

## 6.0 USE OF FORCE

### POLICY

It is the policy of the Buffalo Police Department to use only that amount of physical force that is objectively reasonable to achieve a legitimate law enforcement objective, including protecting a person from the imminent use of physical force, effecting an arrest or preventing an escape from custody. Any force used must be consistent with the Fourth Amendment of the United States Constitution and Article 35 of the New York State Penal Law. Excessive or unreasonable force shall not be used.

This policy is written in recognition of the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force to protect the public welfare requires a careful balancing of all interests.

## 6.1 DEFINITIONS

- A. *Objectively Reasonable* – An objective standard used to judge an officer's actions. Under this standard, a particular application of force must be judged through the perspective of a reasonable officer facing the same set of circumstances, without the benefit of 20/20 hindsight, and be based on the totality of the facts that are known to that officer at the time that the force was used.
- B. *Deadly Physical Force* – Physical force that, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury. It may include attempts to render the Officer unconscious, grabbing for the Officer's service firearm, blows to vital organs, stabbing, shooting, or any other action that would create a likelihood of causing the Officers serious physical injury or death.
- C. *Physical Injury* – Impairment of physical condition or substantial pain.
- D. *Serious Physical Injury* – Physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
- E. *De-escalation Techniques* – De-escalation techniques are actions taken by members that are designed to eliminate the need to use force in order to resolve any event or situation. The guiding principles for de-escalation are patience, flexibility, and the desire to resolve each situation peacefully. Such techniques include, but are not limited to:
  - 1. Slowing down the pace of an incident;
  - 2. Talking to a person using a tone of voice and language that is not aggressive or confrontational;
  - 3. Creating space/distance or placing barriers between the member and the person (reactionary gap);
  - 4. Tactical repositioning;

5. Waiting the person out when circumstances permit;
  6. Permitting a person to move about when safe;
  7. Permitting a person the opportunity to make statements or ask questions;
  8. Using verbal persuasions and warnings
  9. Requesting additional resources as needed (specialized units, CIT trained members, behavioral health care providers, negotiators, etc.).
- F. *Immediate/Direct Supervisor* – the senior on-duty lieutenant to whom a member is assigned.
1. In the absence of an on-duty specialty unit supervisor, the senior on-duty lieutenant in the district in which the member used force shall serve as the immediate/direct supervisor.

## 6.2 CORE PRINCIPLES

- A. Members of the Department must be familiar with Article 35 of the NYS Penal Law which outlines the legal parameters for the use of physical force and the use of deadly physical force.
- B. Physical force shall only be used when no other viable option is available.
- C. When force is used, only that amount of force that is objectively reasonable to overcome a citizen's resistance or aggression shall be employed.
- D. The use of force must be reasonable and can never be reckless.
- E. During an encounter in which force has become necessary, the level of resistance or aggression displayed by the citizen may vary at different points in the encounter. The level of force used by the Officer shall be adjusted to changes in the suspect's level of resistance or aggression.
- F. Although a citizen's level of resistance or aggression is usually the primary factor that determines what level of force is reasonable and authorized, there may be other factors present that may reasonably cause an officer to escalate or de-escalate the level of force used during an encounter. These factors include, but are not limited to:
1. Officer/citizen factors (e.g. relative age, size, strength, skill level, injury/exhaustion, number of Officers versus number of citizens);
  2. Influence of drugs or alcohol;
  3. Presence/proximity of weapons;
  4. Other tactical factors (e.g. position of advantage, cover, time for decision);
  5. Availability of other viable force options.

