



# USE OF FORCE

DIRECTIVE: 110

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## I. Policy

- A. Law Enforcement Officers are faced with many difficult decisions. The decision to use force, whether deadly or non-deadly, is among the most demanding and critical that a law enforcement officer must make. ***The department respects the sanctity of every human life.*** There are situations when an officer is forced to make the irreversible decision of whether to use deadly or non-deadly force. Such a decision can have a powerful, potentially harmful effect on the officer, the department, and the community. The purpose of this policy is to guide and aid officers in the exercise of that decision.
- B. It is the policy of the Brevard Police Department to use only the legally authorized force (both deadly and non-deadly) in law enforcement situations.
- C. Officers may only use force that is objectively reasonable to make an arrest, an investigatory stop/detention, or other seizure, or in the performance of their lawful duties, to protect themselves or others from personal attack, physical resistance, harm, or death. ***The decision to exercise force must be based upon the circumstances that the officer reasonably believes to exist.*** In determining the appropriate level of force to be used by an officer, the nature of the threat or resistance faced or perceived by the officer, as compared to the force employed, should be considered. Factors to be considered in assessing the level of force to be used include, but are not limited to, the following:
1. The severity of the crime at issue,
  2. Whether the subject presents an imminent threat to the safety of the officers or others, and
  3. Whether the subject is actively resisting arrest, or the subject is attempting to evade arrest by flight.

***The reasonableness of force used by an officer will be analyzed based on the totality of the circumstances at the time the force was used.***

### D. North Carolina State Law

In accordance with North Carolina General Statute 15A-401(d), a police officer is justified in using force upon another person when and to the extent that they reasonably believe it necessary:

1. To prevent the escape from custody or to effect the arrest of a person whom the officer reasonably believes has committed a criminal offense, unless the officer knows that the arrest is unauthorized; or
2. To defend themselves or a third person from what the officer reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or trying to prevent an escape (NCLEA 5.01).

E. In accordance with [NCGS 15A-401\(d\)\(2\)](#), Brevard Police Officers are justified in using deadly force upon another person only when it is reasonably necessary or appears to be reasonably necessary (NCLEA 5.03):

1. To defend themselves or a third person from what the officer reasonably believes to be the imminent use of deadly force; or
2. To effect an arrest or prevent the escape from custody of a person whom the officer reasonably believes is attempting to escape by means of a deadly weapon, or who, by his/her conduct or any other means, indicates that he/she presents an imminent threat of death or serious physical injury to others unless apprehended without delay.
3. Officers SHALL NOT use deadly force solely based on NCGS § 15A-401 (d) (2) (c) “to prevent the escape of a person from custody imposed upon him as a result of conviction for a felony”. Deadly force may be used ONLY as provided in sections 1 and 2 above.

When feasible, the member shall identify himself or herself as a law enforcement member and warn of his or her intent to use deadly force. Deadly force shall not be used when serious injury is likely to be inflicted upon persons other than the individual against whom the member is authorized to use lethal force. The safeguarding of other human lives shall outweigh all other considerations.

F. The use of force is permissible only in response to actual or potential resistance or aggression and only to the extent reasonably necessary for an officer to accomplish their lawful purpose. All officers have several force options available when force is objectively reasonable. ***Excessive force is prohibited.***

## II. Definitions

- A. **Active Resistance**: occurs when a subject acts and/or uses evasive movements that attempt to physically counteract or defeat an officer's attempt to detain a subject or place them in custody and take control, and which may create a potential risk of bodily harm to the officer, subject, and/or other persons. Examples include, but are not limited to, pulling away from the officer, breaking the officer's grip and/or control, or fleeing arrest.
- B. **Approved Weapon and Equipment**: Any department-issued weapons or equipment or personally owned weapons or equipment approved by the appropriate departmental authority.
- C. **Area Treatment**: The delivery of a chemical agent to an area, directly or indirectly, to cause people to leave the area or deny access to a location. This delivery method does not include delivery directed at a specific subject.
- D. **Canine Apprehension**: The act of releasing a police-trained canine to seize a suspect to make an arrest physically.
- E. **Conducted Energy Weapon (CEW)**: A CEW is an electronic device that transmits electrical impulses to override the central nervous system that controls the skeletal muscles. It is designed to incapacitate a target from a distance.
- F. **Deadly Force ( also referred to as Lethal Force)**: Any use of force that is intended to or likely to cause a substantial risk of death or serious physical injury.
- G. **Deadly Force Resistance**: The subject's actions are likely to cause imminent death or serious physical injury.
- H. **Direct Application**: The delivery of a chemical agent to a specific person or persons to modify their behavior.
- I. **Employee**: Any employee of the Brevard Police Department (sworn or non-sworn) who has been trained, qualified, and certified with any approved weapon or equipment is authorized to carry such approved weapon or equipment and is authorized to use force subject to this policy.
- J. **Exigent Circumstances**: Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.
- K. **Force**: As it relates to this policy, the tactics and/or techniques utilized by an employee to control or regain control of a subject, in self-defense, in the defense of others, to counter resistance by a subject, or when objectively reasonable.
- L. **Great Bodily Harm ( also referred to as " Serious Bodily Injury")**: A physical condition that creates a substantial risk to death, severe personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.
- M. **Hard Control**: Techniques that could result in greater injury to the subject should the subject resist their application by the employee.

