



USE OF FORCE

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I. Policy

- A. Law Enforcement Officers are faced with many difficult decisions. The need to use force, whether deadly or non-deadly, is one of the most demanding and critical decisions 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 and possibly harmful effect on the officer, the department, and the community. The purpose of this policy is to provide guidance to 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 which 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 and 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 who the officer reasonably believes has committed a criminal offense, unless the officer knows that the arrest is unauthorized; or
2. To defend himself/herself 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 attempting to prevent an escape.

E. Brevard Police Officers are justified in using deadly force upon another person only when it is reasonably necessary or appears to be reasonably necessary:

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 who 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.

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 to use in situations where 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 officer's grip and/or control, or fleeing arrest.

- B. **Deadly Force**: Any use of force which is intended to or likely to cause a substantial risk of death or serious physical injury.

- C. **Less Lethal Force**: Any use of force other than that which is considered deadly force.

- D. **Medical Treatment**: A minimum of an on-scene response by emergency medical services personnel.

- E. **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 but will consider the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations.

- F. **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.

- G. **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.

- H. **Protective Instruments**: Devices or tools authorized by the department that are intended to protect the officer or others or to affect an arrest, investigative stop/detention, or seizure. These include batons, electronic control weapons, OC Aerosol, and flashlights.

- I. **Scene**: The location(s) where force was utilized during an event.

- J. **Serious Physical Injury**: Bodily injury that creates a substantial risk of death, causes a serious, permanent disfigurement, or results in long term loss or impairment of any bodily member or organ.

III. **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, giving commands, physical gestures, or directions, asking or answering questions, conducting interviews, etc. It may also take the form of issuing specific instructions to individuals or groups, dealing with arguments, verbal assaults, or threats, handling disputes, disagreements, etc. 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 that a person is a threat include, but are not limited to, clenched fists, displayed hostility or anger, verbal threats, aggressive stance, non-compliance, and furtive movements, among other things. 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.

- C. **Authorized Use of Less Lethal Force**
 - 1. Less Lethal force, as defined herein, may be used to effect arrests, to safely make or maintain an investigative detention or seizure, 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 are authorized by the Brevard Police Department. All training and certification must be completed prior to carrying or using a protective instrument.
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 in order to protect themselves or others if the object is used in accordance with the limitations on force contained in this policy.

D. 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 deadly force regardless of whether a suspect is fleeing when an officer employs deadly force.

IV. De-escalation

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

V. Duty to Intervene

It is the duty and a requirement of all Brevard Police 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. If 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, 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."

VI. Lateral Vascular Neck Restraints

Carotid restraining holds, choke holds, and other similar holds that choke or restrict a person's ability to breathe or 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 himself/herself or a third person and that he/she has no other reasonable alternative for defending himself/herself or another person. If carotid restraining holds, choke holds, and other similar holds that choke or restrict a person's ability to breathe or flow of blood to the brain are used under these extreme circumstances, 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 medical attention or not.

VII. Firearms

A. Drawing a Firearm

Firearms may be drawn whenever an officer reasonably fear for their safety or the safety of others. The pointing of a firearm at another person constitutes a use of force. Firearms training is excluded from this provision.

B. Consideration of Backstop

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

C. Prohibitions

1. Warning shots are prohibited.
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.
4. Officers are only allowed to carry and use firearms and ammunition authorized by the Brevard Police Department.

VIII. 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 that is likely to be mitigated by use of the ECW. Use of the ECW will be in accordance with the guidance set forth in the departments Electronic Control Weapons Policy.
- B. The pointing of an ECW (i.e. Taser) at another person in order to gain compliance with perceived or actual resistance is considered a use of force and will be reported as a use of force on the 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 not attempt to remove contact probes or darts themselves and should utilize EMS to remove the darts. If EMS is not available, the person will be transported to the hospital for dart removal.**

IX. 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.
- C. OC Projectiles such as “pepper-balls” are intended to use a less-lethal use of force option with 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 be 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. 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. Use of these systems will follow the use

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.