## G. *PROHIBITED USES OF FORCE*

1. Force shall not be used by an officer for the following reasons:
    - a. To extract an item from the anus or vagina of a citizen without a warrant, except where exigent circumstances are present;
    - b. To coerce a confession from a citizen in custody;
    - c. To obtain blood, saliva, urine, or other bodily fluid or cells, from an individual for the purposes of scientific testing in lieu of a court order where required;
    - d. Against persons who are handcuffed or restrained unless it is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the citizen.
  2. The use of a chokehold or any other similar restraint is strictly prohibited. Chokehold restraint is defined as any application of sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air OR restricting the flow of blood to the brain by compressing the neck where the carotid arteries are located.
- H. *DUTY TO INTERVENE* – Any officer present and observing another officer using force that he/she reasonably believes to be clearly beyond that which is objectively reasonable under the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.
- I. *RETALIATORY FORCE* – Members are prohibited from using force against persons engaged in First Amendment protected activities or to punish persons for fleeing, resisting arrest or assaulting a member, or for any other reason.
- J. *DE-ESCALATION* – Members should, when practicable and reasonable, use de-escalation techniques before resorting to force and to reduce the need for force. De-escalation techniques mitigate the threats and gives officers time to utilize extra resources, and increases time available to call more officers or specialty units.
1. In order to de-escalate a situation or deploy a lesser force option or no force at all, members should, when practicable and reasonable:
    - a. Talk to the person and attempt to convince them to comply;
    - b. Reduce any threat presented by withdrawing to a position that is tactically advantageous;
    - c. Take actions that allow the member greater distance and time.
  2. Members should perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions including, but not limited to:
    - a. Immediately approaching a person without proper evaluation of the situation;

- b. Failing to leave sufficient space between the member and the person;
    - c. Closing the reactionary gap;
    - d. Escalating a situation.
  3. Members should not use tactics that unnecessarily escalate an encounter or create a need for force.
  4. Members should de-escalate force immediately as resistance decreases.
  5. If the member has no alternative to using force, the member shall use only the amount of force that is objectively reasonable to respond to the threat or resistance and shall immediately reduce the level of force as the threat or resistance lessens or stops.
- K. *CRITICAL THINKING* – Prior to using force, members should use a critical thinking and decision-making framework to analyze and respond to incidents. This framework will allow members to uphold the sanctity of life and protect themselves by decelerating and stabilizing a situation to minimize the likelihood of the use of force. Using this framework, members should:
1. Assess the situation, threats, and risks;
  2. Gather relevant facts about the incident;
  3. Consider police powers and BPD policy;
  4. Identify options and determine the best course of action;
  5. Act, review, and re-assess the situation

### 6.3 USE OF FORCE CONTINUUM

- A. Members of the Department may use no more than the amount of force which is objectively reasonable to achieve a legitimate law enforcement objective. In most cases, the degree of resistance or aggression displayed by a citizen will be the primary factor in determining what level(s) of force by the Officer is reasonable and authorized. A citizen's reaction to an officer's attempts at control or restraint may be broadly classified into five categories. Those categories, together with the generally authorized officer force response options, are set forth below (also see ['Use of Force Quick Reference Guide \[Force Response Options & Responsibilities\]'](#)):
1. COMPLIANT / COOPERATIVE – The citizen generally complies with the commands of the Officer and offers no resistance.
    - a. *AUTHORIZED FORCE RESPONSE OPTION(S)* – In these instances the use of force is not authorized, however, customary handcuffing and escort techniques are authorized.
  2. PASSIVE / VERBAL RESISTANCE – The citizen passively resists the Officer's attempts to gain compliance or is verbally abusive, insulting or taunting and

refuses to comply with the Officer's commands, but is not verbally threatening to cause imminent physical harm to the Officer or another person.