- N. **Imminent Danger**: Immediate threat of significant bodily harm.
- O. **Intensified Techniques**: Those techniques necessary to overcome the actions of the subject, short of deadly force. If the subject resists or continues to resist these techniques, there is a strong probability of injury being incurred by the subject.
- P. **Lawful Use of Force**: The amount of force reasonably necessary to accomplish a lawful objective. Any lawful use of force must comply with the requirements of NCGS § 15A-401 (d) and the applicable provisions of the United States and North Carolina Constitutions.
- Q. **Less Lethal Force**: Any use of force other than that which is considered deadly force.
- R. **Medical Treatment**: A minimum of an on-scene response by emergency medical services personnel.
- S. **Member**: Any duty appointed the Chief of Police.
- T. **Objectively Reasonable Force**: That level of force which is appropriate when analyzed from the perspective of a reasonable officer on the scene possessing the same information and faced with the same circumstances as the officer who used the force. The objective reasonableness of a particular use of force is not analyzed with hindsight. Instead, it considers that officers must make rapid decisions about the amount of force to use in tense, uncertain, and rapidly evolving situations.
- U. **Passive Resistance**: A refusal by an unarmed person to comply with an officer's verbal command or physical control techniques by non-violent actions. Examples include, but are not limited to, ignoring verbal instructions by failing to respond or move, linking arms, or going limp.
- V. **Probable Cause**: Facts and circumstances that would lead a reasonable person to believe that a crime has been committed and a particular individual has committed that crime.
- W. **Protective Instruments**: Devices or tools authorized by the department that are intended to protect the officer or others or to effect an arrest, investigative stop/detention, or seizure. These include batons, electronic control weapons, OC Aerosol, and flashlights.
- X. **Scene**: The location(s) where force was utilized during an event.
- Y. **Soft Control**: The employee applies techniques that have a minimal potential for injury to the subject, should the subject resist the technique. **Totality of Circumstances**: The various factors known to or considered by an employee at the time law enforcement action was taken.
- Z. **Serious Physical Injury**: Bodily injury that creates a substantial risk of death, causes a severe, permanent disfigurement, or results in long-term loss or impairment of any bodily member or organ.

### III. **Objective Reasonableness**

Objective reasonableness is based upon the totality of circumstances known to or considered by the employee at the moment force was used and may include, but is not

limited to, the severity of the crime; whether the subject is an immediate threat to the safety of the employee or any individual; whether the subject is resisting arrest or attempting to evade arrest by flight; the number of subjects and employees involved; the size, age, and condition of employees and subjects; the duration of the police action; injury; known violent history of any subject; known or suspected use of intoxicants by subject; known or apparent mental or psychological condition(s); environmental factors; and any other factor of circumstances that may be relevant to the Use of Force that is known to or considered by the employee at the time such force is applied.

#### **IV. Force Options**

- A. An officer may encounter situations that require not only the officer's presence, but some form of verbal or non-verbal communication. This communication may take the form of providing information, issuing commands, making physical gestures or giving directions, asking or answering questions, conducting interviews, and other similar activities. It may also involve issuing specific instructions to individuals or groups, addressing arguments, verbal assaults, or threats, and resolving disputes and disagreements. The department recognizes that some situations require the application of force.
- B. A person need not strike or attempt to strike an officer to be considered a physical threat if an officer has an objectively reasonable belief (verbal threats, verbal defiance, physical stance, etc.) that the person is physically threatening and has the present ability to harm the officer or another. Examples of actions or observations that may lead an officer to believe a person is a threat include, but are not limited to, clenched fists, displayed hostility or anger, verbal threats, an aggressive stance, noncompliance, and furtive movements, among others. Under the law, officers are not obligated to retreat when confronted with a threat. The department relies on the officer's judgment and discretion to employ objectively reasonable force under each unique circumstance.

#### **V. Authorizations**

##### **A. Authorized Use of Less Lethal Force**

- 1. Less Lethal force, as defined herein, may be used to effect arrests, to make or maintain an investigative detention or seizure safely, or to protect officers or others from personal harm, physical resistance, or injury, provided the force applied is reasonable based upon the immediate circumstances confronting the officer at the time.

2. Less Lethal force may involve the use of defensive tactics (hands/body) and/or protective instruments.
3. Officers are only allowed to carry and use protective instruments that the Brevard Police Department authorizes. All training and certification must be completed before carrying or using a protective instrument (NCLEA 2.05).
4. Protective instruments shall only be used in accordance with department policy and training.
5. Although the department issues authorized protective instruments, in exigent circumstances, officers are not prohibited from using another object or instrument to protect themselves or others if the object is used in accordance with the limitations on force contained in this policy.

B. Authorized Use of Deadly Force

Officers may use deadly force to defend themselves or another person from what they reasonably believe is an imminent threat of death or serious physical injury. The United States Supreme Court has ruled that any use of deadly force must be objectively reasonable. This standard will be applied to all uses of lethal force regardless of whether a suspect is fleeing when an officer employs deadly force.

VI. Use of Force Continuum

Only the level of force reasonably necessary to overcome the resistance or threat presented by the subject is authorized. As the threat posed by the subject decreases, the force used by the officer must decrease accordingly. Once the resistance or threat posed by the subject has been overcome or has ceased, officers' use of force must also cease. Officers shall never use force as punishment or for unlawful coercion. The "Use of Force Continuum Guideline" provides a training guide to assist employees in determining their response to meet the resistance encountered by a subject. This is a guideline only; every Use of Force is unique to its own circumstances. The Continuum Guidelines shall not limit the employee's response or permit a response that is not objectively reasonable under the totality of the circumstances.

There are five levels of force/control authorized by the Brevard Police Department:

- Level I- Cooperative Control- The subject is compliant. Controls used include the fundamentals of professional, contemporary training. The Officer's presence and communication skills, along with the subject's acceptance of the officer's authority, make it unnecessary to use force to gain compliance.

