



# Policy 1115

Subject	
<b>USE OF FORCE</b>	
Date Published	Page
<b>24 November 2019</b>	<b>1 of 11</b>

*By Order of the Police Commissioner*

## POLICY

The purpose of this policy is to establish when a member may use force, and members' duties before, during, and after the Use of Force. The decision to use force requires careful attention and continual assessment of the situation, threats, options, and risks, with the goal of resolving the encounter peacefully.

**While members must at all times comply with the minimum legal requirements governing the Use of Force, they must also comply with even stricter standards set forth by Department policy.**

## CORE PRINCIPLES

1. **Sanctity of Human Life.** Members shall make every effort to preserve human life in all situations.
2. **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.
3. **Peaceful Resolutions.** Members shall avoid the Use of Force unless it is not possible to do so.
4. **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*).
5. **Avoiding Escalation.** Members shall not do or say anything that escalates an encounter unless necessary to achieve a lawful purpose.
6. **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.
7. **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.
8. **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*).

9. **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*).
10. **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.
11. **Accountability.** Members shall be held accountable for uses of force that violate law or policy.
12. **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 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.

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

**Chokehold/Neck Hold** — A Chokehold or Neck hold is any hold or contact with the neck that may inhibit breathing by compression of the airway in the neck, may inhibit blood flow by compression of the blood vessels in the neck, or that applies pressure to the front, side, or back of the neck. Chokeholds/Neck Holds are prohibited unless the use of Deadly Force/Lethal Force is justified.

**Conducted Electrical Weapon (CEW)** — A weapon designed to discharge electrical impulses in two modes:

**Drive Stun** — Pulling the trigger on the CEW with the cartridge removed or discharged, and placing the electrodes upon the skin/clothing of the person. Drive Stunning does not cause neuro-muscular incapacitation but causes severe pain.

**Probes Deployment** — Probes Deployment is the primary way that CEWs are used. With a cartridge attached, pulling the trigger fires two probes with barbs on the end that can penetrate the clothing or skin of a person. The two probes are connected to the CEW by wires and upon contact, if an electrical circuit is established, the CEW delivers pulsed electricity into the person, and overrides the person's voluntary motor function. Probes Deployment also causes significant pain.

**Deadly Force/Lethal Force** — Any force likely to cause death or Serious Physical Injury, whether the member intended to cause death or Serious Physical Injury or not. Deadly Force/Lethal Force includes, but is not limited to:

- The discharge of a firearm at a person;
- Strikes with any hard object such as a baton, flashlight, radio, weapon stock/handle, or Improvised Impact Weapon to the head, neck, sternum, spine, groin, or kidneys;
- Intentionally striking a person's head against a hard, fixed object such as a roadway, concrete floor, wall, or iron bars;
- Knee strikes or kicks to a person's head;
- Any strikes to a person's throat;
- "Knee drops" against a prone or supine person's head, neck, or torso;
- Chokeholds/Neck Holds;
- Shooting someone in the head, neck, chest, or back, with a Less-Lethal Launcher at close range.
- The use of any force on a person whose health, age, condition, or circumstances make it likely death or Serious Physical Injury will result.

**De-Escalation Techniques** — De-Escalation Techniques are actions taken by members that are designed to eliminate the need to use force in order to resolve any event or situation. De-Escalation Techniques include: talking to a person using a tone of voice and language that is not aggressive or confrontational; creating space or placing barriers between the member and the person; waiting the person out when circumstances permit; permitting a person to move about when safe; permitting a person the opportunity to make statements or ask questions; slowing down the pace of an incident; tactical re-positioning and requesting additional resources. The guiding principles for de-escalation are patience, flexibility, and the desire to resolve each situation peacefully (See Policy 1107, *De-Escalation*).

**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.

**Improvised Impact Weapon (IIW)** — An Improvised Impact Weapon (IIW) is a device or object that is not a department approved weapon, but is nonetheless used as an impact weapon (e.g., flashlight, radio, or stick). Such weapons may be unpredictable, ineffective, or exert unexpectedly high levels of damage (e.g., board with protruding nail). Consequently, members shall use Improvised Impact Weapons only in rare, emergency conditions where members lack an authorized Baton or other approved less-lethal alternatives, and use of an Improvised Impact Weapon is reasonable and necessary to defend against a person displaying Active or Aggravated Aggression.

**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.

**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.

**Physical Force** — A member uses Physical Force any time a member coercively touches, directly or indirectly, any person. Physical Force includes holds, grabs, blows, and strikes as well as the use of instruments, such as batons, devices, such as CEWs, tools such as O.C. spray, canines, or firearms, whether

lethal or less-lethal.