- a. *AUTHORIZED FORCE RESPONSE OPTION(S)* – Officer(s) are authorized to use the amount of force which is objectively reasonable to overcome the resistance or aggression, including:
  1. Verbal techniques
  2. Grabbing, holding, and/or customary handcuffing techniques
  3. BolaWrap (see [EXHIBIT H – BolaWrap Policy](#))
3. ACTIVE RESISTANCE – The citizen makes physically evasive movements to defeat an Officer's attempt at control (e.g. bracing, tensing, moving away) or verbally threatens imminent harm to the Officer or another person or verbally signals an intention not to be taken into or retained in custody, providing the citizen's intent to physically resist is clear.
  - a. *AUTHORIZED FORCE RESPONSE OPTION(S)* – Officer(s) are authorized to use the amount of force which is objectively reasonable to overcome the resistance or aggression, including:
    1. Forcible take downs
    2. Wrestling and/or grappling
    3. Pain compliance holds
    4. Brandishing a firearm
    5. Brandishing an electronic control weapon (see [EXHIBIT G – Taser Conducted Electrical Weapon \[CEW\]](#))
    6. Brandishing an impact weapon (ASP / baton)
    7. Displaying or Deploying a chemical agent (CAP spray)
    8. BolaWrap (see [EXHIBIT H – BolaWrap Policy](#))
    9. Any other objectively reasonable or lesser means of force
4. PHYSICAL RESISTANCE – The citizen engages in or is about to engage in resistance or aggression that is aimed directly at the Officer. This includes grabbing, pushing, punching, kicking, biting, throwing objects or any behavior in which the Officer becomes the object of the citizen's actions. Physical resistance also includes that situation in which an Officer reasonably believes that the citizen is using or is about to use the above degree of physical force against another person.
  - a. *AUTHORIZED FORCE RESPONSE OPTION(S)* – Officer(s) are authorized to use the amount of force which is objectively reasonable to overcome the resistance or aggression, including:
    1. Hand/Foot strikes
    2. Strikes with an impact weapon (Asp/Baton)

3. TASER deployment in either cartridge or drive stun mode (see [EXHIBIT G – Taser Conducted Electrical Weapon \[CEW\]](#))
  4. K-9 Bite
  5. Any other objectively reasonable or lesser means of force
5. **DEADLY RESISTANCE** – The citizen engages or is about to engage in such an escalated level of resistance or aggression that the Officer reasonably believes the citizen’s actions constitute ‘deadly physical force’ (see section definition in section 6.1). This category also includes a citizen who an Officer reasonably believes is using or is about to use deadly physical force on another person.
- a. ***AUTHORIZED FORCE RESPONSE OPTION(S)*** – This level of resistance or aggression authorizes the Officer to use the amount of force objectively reasonable to preserve life or prevent serious physical injury and includes the use of deadly physical force.
    1. Discharge of a firearm
    2. Any other objectively reasonable or lesser means of force

#### 6.4 **RESPONSIBILITIES OF MEMBER(S) USING FORCE**

A. Also see ‘[Use of Force Quick Reference Guide \(Force Response Options & Responsibilities\)](#).’

#### B. ***NOTIFICATION OF IMMEDIATE SUPERVISOR***

1. Members using any of the below force response options or any other use of force to overcome active, physical, and/or deadly resistance by citizen(s) shall immediately notify their direct supervisor:
  - a. BolaWrap (see [EXHIBIT H – BolaWrap Policy](#))
  - b. Grabbing and/or holding
  - c. Brandishing an electronic control weapon (see [EXHIBIT G – Taser Conducted Electrical Weapon \[CEW\]](#))
  - d. Brandishing an impact weapon (ASP / baton)
  - e. Displaying a chemical agent (CAP spray)
  - f. Brandishing a firearm
2. Members shall also notify their immediate supervisor and request their presence at the scene for any of the below listed circumstances:
  - a. If the member used any of the below listed force options:
    1. Forcible take downs
    2. Wrestling and/or grappling
    3. Pain compliance holds