- Level II- Contact Controls- The subject is passively resistant. The officer may deploy tactical strategies to proportionately gain control through “hands-on” techniques designed primarily to guide or direct the subject. The primary force components at this level could include communication skills, leverage, and direction.
- Level III- Compliance Techniques- The subject is actively resistant. The officer may deploy sufficient counterforce to overcome this resistance and remain increasingly vigilant for more aggressive behavior from the subject. At this level, the techniques employed may include pain compliance, temporary distraction, joint manipulation, or OC Spray.
- Level IV- Defensive Tactics- The subject directs the imminent use of physical force towards the officer or another. The officer is authorized to take appropriate steps to immediately stop the subject’s use or imminent use of physical force and to gain and maintain control of the subject. Force alternatives at this level could include physical takedown techniques, OC spray, Taser, or an impact weapon.
- Level V- Deadly Force- The subject poses an imminent threat of deadly physical force or serious physical injury to the officer. Force options at this level include those constituting deadly force as defined above.

## VII. De-escalation

Officers of the Brevard Police Department shall make every reasonable effort to de-escalate all contacts that may lead to or have led to the use of force. If the situation requires the use of force, officers should use only the minimum necessary. De-escalation techniques should be used whenever circumstances allow.

## VIII. Use of Force by Non-Sworn Employees

All non-sworn employees who must use some form of force shall do so for self-defense purposes only. The nonsworn employee(s) shall immediately call for additional members and shall not attempt to effect an arrest. If possible, the non-sworn employee will leave the area and allow responding members to effect the arrest.

## IX. Duty to Intervene (NCLEA 1.25)

It is the duty and a requirement of all Brevard **sworn personnel** to adhere to North Carolina General Statute 15A-401(d1), which states:

*“Duty to Intervene and Report Excessive Use of Force. – A law enforcement officer, while in the line of duty, who observes another law enforcement officer use force against another*

*person that the observing officer reasonably believes exceeds the amount of force authorized by subsection (d) of this section and who possesses a reasonable opportunity to intervene, shall, if it is safe to do so, attempt to intervene to prevent the use of excessive force. Additionally, the observing officer shall, within a reasonable period of time not to exceed 72 hours thereafter, report what the officer reasonably believes to be an unauthorized use of force to a superior law enforcement officer within the agency of the observing officer, even if the observing officer did not have a reasonable opportunity to intervene. Suppose the head of the law enforcement agency of the observing officer was involved or present during what the observing officer reasonably believes to be unauthorized use of force. In that case, the observing officer shall make the report to the highest-ranking law enforcement officer of that officer's agency who was not involved in or present during the use of force."*

X. Duty to Render Medical Aid ( NCLEA 5.07)

Once the scene is safe and as soon as practical, a member shall provide appropriate medical care, consistent with their training, to any individual with visible injuries, who complains of injury, or who requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility. The employee must monitor the affected subject for breathing irregularities and level of consciousness. The employee must call for medical evaluation if there is any sign or reason to believe that a subject's condition is deteriorating and will provide aid until relieved by medical authorities. If multiple members use force on a topic, then one employee shall be designated to monitor the subject until medical personnel arrive.

XI. Lateral Vascular Neck Restraints (NCLEA 5.02)

Carotid restraining holds, choke holds, and other similar holds that choke or restrict a person's ability to breathe or the flow of blood to the brain are not trained or taught. These holds are prohibited **except** when the officer reasonably believes there is an imminent threat of serious physical injury or death to themselves or a third person and that they have no other reasonable alternative for defending themselves or another person. Suppose carotid restraining holds, choke holds, and other similar holds that choke or restrict a person's ability to breathe or the flow of blood to the brain are used under these extreme circumstances. In that case, the officer will cease to use this type of force as quickly as possible. Once the person is handcuffed and under control, officers will immediately seek medical attention for the person, regardless of whether the subject appears to need it.

## **XII. Firearms**

The use of Firearms is only authorized in Level V Use of Force situations, as outlined in Policy 110.

A law enforcement officer is authorized to prevent imminent death or serious injury to himself, a fellow officer, or a member of the public by utilizing reasonably necessary force, including the use of firearms.

### **A. Drawing a Firearm**

Officers shall not draw their weapons unless reasonably necessary under the circumstances. Unless properly drawn, all handguns shall be holstered with all holster safety devices in use. Firearms may be drawn whenever an officer reasonably fears for their safety or the safety of others. The pointing of a gun at another person constitutes a use of force. Firearms training is excluded from this provision.

1. When the handgun is outside the holster, the weapon shall be pointed in a safe direction with the trigger finger outside the trigger guard, until there is a need to fire in accordance with the use of deadly force policy.
2. Shoulder-fired weapons shall not be placed in the vehicle weapon rack with a round in the chamber.
3. Shoulder-fired weapons shall not be used or carried in an off-duty status.

### **B. Consideration of Backstop**

When discharging a firearm for any reason, officers must exercise reasonable caution to avoid unnecessarily endangering the lives of bystanders. When possible, officers should consider the background, bystanders, and location.

### **C. Reasons to Discharge a Firearm**

A officer may discharge a firearm in the performance of a law enforcement duty for any of the following reasons:

1. During training or qualification at an approved firing range
2. When it is or appears to be reasonably necessary to defend herself or a third person from what she or he reasonably believes to be the use or imminent use of deadly physical force; and

3. When it is or appears to be reasonably necessary to effect an arrest or to prevent the escape from custody of a person whom he reasonably believes is attempting an escape by means of a deadly weapon, or who, by his conduct or other means, indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay.