**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 corrective action, 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.

**Serious Physical Injury** — Serious Physical Injury is when there is disfigurement or substantial disruption or harm to one or more body parts, organs, or systems. The term includes, for example, brain injury, with or without unconsciousness, gunshot wounds, cardiac arrhythmia, difficulty breathing, cardiac or respiratory arrest, broken bones, dislocations, torn ligaments or tendons, or significant bleeding. This list is not exhaustive and is intended only to provide representative examples for guidance.

**Temporary Pain** — Any pain or complaint of pain that is brief, does not result in injury, and is delivered as a means to gain compliance. Temporary Pain may result from the application of, but is not limited to, elbow grips, wrist grips, shoulder grips, pressure point techniques, and/or forcible takedowns.

**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 show of force that falls within Level 1, Level 2, or Level 3 force as defined in this policy. Use of Force Levels are:

**Level 1 Use of Force** — Includes:

- Using techniques that cause Temporary Pain or disorientation as a means of gaining compliance, hand control or escort techniques (e.g., elbow grip, wrist grip, or shoulder grip), and pressure point compliance techniques. Force under this category is not reasonably expected to cause injury,
- Pointing a firearm, Less-Lethal Launcher, or CEW at a person,
- “Displaying the arc” with a CEW as a form of warning, and
- Forcible takedowns that do not result in actual injury or complaint of injury.

NOTE: Escorting, touching, or handcuffing a person with minimal or no resistance does not constitute a Level 1 Use of Force.

EXCEPTION #1: SWAT team members and members assigned to work on a federal task force will not be required to report the pointing of a firearm at a person as a Use of Force during the execution of SWAT team or federal task force duties.

EXCEPTION #2: Pointing of a firearm at a person by any member, if done solely while entering and securing a building in connection with the execution of an arrest or search warrant, will not be a Use of Force. A permanent-rank supervisor must still complete a Form 93, Weapons-Pointing Report detailing the incident (See Policy 725, *Use of Force Reporting, Review, and Assessment*).

**Level 2 Use of Force** — Includes:

- Force that causes or could reasonably be expected to cause an injury greater than Temporary Pain or the use of weapons or techniques listed below — provided they do not otherwise rise to a Level 3 Use of Force:
- Discharge of a CEW in Drive-Stun or Probes Deployment, in the direction of a person, including where a CEW is fired at a person but misses,
- Use of OC spray or other Chemical Agents,
- Weaponless defense techniques including, but not limited to, elbow or closed fist strikes, open hand strikes, and kicks,
- Discharge of a Less-Lethal Launcher/Munitions in the direction of a person,
- Canine-inflicted injuries that do not rise to a Level 3 Use of Force,
- Non-weapon strikes to the head, neck, sternum, spine, groin, or kidney area, and
- Striking of a person or a vehicle with a vehicle that does not rise to Level 3 Use of Force.

**Level 3 Use of Force** — Includes:

- Strikes to the head, neck, sternum, spine, groin, or kidney area with an impact weapon,
- Firearm discharges by a BPD member,
- Applications of more than three (3) CEW cycles in a single encounter, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different members,
- CEW application for longer than 15 seconds whether the application is a single continuous application or from multiple applications,
- Uses of Force resulting in death, Serious Physical Injury, loss of consciousness, or requiring hospitalization, and
- Uses of Deadly Force/Lethal Force.

**NOTE:** Hospitalization refers to admission to the hospital, and does not include treatment and release in the emergency department, no matter how long the stay.

**DIRECTIVES****Use of Force**

1. Sworn members have the authority to use Reasonable force when Necessary to accomplish lawful ends. This authority is limited by the laws of the State of Maryland, federal law, the United States Constitution, and the provisions of this policy. Members must conform their actions to the law, the Constitution, and BPD policies. When members use force, they shall exercise the utmost restraint. When practical, members should announce that force will be utilized prior to the application of such force.
2. Members shall prevent or stop the illegal, inappropriate, or excessive Use of Force by other members. Failure to intervene may subject a member to disciplinary action (See Policy 319, *Duty to Intervene*).
3. Members may only use weapons and/or force techniques that are allowed by policy and on which the member is trained, unless warranted by the Totality of Circumstances.