X. Destruction of Animals

A. Humane Destruction of Injured Animals

Officers may discharge their firearms to destroy injured animals when no other reasonable alternative exists. Factors considered must include backstop, location, bystanders, etc. When an animal is destroyed, officers must complete the BPD-101, Use of Force Report. Officers will attempt to get medical treatment for an injured domestic animal if safe to do so and practical. 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 domestic animal prior to destruction of the injured domestic animal. If unable to locate the owner prior to the destruction of the domestic animal, officers will continue to attempt to find the owner post-destruction. Rifles will not be used to humanely destroy an injured animal. A copy of the BPD-101 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 safety of the officer or another, an incident report documenting the incident shall be completed in addition to the BPD-101. This includes attempted destruction by firearm. Officers who are confronted by dangerous animals are encouraged to consider the use of non-firearm alternatives, to include an ECW. A BPD-101 is required in cases where an officer uses a protective instrument against a dangerous or vicious domestic animal. A copy of the BPD-101 will be forwarded to the Animal Services Officer.

XI. 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 area of the shooting, if appropriate, and await the arrival of the supervisor. 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.

If the firearm was discharged in another jurisdiction, 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 who is not employed by the Brevard Police Department, the officer will follow the same procedure as if he/she had fired the weapon.

XII. Custody and Transport Responsibilities

A. Important Considerations

Officers must be mindful of certain 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 in the aftermath of 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 is able to 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

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 practicable and safe to do so.

D. Medical Treatment

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

1. Who show signs of injury as a result of any use of force.
2. Who complain 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. 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 which can assist in treating individuals suffering from excited or agitated delirium.
5. Who have been exposed to an ECW and/or for dart removal. (EMS is an appropriate level of care; 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.

XIII. Use of Force Reporting Requirements

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 which results in an injury to an individual.
3. When an individual claims to have been injured as a result of use of force.
4. Whenever force is applied with a protective instrument.
5. Whenever a firearm is discharged other than 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, an 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.

- E. The BPD-101 will be completed **prior** to the end of the tour of duty or immediately before beginning the next tour of duty. The BPD-101 will be completed prior to beginning any scheduled leave or regular days off. 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.
- 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.

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 some or all the required documentation, then the reporting officer must ensure the information is accurately recorded. The reporting officer will identify the source of the information in the required documentation. If it is investigative sensitive or necessary to keep the source out of the required documentation, then the identity of the source will be maintained on notes in 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 below notifications in the circumstances described regardless of whether the involved employee is on or off-duty.
 - a. Criminal Investigations Division are 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.
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 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 prior to 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 forwarded 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. Officer will be referred to the designated Employee Assistance Trauma Program as designated by the Chief of Police.
 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 forwarded to the Chief of Police.

XIV. Use of Force Review Committee

- A. The Use of Force Review Committee will consist of the following personnel:
 - a. Deputy Chief of Police and/or Division Captains
 - b. BPD Training Coordinator
 - c. Patrol Lieutenant (rotating)

- B. The Use of Force Review Committee will review use of force incidents referred for review by a supervisor, as well as all in custody deaths and intentional discharge of firearms by department personnel, and report the results of this review, along with any conclusions or recommendations, to the Chief of Police, as requested. The committee will focus on overall operations and procedures and not on individuals. In addition, the committee will periodically evaluate the list of authorized departmental firearms and protective instruments and make recommendations concerning approval, adoption, and required training/certification.

- C. The committee will meet quarterly and as needed at the direction of the Chief of Police.

- D. Other personnel may be added to select committee meetings as needed.

XV. Training / Certification Requirements

- A. Authorization
Only officers who have successfully 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
Each officer must certify annually with all approved firearms and protective instruments that the officer is authorized to use. Annual firearms certification must meet the standards of the North Carolina Criminal Justice Training and Standards Commission and department training standards. Failure to recertify annually on any firearm or protective instrument will withdraw from the officer the authorization to carry or utilize that force option. In the case of department-issued firearms, the firearm will be immediately turned in until recertification is completed. In the case of department issued protective instruments, such equipment will be immediately turned in to a supervisor until recertification is completed.

- C. Use of Force Policies
Officers will be provided a copy of, and instruction in, the department's use of force policy prior to being authorized to carry any firearm or protective instrument.

- D. Documentation / Administration
The Brevard Police Department Training Coordinator is responsible for the maintenance of certification records, approval lists for protective instruments and defensive tactics, training materials, and approved lesson plans. 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 firearms qualifications are completed by an officer.

E. Defensive Tactics

Original training in defensive tactics occurs during Entry Level Training. Retraining occurs during In-Service Training every year. 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.

XVI. Relief from Duty

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 in order to protect the interests of the individuals involved and the Department while an investigation is being conducted 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.

XVII. Cancellation

This directive cancels Directive-110 with the effective date of September 1, 2021.

XVIII. Disclaimer

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



C Thomas Jordan
Chief of Police