#### D. Prohibitions

1. Officers are prohibited from discharging a firearm to warn, frighten, or intimidate a person. Warning shots are expressly forbidden (NCLEA 5.09).
2. Officers are prohibited from intentionally placing themselves in the path of a moving vehicle where an officer's use of deadly force would be the probable outcome. When confronted by an oncoming vehicle, officers will move out of its path, if possible, rather than fire at the vehicle.
3. Officers are prohibited from shooting at or from moving vehicles unless the circumstances would authorize the use of deadly force. **Firearms shall not be discharged at a moving vehicle unless:**
  - a. A person in the vehicle is threatening the member or another person with deadly force by means other than the vehicle, or
  - b. The vehicle is operated in a manner deliberately intended to strike a member or another person, and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.
4. Firing into or over the heads of crowds, into buildings, enclosures, or through doors when a subject is not visible is expressly forbidden.
5. Officers are only allowed to carry and use firearms and ammunition authorized by the Brevard Police Department.
6. Officers SHALL NOT use deadly force solely based on NCGS § 15A-401 (d) (2) (c) "to prevent the escape of a person from custody imposed upon him as a result of conviction for a felony". Deadly force may be used ONLY as provided in sections 2 and 3 above.
7. Nothing in this policy constitutes justification for willful, malicious, or criminally negligent conduct by any member which injures or endangers any person or property; nor shall it be construed to excuse or justify the use of unreasonable or excessive force. **The use of excessive or unjustified force will not be tolerated.**

#### E. Firearms Training

Firearm training will be conducted as directed by the Chief or designee. The administrative team shall be responsible for establishing standards of proficiency, ensuring compliance by all members, and maintaining proficiency records.

Firearms Qualification Course(s) shall be developed or selected by a Firearms Instructor designated by the Chief.

Prior to being used for the actual qualification of officers, each firearms qualification course shall be approved by the Chief.

Before final approval by the Chief, a minimum passing qualification score of 80 shall be assigned to each course. Still, the minimum passing score for the Brevard Police Department qualification shall not be less than the minimum passing score as designated by the North Carolina Policing Standards Commission ( NCLEA 2.1).

A copy of each Firearm Qualifications Course shall be given to the Chief, and a copy shall be kept on file by the designated Firearms Instructor.

A copy of each approved Firearms Qualification Course shall be permanently maintained on file by the designated Firearms Instructor.

The designated Firearms Instructor shall maintain a permanent qualification record for each officer at the Brevard Police Department.

Each time an officer shoots a Firearms Qualification Course for qualification purposes, the following information shall be collected by the Range Instructor and recorded on the Firearm Qualification Form:

- a. Qualifying officer name;
- b. Date of qualification;
- c. Weapon(s) fired;
- d. Score or "Pass/Fail" attained; and
- e. Range Instructor on duty.

Qualification records shall be permanently maintained on file by the designated Firearm Instructor.

Firearm qualification shall be scheduled by the designated Firearms Instructor a minimum of once per calendar year, and each officer shall qualify a minimum of once per calendar year, or more frequently if so ordered by the Chief.

Qualification shall be done with the officers' issued weapons. Officers are expressly authorized to undergo more frequent firearms training if they are ordered to do so. The Brevard Police Department will provide ammunition if it is available.

An officer who fails to qualify (defined by the NC Administrative Code as three attempts in one day) during a scheduled qualification session shall be allowed an additional opportunity to attempt to qualify within 30 days of such failure.

An officer who fails to qualify during a scheduled qualification session shall be placed in a non-gun-carrying status and shall not carry or use a firearm in an operational capacity until he/she successfully qualifies. An officer who is unable to qualify within 30 days of their initial qualification failure may be discharged from their employment with the Brevard Police Department.

All officers hired by the Brevard Police Department shall successfully complete a Firearms Qualification Course with all issued firearms before being authorized or allowed to carry those issued firearms prior to being authorized or allowed to carry those issued firearms during the City's employment. The supervisor to whom a new officer is assigned shall ensure that the new officer has complied with this requirement before the supervisor allows the officer to begin work.

Officers scheduled for firearms qualification shall report at the designated time and place with the following equipment:

1. The appropriate clothing, ballistic vest, authorized belt, flashlight, holster, and ammunition used while on duty;
2. The officer's issued firearms; and
3. The officer's issue ammunition carried while on duty.

An officer who fails to bring the required equipment may not fire for requalification. Such officers shall be rescheduled at the discretion of the designated Firearms Instructor.

Eye and ear protection shall be used by all officers while on the range.

Each officer shall report for duty with the issued firearms clean and free from mechanical defects. Any defects are to be reported immediately to the designated Firearms Instructor.

Supervisors shall perform periodic inspections of service firearms. Issued firearms shall be inspected before firearms qualification by the Firearm Instructor.

The designated Firearms Instructor shall permanently maintain on file a list of approved firearms Instructors.

Failure of an employee to demonstrate and maintain acceptable standards of proficiency shall be cause for remedial training. Remedial training shall be coordinated with the Training Unit and shall be completed within seven days. An employee's continued inability to maintain proficiency standards shall cause the employee to be placed on an alternative assignment pending a final determination as to their job fitness.

Employees who are unable to participate in training and/or evaluation sessions that qualify them to carry weapons and employ force ( e.g., during an extended leave of absence, physical disability, etc) shall be restricted as to their use of authority in accordance with North Carolina Commission Training Standards.

Before resuming full duty status, employees must demonstrate proficiency in all areas.

#### F. Medical Care after Use of Firearms

All subjects who are injured or claim injury by the discharge of a Brevard Police Department-issued firearm or back-up weapon shall be presented to a medical doctor without unreasonable delay, for examination and treatment. Treatment ( if required) or refusal of treatment shall be documented in the written report of the use of force.

The patrol lieutenant or his/her designee shall be responsible for photographing the location of injury on the person, if feasible.

### **XIII. Firearms Discharges**

#### **A. Firearms Discharges Off-Duty**

If an officer's weapon is discharged outside the line of duty and not during department-authorized training, the officer will immediately notify the on-duty supervisor of the incident. The officer should secure the shooting area, if appropriate, and await the supervisor's arrival. The supervisor will contact the on-call investigator to determine if a further investigation is warranted. The Chief of Police or their designee will also be notified as soon as practical and provided the details of the unintentional shooting.

Suppose the firearm was discharged in another jurisdiction. In that case, the officer will cooperate with any law enforcement agency conducting any investigation related to the firearms discharge and immediately notify the on-duty supervisor of the incident. The on-duty supervisor will notify the on-call investigator and the Chief of Police or their designee immediately.