**De-Escalation**

Members shall, unless it is not possible to do so, avoid the Use of Force by using De-Escalation Techniques, including verbal persuasion and warnings, slowing down the pace of an incident, waiting out persons, using barriers, creating distance (and thus the reactionary gap) between the member and the threat, and requesting additional resources such as specialized units, CIT trained members, behavioral health care providers, or negotiators, before resorting to force, and to reduce the need for force. De-Escalation Techniques mitigate the threats and gives officers time to utilize extra resources, and increases time available to call more officers or specialty units (See Policy 1107, *De-Escalation*).

1. Members shall talk to the person; attempt to convince the person to comply; reduce any threat presented by withdrawing to a position that is tactically advantageous; or take actions that allow the member greater distance and time, in order to de-escalate a situation or deploy a lesser force option or no force at all.

2. Members shall perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions including, but not limited to, immediately approaching a person without proper evaluation of the situation, failing to leave sufficient space between the member and the person, closing the reactionary gap, or escalating a situation.
3. Members shall not use tactics that unnecessarily escalate an encounter or create a need for force.
4. Members shall de-escalate force immediately as resistance decreases.
5. If the member has no alternative to using force, the member shall use only the amount of force that is Reasonable, Necessary and Proportional to respond to the threat or resistance and shall immediately reduce the level of force as the threat or resistance lessens or stops.

### Critical Thinking

Prior to using force, members shall use a critical thinking and decision-making framework to analyze and respond to incidents. This framework will allow members to uphold the sanctity of life and protect themselves by decelerating and stabilizing a situation to minimize the likelihood of a Use of Force incident. Using this framework, members will:

1. Assess the situation, threats, and risks;
2. Gather relevant facts about the incident;
3. Consider police powers and BPD policy;
4. Identify options and determine the best course of action; and
5. Act, review, and re-assess the situation.

### Restrained Persons

1. Members shall not use force against persons who are handcuffed or otherwise restrained, except in exceptional circumstances where the Totality of Circumstances makes it Reasonable and Necessary to prevent injury or escape. Members are cautioned that force that may be Proportional against an unrestrained person may not be Proportional when used on a restrained person. As with any Use of Force, members shall be required to use De-Escalation Techniques and critical thinking in order to avoid the Use of Force.
2. Members shall not use force against a handcuffed or restrained person if the person's actions only present a risk of property damage.
3. Members shall **not** position a restrained person face-down as it may cause positional asphyxia, placing persons on their back can cause radial nerve damage to the wrist and forearm area. Restrained persons are to be seated or placed on their side.

### Use of Deadly Force/Lethal Force

1. The use of Deadly Force/Lethal Force shall always be the last resort.
2. Members shall not use Deadly Force/Lethal Force unless they have exhausted de-escalation

(See Policy 1107, *De-Escalation*) and Less-Lethal Force options have been tried and failed, or are not safe based on the Totality of Circumstances.

3. A member may use Deadly Force/Lethal Force when they reasonably believe such action is immediately necessary to protect a member or another person from an Imminent Threat of death or Serious Physical Injury.
4. Prior to the decision to employ Deadly Force/Lethal Force members shall consider environmental considerations such as field of fire, backdrop, bystanders, potential for ricochet, possibility of over-penetration, and other risks to life.
5. Where safety permits, a member should identify himself/herself as a law enforcement officer and state his/her intention to use Deadly Force/Lethal Force before using a firearm or employing Deadly Force/Lethal Force.
6. A member may use Deadly Force/Lethal Force to prevent the escape of a fleeing person if force is authorized and no Reasonable force alternative exists that is within BPD policy, the member has given a verbal warning to the person (if time, safety, and circumstances permit), and there is probable cause to believe that:
  - 6.1. The person has committed or is in the process of committing a felony involving the infliction or threatened infliction of Serious Physical Injury or death, and
  - 6.2. The escape of the person would pose an Imminent Threat of death or Serious Physical Injury to the member or another unless the person is apprehended without delay, and
  - 6.3. Members have identified themselves as law enforcement officers, have stated their intention to use Deadly Force/Lethal Force, and have given the person a reasonable opportunity to comply voluntarily, if time, safety, and the circumstances permit.

#### **Restrictions on the Use of Deadly Force/Lethal Force**

1. Deadly Force/Lethal Force shall not be used to subdue persons whose conduct is a threat only to property.
2. Deadly Force/Lethal Force shall not be used against persons whose conduct is a threat only to themselves.
3. **The following are prohibited** unless the use of Deadly Force/Lethal Force is authorized and no reasonable alternatives exist:
  - 3.1. Discharge of a firearm at a person.
  - 3.2. Strikes with any hard object, such as a baton, flashlight, radio, weapon stock/handle, or IIW to the person's head, neck, sternum, spine, groin, or kidneys.
  - 3.3. Intentional strikes of a person's head against a hard, fixed object including, but not limited to, a roadway, concrete floor, wall, or iron bars.
  - 3.4. Kneeing or kicking a person's head, neck, back, or torso, including "knee drops" onto a prone or supine person.



