is justified in accordance with Policy 1115, *Use of Force*, the following devices shall be deployed no closer to a person than the following minimum deployment ranges:

- 10.1. 40mm LE eXactiMpact: 11 yards.
- 10.2. DS-3027, .12 gauge beanbag: 10 yards.
- 10.3. 40mm eXactiMpact: 6 yards.
- 10.4. FN 303: 1 yard.
- 10.5. PepperBall: less than 1 yard.

Chemical Agents

- 11. Members shall utilize Chemical Agents to disperse a Civil Disturbance/Unrest only upon the orders of the IC.
- 12. The IC shall give clear warnings to persons who will be subject to Chemical Agents, and they shall be provided reasonable opportunity to heed the warnings and exit the area.
- 13. The IC shall ensure there is a means of safe egress from the area available to the persons, and that clear direction to safe egress is given prior to the deployment of Chemical Agents.

Prohibited Use

- 14. Members shall not use LL Launchers/Munition or Chemical Agents on subjects who are compliant or exhibiting only Passive Resistance.
- 15. Members shall not use tactics designed to escalate the level of force.
- 16. Once an individual is no longer a threat, or a gathering is no longer declared unlawful, the use of LL Launchers/Munitions or Chemical Agents is no longer justified.
- 17. Members are prohibited from using or launching Chemical Agents to disperse crowds unless those crowds are committing acts that endanger member(s) or public safety and security, participants refuse to obey lawful orders to disperse, and the use of Chemical Agents is objectively Reasonable, Necessary, and Proportional. (See Public Order Forces Standard Operating Procedure for further detail).
- 18. At no time shall any force be used to retaliate against individuals.

Duty to Provide Medical Assistance

- 19. Any individual or member who has been injured or complains of injury from the deployment of LL Launchers/Munitions or Chemical Agents shall receive medical attention in accordance with Policy 1115, *Use of Force*, when it is safe to do so.
 - 19.1. If an individual has been subjected to impact by a less-lethal impact projectile, he/she will be provided with medical treatment, when safe to do so.

- 19.2. If an individual has been subjected to Chemical Agents, members shall render aid consistent with their training and experience, and arrange immediate transport to a hospital for medical treatment for subjects on whom Chemical Agents have been used under the following circumstances:
- 19.2.1. When individual(s) complain of or exhibit continued side effects after having flushed the affected areas.
- 19.2.2. When individuals indicate that they have a pre-existing medical condition (e.g., asthma, emphysema, bronchitis, heart ailment) that may be aggravated by Chemical Agents.
- 19.3. If the individual refuses or leaves the location, members shall document the actions taken to identify and render aid to the individual.

Review and Analysis

20. All members shall adhere to the Reportable Force guidelines found in Policy 725, *Use of Force Reporting, Review, and Assessment*.
21. Members of the BPD shall notify a permanent-rank supervisor immediately, or as soon as practicable, following a Use of Force. The supervisor will notify the Shift Commander by the end of the shift during which the force occurred. The notification will contain basic information concerning the incident. Any member with knowledge that another member used force must also immediately report that Use of Force to a permanent-rank supervisor. In all instances, the permanent-rank supervisor will conduct a thorough review of the use of force, and document this review by completing a BlueTeam entry before the conclusion of the supervisor's tour of duty.
22. The failure of any commander, supervisor, or member to fulfill any of the requirements of this policy will not prevent, inhibit or otherwise affect the ability of the Department to conduct an investigation of any misconduct arising from a Use of Force incident or to otherwise discipline a member for any violation of this policy.

REQUIRED ACTION

Education and Training (E&T)

23. The Commander of the Education and Training Section (E&T) shall ensure:
- 23.1. Members have received proficiency training on the use of LL Launchers/Munitions and/or Chemical Agents before they are certified to carry and/or use LL Launchers/Munitions and/or Chemical Agents.

APPENDIX

A. Ideal Deployment Range Chart

ASSOCIATED POLICIES

Policy 409, *Firearms Regulations*
Policy 413, *Mobile Field Force*
Policy 725, *Use of Force Reporting, Review, and Assessment*
Policy 804, *First Amendment Protected Activities*
Policy 1107, *De-Escalation*
Policy 1115, *Use of Force*
Policy 1118, *Oleoresin Capsicum (OC) Spray*

RESCISSION

Remove Policy 414, *Less Lethal Munitions and Chemical Agents*, dated 30 November 2020.

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

APPENDIX A

Ideal Minimum Deployment Range Chart

IDEAL MINIMUM DEPLOYMENT RANGE CHART