#### **B. Firearm Discharges by Non-Employees**

If an officer's firearm is discharged by an individual not employed by the Brevard Police Department, the officer will follow the same procedure as if they had fired the weapon.

### **XIV. Use of Handcuffs**

Officers responsible for the custody, safe handling, and transportation of subjects should utilize their department-issued handcuffs as a primary restraining device to ensure the security of and prevent injury to the subject. The handcuffs should be double locked behind the subject's back. Consideration may be given to the subject's age, physical conditions or disability, and mental capacity concerning the decision to utilize handcuffs.

If the decision is made not to handcuff a subject, another member should be assigned to assist in transporting the subject to the destination. Subjects may only be handcuffed to a fixed object designed for temporary restraint when it is necessary to protect any individual from harm or in the completion of the member's duties ( i.e., booking procedures, medical).

### **XV. Use of Flex cuffs**

Officers may use flex cuffs instead of handcuffs when appropriate. Subjects should be flex cuffs in such a manner as to ensure the security of and prevent injury to the subject. Flex

cuffs shall be removed using flex cuff cutters. In cases of emergency only, flex cuffs may be removed with other cutting instruments; extra care should be given to the removal of the flex cuffs to ensure that injury does not occur to the subject during the removal process.

#### **XVI. Use of Four-Point Restraint**

When a subject resists and creates an imminent danger to the subject, officer, or individual, officers may utilize a four-point restraint. A four-point restraint is the securing of the subject's feet to their hands from the rear, using handcuffs, flex cuffs, and/or a Ripp-Hobble. When it is necessary to utilize a four-point restraint on a subject, officers shall not "cinch" down the handcuffs, flexcuffs, or Ripp-Hobble. The feet should not be brought past a 90-degree angle to the body. This ensures the safest method of utilizing their restraint technique. Two officers should transport a four-point restrained subject for officer and subject safety whenever possible. The officer should monitor the subject at all times while the subject is in a four-point restraint.

#### **XVII. Use of Chemical Agents**

Department-issued chemical agents may be used when necessary to stop passive or greater resistance. The purpose of the chemical agent is to minimize the potential threat of resistance by the subject. Chemical agents will cause burning and tearing of the eyes, heavy discharge from the nose, difficulty in breathing, disorientation, panic, and uncontrollable sneezing. The effects of the chemical agent alone do not classify as an injury. The appropriate use of a chemical agent without injury, and when spray is the sole tactic used, will require an incident report and completion of a Use of Force report.

Chemical agents should only be used in direct application in situations where an arrest is likely. If an arrest is not made, the Operations Captain shall be notified as soon as possible, and an Incident Report shall be completed concerning the incident.

All employees in uniform authorized to carry an approved chemical agent shall carry that agent while performing on-duty or extra-duty work assignments. Members who wear plain clothes and members in limited-duty status shall have their approved chemical agent concealed while performing their assigned duties. Members may carry their chemical agent in off-duty status. Non-sworn employees shall not carry their chemical agent in off-duty status.

## **XVIII. OC Spray**

Oleoresin Capsicum Spray (hereinafter “OC Spray”) is a non-lethal tool that can temporarily incapacitate a suspect and is identified in Policy 116.

OC spray is provided to the Brevard Police Department officers as an alternative to physical force or striking weapons when confronted by an actively resisting suspect or a suspect who poses a threat or imminent threat of physical assault. OC Spray shall only be used in Level 3 or higher use-of-force situations.

## **XIX. Chemical Munitions**

The incident commander shall ensure that only those members trained adequately through the Police department-approved training course in the use and deployment of an item of special equipment shall utilize that equipment during operations. Because of the specialized nature of these devices and the training required to use and deploy them properly, their use shall be restricted to trained personnel, except in the case of imminent threat of death or serious injury. The Chief of Police shall be responsible for establishing the exceptional equipment certification standards and criteria. The Training Commander shall maintain documentation of the specialized training and certifications of officers for special equipment (NCLEA 2.03).

Chemical munitions are devices that emit chemical agents in a solid and/or liquid form. The following chemical munitions have been approved for use by trained officers:

- a. Oleoresin Capsicum (OC): Comprised of Oleoresin ( a naturally occurring mixture of oil and resin extracted from various plants) and Capsicum ( an herb with the active ingredient capsaicin, a colorless and pungent crystalline compound that is a strong irritant to the skin and mucous membranes). OC is classified as an inflammatory chemical agent and can be produced in powder and liquid form.
- b. Ortho Chlorobenzalmalonitrile ( CS): A synthesized chemical composition known as a lachrymator. CS is classified as an irritant chemical agent and can be produced in powder and liquid form.
- c. Hexachloroethane Smoke (HC) or other types of smoke: This is a product that will only be used outdoors away from any structures due to flammability with or without an accompanying OC or CS component.
- d. PAVA Powder: Pelargonic Acid Vanillylamide or Nonivamide, is a synthetic organic compound that mimics the active component found in chili peppers, capsaicin, launched from a PepperBall® Launcher, a less-lethal force weapon which utilizes high-pressure air to deliver PepperBall® projectiles identified under Policy 117.

To ensure safety for officers and citizens, only officers who have completed an approved training course and any required certification process, as set forth above, in the proper deployment of chemical munitions, may deploy the devices.

Except in the case of an imminent, life-threatening emergency that renders it impracticable to do so, members deploying chemical munitions must wear the following required safety equipment:

- a. Full eye coverage or issued chemical agent mask,
- b. Nomex, Kevlar, or other flame-retardant gloves,
- c. Long-sleeved shirt,
- d. Ballistic vest,
- e. The device manufacturer requires protective gear.

Chemical munitions shall be carried in an enclosed carrier specifically designed for carrying chemical munitions.