4. Hand/Foot strikes
  5. Strikes with an impact weapon (Asp/Baton)
  6. Deployment of OC Spray
  7. TASER deployment in either cartridge or drive stun mode (see [EXHIBIT G – Taser Conducted Electrical Weapon \[CEW\]](#))
  8. K-9 Bite
  9. Any firearm discharge (other than for the dispatch of a wounded animal)
- b. Force was used and a citizen is charged with resisting arrest ([NYS Penal Law Section 205.30](#)) and/or obstructing governmental administration ([NYS Penal Law Section 195.05](#)).
1. Supervisor presence at scene not required if force used to overcome the citizen's resistance was ONLY displaying, brandishing, grabbing, holding, and/or using customary handcuffing techniques.
- c. A citizen, bystander, and/or member sustains a physical or serious physical injury.
- d. A member believes that force used appeared to be excessive or out of policy.
- B. If a citizen sustains a physical or serious physical injury, whether by their own resistance/aggression or as a result of a use of force, the member shall immediately inform their direct supervisor, and, if necessary, prepare a P-1261 (Request for Medical Attention of Injured Prisoner) and have the injured citizen taken for medical treatment to the Erie County Medical Center (ECMC).
- C. Members involved in the use of force must dock their body worn camera at the end of their shift:
1. In accordance with the BPD [body worn camera policy](#), if an officer fails to activate their BWC, chooses to terminate a BWC recording, or experiences a malfunction of their BWC, that officer must complete a [P-1385 \(Body Worn Camera \[BWC\] Incident Report\)](#) form articulating the reason(s) why the officer failed to activate their BWC, why the BWC recording was interrupted, why the BWC recording was terminated, or explaining the malfunction of their BWC.
- D. Members using force shall document the circumstances surrounding the incident in a 'Use of Force' report via Axon Standards that shall be submitted directly to the Internal Affairs Division Captain, prior to the end of their shift.
1. If more than one officer used force, each officer shall submit their own individual 'Use of Force' report via Axon Standards.

E. Discharging a firearm on-duty:

1. Whenever a member discharges a firearm while on duty (other than in practice/training at a firearms range or to dispatch a wounded animal) he/she shall immediately report the incident to the Supervisor on duty in the District in which the incident occurred and then report the incident to their own supervisor to whom they are assigned and request their presence at the scene.
2. Prior to the end of their shift, the member must complete the Use of Force report (including circumstances in which a firearm was used to dispatch a wounded animal), via Axon Standards.

F. Discharging a firearm off-duty:

1. If a member discharges a firearm while off duty, whether intentionally or accidentally, the member shall notify the police authorities in the jurisdiction in which the incident occurred.
  - a. If the firearms discharge resulted in an injury to the member, or injury or death to another, the member shall request medical attention and the scene of the incident shall be preserved (refer to MOP Chapter 17).
2. The member must immediately contact his/her Commanding Officer, or in the Commanding Officer's absence, the 911 Communications Lieutenant.
3. The member shall, as soon as practicable thereafter, submit the Use of Force report via Axon Standards.
4. No such notification or report need to be made if the officer was legitimately engaged in target practice or hunting and there were no injuries.

6.5 RESPONSIBILITY OF IMMEDIATE SUPERVISOR OF MEMBER WHO USED FORCE

- A. Also see '[Use of Force Quick Reference Guide \(Force Response Options & Responsibilities\)](#).'
- B. The immediate supervisor shall promptly respond to the scene of any use of force incident in which:
  - a. One of the below force response options was used or any other type of force to overcome active, physical, or deadly resistance.
    1. Forcible take downs
    2. Wrestling and/or grappling