- 3.5. Intentionally deploying a CEW to the neck, chest, groin or face of a person.
  - 3.6. Application of Chokeholds/Neck Holds.
  - 3.7. Discharge of a Less-Lethal Launcher to the chest, neck, or head at close range.
  - 3.8. The use of any force on a person whose health, age, condition, or circumstances make it likely that death or Serious Physical Injury will result.
4. Firing warning shots is prohibited.
  5. Firing into crowds is prohibited.
  6. Members shall not fire any weapon from or at a moving vehicle, except:
    - 6.1. To counter an immediate threat of death or Serious Physical Injury to the member or another person, by a person in the vehicle using means other than the vehicle.
    - 6.2. To counter a situation where the member or another person is unavoidably in the path of the vehicle and cannot move to safety. Members shall not position themselves in the path of a moving vehicle where they have no option but to use Deadly Force/Lethal Force.

NOTE: Refer to Policy 409, *Firearms Regulations*, for instructions on the use of firearms.

## **REQUIRED ACTION**

### **Duty to Intervene**

Members shall intervene to stop any member from using excessive force. Intervention may be verbal and/or physical (see Policy 319, *Duty to Intervene*).

**NOTE: Failure to intervene may subject a member to disciplinary action. Members must immediately, or as soon as safety allows, notify a permanent-rank supervisor after such an intervention.**

### **Duty to Provide Medical Assistance**

1. When there is a visible injury, complaint of injury, signs of medical distress, or when medical attention is requested by any person, members shall immediately render aid consistent with their training and shall request that a medic respond to the scene, or transport the person directly to the nearest hospital emergency room. The member shall then notify their supervisor and the Communications Section.
2. If a person has been subjected to impact by any type of Less-Lethal Force including CEW, impact weapons or impact projectile, he/she will be provided with medical treatment. If the person refuses medical treatment or leaves the location (e.g., persons of an unlawful gathering dispersed by Less-Lethal Force that may voluntarily leave without aid), members must document the actions taken to identify and render aid to the person in the Use of Force Review.

### Children and Youth

1. As with any encounter, members are expected to continually assess the situation, employ De-Escalation Techniques, and seek peaceful resolutions during incidents involving children and youth.
2. Members will, when feasible, recognize and employ developmentally-appropriate and trauma-informed tactics including, but not limited to, using a calm and natural demeanor, and avoiding threatening language. Members will also account for any fear-based reactions children and youth may experience during an encounter.
3. When force against a child or young person is necessary, take into account personalized factors of the child or young person including, apparent age, body size, and relative strength of the member relative to the child or young person; and risk posed by the child or young person; and,
4. In the case of injury resulting from a Use of Force, in addition to the requirements to render aid, summon medical care and notify a supervisor, the member will notify the child or young person's parent, guardian, or other responsible adult.

### Reporting

1. All members will adhere to the Use of Force guidelines found in Policy 725, *Use of Force Reporting, Review, and Assessment*.
2. Members of the BPD must 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.
3. 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.

**ASSOCIATED POLICIES**

Policy 302,	<i>Rules and Regulations</i>
Policy 319,	<i>Duty to Intervene</i>
Policy 409,	<i>Firearms Regulations</i>
Policy 414,	<i>Less-Lethal Munitions and Chemical Agents</i>
Policy 710,	<i>Level 3 Use of Force Investigations / Special Investigation Response Team (SIRT)</i>
Policy 719,	<i>Conducted Electrical Weapon</i>
Policy 724,	<i>Performance Review Board</i>
Policy 725,	<i>Use of Force Reporting, Review, and Assessment</i>
Policy 824,	<i>Body-Worn Camera</i>
Policy 1107,	<i>De-Escalation</i>
Policy 1111,	<i>Batons / Impact Weapons</i>
Policy 1114,	<i>Persons in Police Custody</i>
Policy 1118,	<i>Oleoresin Capsicum Spray</i>
Policy 1602,	<i>Canine Procedure</i>

**RECISSION**

Remove and destroy/recycle Policy 1115, *Use of Force*, dated 2 March 2018.

**COMMUNICATION OF POLICY**

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