The following factors shall be considered when deploying chemical munitions:

- a. **Elderly adults or Children:** Chemical munitions shall not knowingly be deployed in proximity to elderly adults or to young children, unless authorized by the incident for rescue purposes.
- b. **Safety:** The purpose of the use of chemical munitions is to provide a tactical advantage to officers, giving them a window of opportunity. In contrast, the chemical agents disorient the suspect(s). The devices are designed to save lives and prevent active resistance from suspects. Officers shall take every reasonable precaution to ensure that innocent bystanders are not in the line of fire before discharge. When deploying chemical munitions, the officer should ensure that an avenue of egress from the targeted location to an area controlled by the incident commander, which is available to the suspect(s).
- c. **Planning:** All pre-planned uses of chemical munitions shall be marked on the operational plan, including who will deploy them and into what portals. The incident commander shall approve all preplanned uses of chemical munitions, but not limit the discretion to use such munitions during an operation when an imminent threat exists, such that deployment lessens the risk of injury or harm.
- d. **Emergency Deployment:** Chemical munitions may be deployed during a situation in which any officer reasonably believes his safety has been compromised and the effects of chemical munitions are reasonably necessary to overcome resistance or make entry into a target area safer. In such an event, the supervisor or his designee shall direct a certified and qualified officer to deploy the device. The same usage considerations set forth above must be taken into account during deployments in emergency conditions.
- e. **Decontamination:** Subjects taken into custody after exposure to the chemical munitions shall be decontaminated as soon as practical via the use of water and fresh air. Subjects shall

be monitored after exposure for any complications. Subjects shall be discouraged from rubbing their eyes and shall not be allowed to apply salves, lotions, or creams on the affected skin.

- f. Medical Attention: Officers shall request immediate medical attention when:
  1. The affected subject experiences gagging or breathing difficulties that persist beyond a brief initial period; or
  2. The affected subject loses consciousness, sweats profusely, or appears to be very sick; or
  3. The affected subject appears to significantly suffer from the effects of the chemical munitions for a significant time after exposure;
  4. The officer is aware that the affected subject suffers from bronchitis, asthma, emphysema, or a similar respiratory disease; or exists or as to whether medical assistance is necessary. ANY UNCERTAINTY AS TO THE MEDICAL STATUS OF THE AFFECTED SUBJECT WILL BE RESOLVED BY IMMEDIATELY REQUESTING MEDICAL ATTENTION.
  5. Documentation: Each time chemical munitions are utilized, their use shall be reported on the Use of Force Form.
  6. Chemical munitions shall only be used when reasonably necessary under the circumstances. The circumstances that may allow deployment of chemical munitions include, but are not limited to:
    1. To rescue hostages
    2. To distract potentially dangerous suspects to facilitate their arrest, while at the same time enhancing the safety of Team members.
    3. To distract large numbers of potentially violent suspects present at a target location, who might hinder the safe completion of an operation.
    4. To prevent a shooting.
    5. Situations in which the incident commander or supervisor deems their use reasonable and necessary to resolve the incident safely.
    6. Chemical munitions may be hand thrown or launched with a Police Department's approved launcher designed for the deployment of chemical munitions (Policy 117).

**XX. 12-Gauge Impact Projectiles / OC Projectiles**

- A. The 12-gauge impact projectiles are intended to provide a less-lethal use of force option with greater standoff distance than other protective instruments.

- B. All officers who use this system must ensure that any person struck with the projectile and in custody receives a prompt medical evaluation at a hospital. Officers will request that emergency medical services respond to evaluate the condition of the person. Photos of all injuries will be taken (NCLEA 5.07)
- C. OC Projectiles such as “pepper-balls” are intended to use a less-lethal use of force option with a greater stand-off distance than other protective instruments.
- D. All officers who use any OC projectile system must ensure that any person struck with an OC projectile and in custody is provided immediate decontamination. The person will be asked if they require further medical attention after decontamination. If the person requests medical attention, emergency medical services will be called to the scene for an evaluation and treatment if necessary (NCLEA 5.07). Photos of all injuries will be taken.
- E. All systems in the section will only be used by officers who have completed the requisite training and follow-up recertifications as required (NCLEA 2.05). Use of these systems will follow the guidelines established in training. Use of these systems constitutes a use of force and will be reported accordingly.
- F. Supervisors will be notified whenever any of these systems are utilized outside of a training environment.

## **XXI. Electronic Control Weapons**

- A. An electronic control weapon (ECW) is a less lethal weapon, the deployment of which is a use of force. An ECW may only be deployed when an officer is confronted with circumstances that present a risk of immediate danger to the officer or others, and that is likely to be mitigated using the ECW. Use of the ECW will be in accordance with the guidance outlined in the department's Electronic Control Weapons Policy (Directive 115).
- B. The pointing of an ECW (i.e., Taser) at another person to gain compliance with perceived or actual resistance is considered a use of force and will be reported as a use of force on BPD-101.
- C. After a successful deployment of any ECW, officers will summon emergency medical services (EMS) to the scene to evaluate the person and remove any contact probes or darts. **Officers will determine the removal of probes or darts in accordance with the department’s Electronic Control Weapon (ECW) policy (Directive 115).**

## XXII. Destruction of Animals

### A. Humane Destruction of Injured Animals

Officers may discharge their firearms to destroy injured animals if one of the following situations exists:

1. Need for self-defense;
2. To prevent substantial harm to another person; or
3. When the animal is so severely injured that compassion requires its relief from further suffering.

Factors considered must include backstop, location, bystanders, and other relevant elements. When an animal is killed, officers must complete the [Animal Destruction Form](#). Officers will attempt to obtain medical treatment for an injured domestic animal if it is safe and practical to do so ([NCLEA 5.07](#)). An incident report will be completed for the destruction of injured domestic animals (cats, dogs, cattle, horses, etc.). An incident report is not required for the humane destruction of non-domestic animals (deer, raccoons, and other wildlife). Officers will attempt to locate the owner of the domestic animal before destroying the injured domestic animal. If unable to identify the owner before the destruction of the domestic animal, officers will continue to attempt to find the owner post-destruction. Rifles will not be used to destroy an injured animal humanely. A copy of the [Animal Destruction Form](#) will be forwarded to the Animal Services Officer.