3. Pain compliance holds
  4. Hand/Foot strikes
  5. Strikes with an impact weapon (Asp/Baton)
  6. Deployment of OC Spray
  7. TASER deployment in either cartridge or drive stun mode (see [EXHIBIT G – Taser Conducted Electrical Weapon \[CEW\]](#))
  8. K-9 Bite
  9. Any firearm discharge (other than for the dispatch of a wounded animal).
- b. Force was used and a citizen is charged with resisting arrest ([NYS Penal Law Section 205.30](#)) and/or obstructing governmental administration ([NYS Penal Law Section 195.05](#)).
1. Supervisor presence at scene not required if force used to overcome the citizen's resistance was ONLY displaying, brandishing, grabbing, holding, and/or using customary handcuffing techniques.
- c. A citizen, bystander, and/or member sustains a physical or serious physical injury.
- d. A member believes that force used appeared to be excessive or out of policy.
- C. The immediate supervisor shall observe any citizen(s) and member(s) involved in the incident and ask if they are injured. If injured, the immediate supervisor shall ensure appropriate medical treatment is provided.
1. If the citizen, bystander, or member was injured as a result of the use of force and requires treatment and they have already been transported to the hospital, the supervisor will respond to the hospital to assess the extent of the injuries.
    - a. If the use of force used by a member results in what appears to be a serious physical injury to the citizen, the immediate supervisor shall ensure the scene is secured for further investigation as required.
- D. Prior to the conclusion of their shift, the supervisor shall submit a P-73 (Intra-Departmental Memorandum) addressed to the Commissioner of Police, directed to the Inspector and Captain of the Internal Affairs Division, via the chain of command, documenting their own actions and observations for any/all incidents involving use of force to which they respond. The P-73 should at a minimum include the following:
1. Time and date of the incident
  2. Location(s) to which the supervisor responded
  3. Initial observations from the scene

4. Member(s) involved in the use of force incident
  5. Information obtained from the member(s) detailing the level of resistance offered and the type of force used
  6. The response of the citizen when questioned about injuries
  7. Description of any injuries sustained by the member or citizen. If there are no visible injuries, note this observation
  8. If the use of force results in an injury, note the name of any medical personnel the supervisor speaks to regarding the nature of the injury
  9. Any potential witnesses
- E. If the immediate supervisor is involved in the use of force incident, the supervisor shall notify the Watch Commander who shall respond to the scene and will be responsible for completing and submitting the P-73 (Intra-Departmental Memorandum).
- F. For any incident in which force was used to overcome deadly resistance the supervisor shall immediately notify the Watch Commander.
- G. Ensure any members who used force submit all applicable reports including 'Use of Force' report via Axon Standards.
- H. The immediate supervisor of the member(s) involved in the use of force incident shall ensure that all members dock their body worn cameras at the conclusion of their tour.
- I. In the event a member who used force in an incident is incapacitated and unable to fulfill their responsibilities, the member's immediate Supervisor shall ensure all applicable responsibilities are fulfilled, including preparing reports on a member's behalf (via Axon Standards).
- J. NOTIFICATION OF WATCH COMMANDER – Supervisors shall notify the Watch Commander of all incidents in which:
1. A member uses one of the below types of force:
    - a. Strikes with an impact weapon (Asp/Baton)
    - b. Hand/Foot strikes
    - c. Deployment of OC Spray
    - d. TASER deployment in either cartridge or drive stun mode (see [EXHIBIT G – Taser Conducted Electrical Weapon \[CEW\]](#))
    - e. K-9 Bite
    - f. Any use of a police vehicle (marked or unmarked) to intentionally strike a citizen or a citizen's vehicle
  2. The presence of the Watch Commander shall be requested on scene in the following circumstances:
    - a. A citizen, a bystander, and/or a BPD member sustained a physical or

- serious physical injury.
- b. Any firearm discharge (other than for the dispatch of a wounded animal).
- c. Force was used to overcome deadly resistance.
- d. The force used appears to be excessive or out of policy.
- e. When requested by a supervisor.