### B. Destruction of Dangerous or Vicious Animals

If an officer destroys a dangerous or vicious animal (domestic or non-domestic) that presents a threat to the officer's or another person's safety, an incident report documenting the incident shall be completed in addition to the Animal Destruction Form. This includes attempted destruction by firearm. Officers who encounter dangerous animals are encouraged to consider non-firearm alternatives, including an ECW. The [Animal Destruction Form](#) is required when an officer uses a protective instrument against a hazardous or vicious domestic animal. A copy of the [Animal Destruction Form](#) will be forwarded to the Animal Services Office.

## **XXIII. Custody and Transport Responsibilities**

### **A. Important Considerations**

Officers must be mindful of specific indicators and/or conditions when detaining or arresting a person. The following conditions and/or indicators may potentially contribute to sudden unexpected death following extreme physical exertion and/or restraint;

1. Excited Delirium: State of extreme mental and physiological excitement, characterized by extreme agitation, hyperthermia, epiphoria (excessive watery eyes), hostility, exceptional strength, and endurance without fatigue.
2. Alcohol or drug use/abuse
3. Obesity
4. Display of erratic/psychotic behavior
5. Incoherent Speech
6. State of agitation
7. Subject intentionally injuring themselves
8. Subject disrobing or naked

Officers must recognize these factors and closely monitor a subject in custody after a struggle when one or more of the above indicators are present and the scene is secure.

- B. Officers must take appropriate measures so that the individual being transported can breathe without restriction, and if possible, should lay the subject on their side or seated in an upright position. Officers must avoid transporting subjects in a face-down position whenever possible.

### **C. Medical Emergencies [\(NCLEA 5.07\)](#)**

1. Officers must immediately summon emergency medical assistance if the subject exhibits or complains of trouble breathing, becomes unresponsive, exhibits reduced levels of consciousness, or if, in the officer's opinion, the subject requires evaluation or medical treatment.
2. Officers shall render medical aid, consistent with their training, as soon as it is practicable and safe to do so [\(NCLEA 5.07\)](#).

#### D. Medical Treatment (NCLEA 5.07)

Officers and supervisors shall obtain medical treatment as soon as practical and safe for individuals:

1. Those who show signs of injury as a result of any use of force.
2. Who complains of injury as a result of any use of force and/or the person requests medical attention.
3. When the officer or supervisor reasonably believes an individual needs medical attention as a result of any use of force.
4. Those who show obvious signs that chemical restraint may be necessary.
  - a. Officers must specifically request an Advanced Life Support Unit (ALS). ALS units carry medication that can assist in treating individuals suffering from excited or agitated delirium.
5. Who has been exposed to an ECW and/or for dart removal. (EMS is an appropriate level of care; a hospital/emergency medical center visit may not be required.)

E. Medical treatment will not be refused for any individual who requests it.

F. If safety circumstances reasonably dictate moving the subject to another location, officers may have emergency medical personnel meet the officers at a nearby location to assess the subject and render aid.

#### XXIV. Use of Force Reporting Requirements (NCLEA 5.06)

##### A. When to Report Use of Force or Firearms Discharge

The BPD-101 will be completed in the following circumstances:

1. Anytime force is used to counteract a physical struggle.
2. Following the use of any force that results in an injury to an individual.
3. When an individual claims to have been injured as a result of the use of force.
4. Whenever force is applied with a protective instrument.
5. Whenever a firearm is discharged, other than during authorized firearms training.
6. Anytime an officer is assaulted or ambushed.
7. Anytime a firearm or ECW is pointed at another person to gain compliance.

B. One subject – One BPD-101

When multiple officers are involved in a use-of-force incident with one subject, it will be considered a single event for reporting purposes. Only one BPD-101 is needed unless more officers are involved than can be captured on a single BPD-101; in that case, additional BPD-101s must be completed.

C. Multiple Subjects – Multiple BPD-101s

When force is used against more than one subject in an incident, a BPD-101 must be completed for each subject.

D. Crowd/Riot Events

In those instances, where crowd control tactics are used for crowd/riot control during mass disturbances/protests/riots that involve a use of force against multiple subjects whose identities cannot be established, a single BPD-101 will be completed that includes basic known information (e.g., date, time, case number, location, type of force used, reason, etc.). Additional details related to the incident, including the circumstances and nature of the force used, will be documented in the incident report ([NCLEA 5.06](#)).

E. The BPD-101 must be completed **before** the end of the tour of duty or immediately before beginning the next tour of duty. The BPD-101 must be completed before any scheduled leave or regular days off begin, unless the Chief of Police approves extending [the deadline up to 72 hours](#). It will be forwarded, via the chain of command, to the Chief of Police. Any supervisor reviewing the BPD-101 is empowered to recommend that the Use of Force Committee review the incident to ensure compliance with policy, any need for adjustments to policy, or any need for adjustments in training ([NCLEA 5.04, 5.06](#)).

F. Use of Force statistics will be maintained by the Chief of Police or their designee and compiled into an annual report on Use of Force. [This report will not include Animal Destruction Form data.](#)

G. Officer's Responsibilities

In every circumstance where a BPD-101 is needed, officers are required to adhere to the following:

1. On-duty officers must immediately report the incident to their on-duty supervisor. Off-duty officers must immediately report the incident to an on-duty supervisor.

2. Officers will complete or provide information for the completion of an incident report(s), charging document(s), and/or the BPD-101. If the officer involved in the use of force does not complete all or part of the required documentation, the reporting officer must ensure the information is accurately recorded. The reporting officer will identify the source of the information in the required documentation. Suppose the information is investigative sensitive or requires the source to be kept out of the necessary documentation. In that case, the source's identity will be maintained in notes within the officer's and/or detective's case file.