## 6.6 RESPONSIBILITY OF WATCH COMMANDER IN USE OF FORCE INCIDENTS

- A. Also see [‘Use of Force Quick Reference Guide \(Force Response Options & Responsibilities\).’](#)
- B. The Watch Commander shall respond to the scene of any incident they are notified of or become aware of in which:
  - 1. A citizen, a bystander, and/or a BPD member sustained a physical or serious physical injury.
  - 2. Any firearm discharge (other than for the dispatch of a wounded animal).
  - 3. Force was used to overcome deadly resistance.
  - 4. The force used appears to be excessive or out of policy.
  - 5. When requested by a supervisor.
- C. Ensure scene is secure for further investigation, when necessary.
- D. Observe all citizens, bystanders, and/or members (regardless of location – scene, hospital, CCB, etc.) involved and ascertain extent of injuries for same.
- E. If the Watch Commander has reason to believe that the incident warrants activation of the [Critical Incident Policy](#), the Watch Commander shall initiate same.
- F. Investigating Incidents Occurring Outside the City

Whenever a member of the Department intentionally or accidentally discharges their firearm while outside the city, other than when legitimately involved in hunting or target practice the Watch Commander will determine whether a member of the Buffalo Police Department will respond to the incident based on:

  - 1. the apparent surrounding circumstances;
  - 2. the severity of the injuries, if any;
  - 3. the possibility of criminal conduct by the member;
  - 4. the distance from the City.
- G. If the Watch Commander is involved in a use of force incident that results in physical or serious physical injury, the Internal Affairs Division shall be notified to respond via the 911 Lieutenant.
- H. NOTIFICATION OF INTERNAL AFFAIRS DIVISION (IAD) – The Watch

Commander shall request IAD respond to all incidents in which:

1. Force was used to overcome deadly resistance.
2. Any firearm discharge (other than for the dispatch of a wounded animal).
3. The force used appears to be excessive or out of policy.
4. A citizen, bystander, and/or member sustained serious physical injury or death.

#### 6.7 USE OF DEADLY PHYSICAL FORCE

- A. Members of the Department may use deadly physical force but only when it is necessary to defend the Officer or third person from what the Officer reasonably believes to be the use or imminent use of deadly physical force.
- B. Even if the use of deadly physical force is authorized, the Officer may not be reckless in its use.
- C. Depending upon the circumstances in which they are utilized, the use of the ASP/baton, restraining holds, police vehicles, as well as service firearms, may be construed as the use of deadly physical force.
- D. If feasible, Officers will issue a verbal warning before using deadly physical force. Verbal warnings need not be issued when the Officer believes that doing so would increase the danger to the Officer or another person.

#### 6.8 USE OF FIREARMS

- A. Members of the Department shall discharge their firearms at a person only in those circumstances in which it is necessary to defend the Officer or another person from what the Officer reasonably believes to be the imminent use of deadly physical force. In attempting to take a suspect into custody, members of the Department shall discharge their firearms only in those circumstances in which the member reasonably believes that the use of deadly physical force by the suspect is imminent.
- B. Members shall not discharge a firearm or shoulder weapon from or at a moving vehicle or its occupants unless the occupants of the other vehicle are using deadly physical force against officer(s) or another person by means other than the vehicle. Members shall not discharge their firearms at or from a moving vehicle when the consequences of so doing will jeopardize the safety of other members of the Department or innocent bystanders.
- C. In those circumstances in which members of the Department are justified in discharging their firearms, they are not allowed to do so recklessly.
- D. Warning shots are prohibited.

- E. Members of the Department may use their firearms for target practice or competition at an approved range. Dry firing or other forms of practice on any Departmental property, except under the personal direction of a firearms instructor, is strictly prohibited.
- F. Members of the Department may use their firearms to incapacitate wild, vicious or rabid animals consistent with the guidelines set forth in Chapter 2 (Aided and Accident Cases), [Section 10 \(Incidents Involving Animals\)](#).

G. *DRAWING & BRANDISHING A FIREARM*

- 1. A member of the Department is authorized to draw (remove) his/her firearm from its holster or gun mount and have it ready for immediate use, in any circumstance in which the member reasonably believes his/her life or safety may be in danger.
- 2. A member of the Department may brandish (point) his/her firearm at a person when the officer reasonably believes that the person poses an immediate risk of death or serious physical injury to any other person.

6.9 USE OF AUTHORIZED LESS LETHAL SUBSTANCES /DEVICES /EQUIPMENT

- A. Non-lethal force options such as chemical spray (CAP) or a police baton/asp may be used, if “objectively reasonable” based on the citizen’s level of resistance or the suspects level of offensive action.
- B. THE USE OF SAPS, WEIGHTED GLOVES OR OTHER NON-LETHAL WEAPONS NOT APPROVED BY THE DEPARTMENT ARE PROHIBITED.
- C. Members of the Department shall use only that type of less lethal substances, devices or equipment specifically authorized by the Department and for which they have received proper training. Officers using these devices must successfully complete an initial training course in there use before issuance.
- D. The BPD will only use/train with less lethal substances, devices and equipment that have been previously training and taught in the Erie County Police Academy.
- E. The Department authorized the following less lethal equipment:
  - 1. CAP Spray
  - 2. ASP / Baton
  - 3. Taser CEW
  - 4. BolaWrap Device

F. USE OF CHEMICAL SPRAY

- 1. The Product – the only chemical agent projector (C.A.P.) to be used by an on-

duty member of the Buffalo Police Department is the Department issued.

2. Issuance – the Department issues authorized chemical agent projectors to those Officers trained in its use. The chemical agent projector issued by the Department is for on duty use only and it is not to be used or carried while the member is off-duty or while employed outside the Department.
3. Replacement – requests for replacement of empty or malfunctioning chemical agent projectors shall be submitted to the Police Academy on an Intra-Departmental Memorandum (P-73), which shall include an explanation of the necessity for the replacement. When an Officer requests replacement of an empty container, a check will be made to determine if the appropriate number of reports (P-1174) have been submitted to reflect why the chemical agent container is empty. If an appropriate number of reports have not been submitted, the Officer will not be issued a replacement chemical agent.
  - a. Although chemical agent containers are stamped with a date on the canister, the chemical agent is effective as long as the product is able to be discharged from the canister.
  - b. If an issued chemical agent projector is lost by any member of the Department, the member must immediately report the loss in writing. The report shall detail the circumstances of the incident and shall be forwarded to the Training Academy through the chain of command.
4. Use
  - a. In general, chemical agent projector spray is a use of force and shall be used only in conformity with the Departmental policy on use of force. Accordingly, chemical agent projector spray may be used only when its use is objectively reasonable to achieve a legitimate law enforcement objective. As a general rule, chemical agent projector spray is authorized for use on a citizen when an Officer encounters “Active Resistance” or “Physical Resistance”, as those terms are defined in the Department’s Use of Force Continuum.
5. Officer Accidentally Sprayed With A Chemical Agent

In the event that an Officer is accidentally sprayed with a chemical agent, or is intentionally sprayed by another person, the safety of that Officer becomes paramount. The attempted apprehension of the suspect must be abandoned if the safety of the sprayed Officer is unduly jeopardized.
6. Decontamination
  - a. The arresting Officer is responsible for the decontamination of any prisoner sprayed with a chemical agent. Decontamination will be accomplished in accordance with procedures and regulations at the City

Court Lock-up.

- b. If the chemical agent is used indoors, occupants are to be advised to air out the room where the chemical agent was used, for at least one hour before using the room.

## 7. Reporting

- a. A Use of Force Report (via Axon Standards) must be completed any time a member of the Department discharges a chemical agent, except those discharges occurring during testing, training, a malfunction, a use against an animal or an accidental discharge with no person affected. A Use of Force Report (via Axon Standards) shall be completed by each Officer using the chemical agent.
- b. Accidental discharges with no person affected or uses against animals require an Intra- Departmental Memorandum with explanation directed to the Training Academy.

## G. USE OF ASP / BATON

1. The Department issues the ASP Baton to those officers trained in its use. It is for on-duty use and may not be used off-duty or while employed outside the Department.