#### H. Supervisor's Responsibilities

On-duty patrol supervisors will respond to all ECW deployments, firearm discharges (except for the humane destruction of non-domestic animals), 12-gauge impact projectiles, OC Projectiles, and any use of force that results in serious bodily injury or in-custody death. Supervisors are required to immediately notify the Chief of Police, or their designee, of any of the above incidents.

1. Notifications: Supervisors are required to make the following notifications in the circumstances described, regardless of whether the employee involved is on or off-duty.
  - a. Criminal Investigations Division is to be notified immediately in the following instances:
    - i. All intentional firearm discharges by an employee, whether injuries occur or not, except for authorized range practice or the humane destruction of non-domesticated animals.
    - ii. All accidental firearm discharges by an employee that result in an injury to anyone, including the involved officer.
    - iii. All incidents where an individual sustains life-threatening injury as a result of police action.
  - b. Chief of Police, or designee: Immediately notify the Chief of Police or their designee in the following instances:
    - i. All intentional and accidental firearm discharges involving departmental firearms and authorized off-duty firearms, regardless of injury (except range practice or the humane destruction of non-domestic animals).
    - ii. Any range practice or destruction of an animal incident resulting in injury.

- iii. Any use of force incident resulting in death or serious injury requiring the immediate hospitalization of a person in police custody.
  - iv. Any other event or situation as may be deemed necessary after consultation with an executive officer.
  - v. Any use of force against an officer requiring the officer to obtain medical treatment or hospitalization ([NCLEA 5.07](#)).
2. Complete the BPD-101 if the officer is unable to complete it.
  3. Review the BPD-101 for accuracy and completeness.
  4. Review the Body-worn Camera (BWC) recording when an officer is involved in a reportable use of force incident.
  5. Ensure the incident report and any individual reports are completed and submitted if required.
  6. In incidents involving intentional or accidental firearms discharges (except for authorized range practice or for the purpose of destroying animals), the supervisor will complete the BPD-101. In the section for the supervisor's comments, the supervisor will indicate that the incident is under investigation and not provide any judgment about the circumstances.
  7. Forward the BPD-101 and any related incident or arrest reports to the Chief of Police via the chain of command before the end of the tour of duty.
  8. In instances where force was used to destroy a dangerous animal (domestic or non-domestic) that presented a threat to the safety of the officer or anyone else, supervisors will forward a copy of the incident report through the chain of command to the Chief of Police. A copy will also be sent to the Animal Services Officer.
  9. Remove any officer from line duty who has been involved in any use of force that results in death or serious physical injury. The officer will be referred to the designated Employee Assistance Trauma Program, as assigned by the Chief of Police ([NCLEA 5.08](#)).
  10. On-duty supervisors will ensure that off-duty officers involved in reportable use of force events fulfill the requirements of this directive. The on-duty supervisor will complete the supervisor's section of the BPD-101 and forward it, along with a copy, to the officer's assigned supervisor. A copy will also be sent to the Chief of Police.

## **XXV. Training / Certification Requirements** ([NCLEA 2.03](#))

### **A. Authorization**

Only officers who have completed specified training courses and any required

recertification courses, as determined by the department, are authorized to carry and/or use any defensive tactic, protective instrument, or firearm.

B. Annual Certification (NCLEA 2.02, 2.03)

Each officer must annually certify, for all approved firearms and protective instruments (including electronic control devices, pepper spray, batons, etc.), that the officer is authorized to use them (NCLEA 2.03). Annual firearms certification must meet the standards of the North Carolina Criminal Justice Training and Standards Commission and department training standards (NCLEA 2.05). Failure to recertify annually on any firearm or protective instrument will result in the withdrawal of the authorization to carry or utilize that force option. For department-issued guns, the firearm will be immediately turned in until recertification is completed. In the case of department-issued protective equipment, such equipment will be immediately turned in to a supervisor until recertification is completed.

C. Use of Force Policies

Officers will be provided with a copy of and instruction in the department's use of force policy before being authorized to carry any firearm or protective instrument.

D. Documentation / Administration

The Brevard Police Department Training Coordinator is responsible for maintaining certification records, approving lists for protective instruments and defensive tactics, managing training materials, and overseeing approved lesson plans. The Coordinator must ensure training is conducted by instructors trained to teach specific devices used by the agency (NCLEA 2.03). Any firearms training or certification records (F-9) shall be completed by the Brevard Police Department Firearms Lead Instructor and submitted to the Training Coordinator no more than five days after an officer completes firearms qualifications.

E. Defensive Tactics

Original defensive tactics training occurs during Entry Level Training. Retraining occurs during In-Service Training every year (NCLEA 2.02). The number of hours of training dedicated to defensive tactics will be determined by the Brevard Police Department Training Coordinator and approved by the Chief of Police. The Training Coordinator will maintain course descriptions and a list of approved defensive tactics.

## **XXVI. Relief from Duty (NCLEA 5.08)**

An officer directly involved in an incident involving the use of force resulting in serious physical injury or death will be placed on **non-disciplinary leave** or will be assigned to an administrative duty assignment, as designated by the Chief of Police, during the investigation of the incident. This action is taken to protect the interests of the individuals involved and the Department during the investigation and does not imply or indicate that the officer acted improperly.

If on non-disciplinary leave without an administrative duty assignment, the officer will remain available for departmental interviews and will be subject to recall to duty at any time. Upon returning to duty, the officer may be assigned to an administrative duty assignment for a period determined by the Chief of Police.

## **XXVII. Disclaimer**

This directive is for department use only and does not apply in any criminal or civil proceeding unless indicated explicitly by law. This department policy should not be construed as creating a higher legal standard of safety or care in a legal proceeding involving third-party claims. Violations of this directive will only form the basis for departmental administrative sanctions.