## H. USE OF TASER C.E.W. ([see EXHIBIT G – Taser Conducted Electrical Weapon \[CEW\]](#))

## I. USE OF BOLAWRAP DEVICE ([see EXHIBIT H – BolaWrap Policy](#))

### 6.10 ADMINISTRATIVE DUTY

At the discretion of the Police Commissioner or his/her designee, any member involved in a shooting or any other incident resulting in death or serious physical injury to another, may be temporarily assigned to administrative duty. Administrative duty, for purposes of this section, is any assignment that does not ordinarily require the making of arrests. Assignment to administrative duty is in no way a punitive measure and shall be used when it tends to advance the mission and goals of the Department.

### 6.11 ANNUAL INSTRUCTION ON USE OF FORCE

All members of the Department authorized to carry weapons shall receive a copy of the Department's use of force policies as established in this section and shall receive instruction on these policies during their annual firearms qualification at the Firearms Unit.

## 6.12 INTERNAL AFFAIRS DIVISION (IAD) DUTIES

- A. Internal Affairs will be the central repository for all use of force reporting.
- B. The Internal Affairs Division shall investigate every incident that generates an Axon Standards Use of Force Report.
- C. This investigation will include, at a minimum, a review of each Axon Standards Use of Force Report associated with the incident, a review of all Body Worn Camera footage of the incident, and a review of any Supervisor's P-73 documenting all observations of the incident.
- D. Upon conclusion of the investigation the Internal Affairs Unit shall make one of the following determinations:
  - 1. JUSTIFIED, WITHIN DEPARTMENT POLICY – a use of force is determined to be justified, and during the course of the incident the subject officer(s) did not violate a department policy; or
  - 2. JUSTIFIED, NOT WITHIN DEPARTMENT POLICY – a use of force is determined to be justified, but during the course of the incident the subject officer(s) violated a department policy; or
  - 3. JUSTIFIED, TRAINING OPPORTUNITY – a use of force is determined to be justified, no department policy violations occurred, but the investigation revealed tactical error(s) that could be addressed through non-disciplinary, tactical improvement training; or
  - 4. NOT JUSTIFIED, NOT WITHIN DEPARTMENT POLICY – a use of force is determined to be not justified, and during the course of the incident the subject officer(s) violated department policy.
- E. For any use of force that is deemed to be either “Not Justified” or “Not within Departmental Policy”, Internal Affairs shall open a formal case that will be presented to the Commissioner of Police for a final determination.
- F. IAD will be responsible for filing the mandatory reporting to DCJS following the current reporting mechanism.
  - 1. Reporting is required for any use of force incident, whether on or off-duty, for any use of force that meets the below definitions of force or threshold of injury of a citizen:
    - a. *Display a chemical agent* – To point a chemical agent at a person or persons.

- b. *Use/Deploy a chemical agent* – The operation of the chemical agent against a person or persons in a manner capable of causing physical injury as defined in PL Article 10.
- c. *Brandishes a firearm* – To point a firearm at a person or persons
- d. *Uses/Discharges a firearm* – To discharge a firearm at or in the direction of a person or persons
- e. *Brandishes an electronic control weapon* - To point an electronic control weapon at a person or persons
- f. *Uses/Deploys an electronic control weapon* – The operation of an electronic control weapon against a person or persons in a manner capable of causing physical injury as defined in PL Article 10
- g. *Brandishes an impact weapon* – To point an impact weapon at a person or persons
- h. *Uses/Deploys an impact weapon* – The operation of an impact weapon against a person or persons in a manner capable of causing physical injury as defined in PL Article 10
- i. *Uses a chokehold or other similar restraint* - Any application of sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air OR restricting the flow of blood to the brain by compressing the neck where the carotid arteries are located.
- j. *Conduct that Resulted in Death*
- k. *Serious bodily injury* - Bodily injury that creates or causes:
  - 1. a substantial risk of death; or
  - 2. unconsciousness; or
  - 3. serious and protracted disfigurement; or
  - 4. protracted loss or impairment of the function of any bodily member, organ or mental faculty.