

USE OF FORCE

EVERETT POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.01	ISSUE DATE: 11 APR 2011
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.3.1; 1.3.2; 1.3.3; 1.3.5;	EFFECTIVE DATE: 11 APR 2011
	REVISION:11/15/19; 6/15/2020 3/24/2021;3/23/2022

I. GENERAL CONSIDERATIONS AND GUIDELINES

Police officers are continuously confronted with situations requiring or resulting in the use of force. The degree of force used is dependent upon the facts surrounding the situation the officer's face. Only a reasonable and necessary amount of force may be used. The objective of the use of force is to maintain and/or reestablish control over a situation.

Police officers are further trained that whenever a particular force option is utilized against an individual who fails to comply with the reasonable and lawful command of the officer(s), that particular force option shall terminate, when it is deemed to be objectively reasonable that a subject is fully within the law enforcement officer's control.

II. POLICY

It is the policy of the department that:

1. Officers use only the force that is reasonably necessary to accomplish lawful objectives such as to make a lawful arrest, to place a person into protective custody, to effectively bring an incident under control, or to protect the lives or safety of the officer and others. [1.3.1]
2. The use of neck restraints or control techniques, commonly known as choke holds, have a potential for serious injury therefore are **not authorized.**

3. When exigent and unforeseen circumstances cause officers to deviate from the provisions of this rule, officers are still expected to act with intelligence, sound judgment and in full conformity with both state and federal laws and constitutional provisions. Any such deviations from the provisions of this rule shall be examined on a case by case basis.

III. DEFINITIONS

- A. *Force*: Any physical effort used to compel, repel and/or control.
- B. *Non-Lethal Force*: (Non-Deadly Force) That force which is not likely or intended to cause serious bodily harm or death.
- C. *Lethal Force*: (Deadly Force) That force which is likely or intended to cause serious bodily harm or death.
- D. *Chokehold*: The use of a lateral vascular neck restraining or other action that involved the placement of an part of a law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing of blood flow with the intent of or with the result of causing serious bodily harm, unconsciousness or death. Chokeholds are strictly forbidden by statute and are not part of this department's training program.
- E. *Bodily Harm*: A bodily injury that does **not** create a substantial risk of death; causes serious and/or permanent disfigurement; or results in significant loss or impairment of the functioning of any body part.
- F. *Serious Bodily Harm*: (Serious Bodily Injury) A bodily injury that creates a substantial risk of death; causes serious and/or permanent disfigurement; or results in significant loss or impairment of the functioning of any body part.
- G. *De-Escalation*: Proactive actions and approaches used by an officer to stabilize a law enforcement situation so that more time, options and resources are available to gain a person's voluntary compliance and to reduce or eliminate the need to use force including, but not limited to, verbal persuasion, warnings, slowing down the pace of an incident, waiting out a person, creating distance between the officer and a threat and requesting additional resources to resolve the incident, including, but not limited to, calling in medical or licensed mental health professionals, as defined in subsection (a) of section 51½ of chapter 111, to address a potential medical or mental health crisis.

IV. PROCEDURES

A. Use of Force, Non-Sworn Employees

1. NON-SWORN: Non-sworn employees have no authority to use force for law enforcement purposes. Non-sworn have no authority to use force other than that associate with a citizen's right to use force.
2. CITIZENS ARREST: A non-sworn employee may use force against another when he/she is making or assisting in making an arrest and he/she believes that such force is immediately necessary to effect a lawful arrest. ¹
 - a. The use of force is not justifiable unless:
 - 1) The employee makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and
 - 2) When the arrest is made under a warrant, the warrant is valid or believed by the employee to be valid.
 - b. The use of deadly force is not justifiable unless the employee effecting the arrest:
 - 1) Is authorized to act as a peace officer or is assisting a person whom he believes to be authorized to act as a peace officer, and
 - 2) Believes that the force employed creates no substantial risk of injury to innocent persons; and
 - a) The crime for which the arrest is made involved conduct including the use or threatened use of deadly force; or
 - b) There is a substantial risk that the person to be arrested will cause death or seriously bodily harm if his apprehension is delayed.
3. SELF DEFENSE²
 - a. Non-Deadly Force: For the use of non-deadly force to be justified, the employee must:
 - 1) Have reasonable concern for his/her safety;
 - 2) Pursued all possible alternatives to combat; and
 - 3) Force used must be no greater than necessary.
 - b. Deadly Force: For the use of deadly force, an employee must:
 - 1) Have a reasonable fear that he/she is imminent danger of death or serious bodily harm; and
 - 2) No other means will suffice to prevent such harm.

4. DEFENSE OF THIRD PERSON: ³

- a. A non-sworn employee is justified in using force against another to protect a third person when:
 - 1) A reasonable person in the employee's position would believe the intervention to be necessary for the protection of the third person, and
 - 2) In the circumstances, as that reasonable person would believe them to be, the third person would be justified in using such force to protect himself. The reasonableness of the belief may depend in part on the relationships among the person involved.
- b. The employee's justification is lost if he uses excessive force

B. Use of Force by Sworn Officers

1. SWORN OFFICERS:

- a. Officers shall not use force upon another person unless de-escalation tactics have been attempted and failed or (the de-escalation tactics) are not feasible based on the totality of the circumstances.
 - b. Officers use only the force that is reasonably necessary to accomplish lawful objectives such as to make a lawful arrest, to place a person into protective custody, prevent an escape from custody, prevent imminent harm and the amount of force used in proportionate to the threat of imminent harm, to effectively bring an incident under control, or to protect the lives or safety of the officer and others when alternative methods and tactics are either impractical, ineffective or pose a greater risk. [1.3.1]
- #### 2. DE-ESCALATION: Whenever reasonable to do so, officers shall utilize de-escalation tactics to stabilize a law enforcement situation so that more time, options, and resources are available to gain voluntary compliance and reduce or eliminate the need for force. These approaches include (but not limited to): .
- a. Verbal persuasion,
 - b. Warnings,
 - c. Slowing down the pace of an incident,
 - d. Waiting out a person,
 - e. Creating distance between the officer and a threat, and
 - f. Requesting additional resources to resolve the incident (calling medical or mental health professionals)

-
3. DUTY TO INTERVENE: Officers shall intervene when they believe another officer is about to use excessive or unreasonable force, or, when they witness colleagues using excessive or unreasonable force, or, engaging in other misconduct based on the totality of the circumstances, unless intervening would result in imminent harm to the officer or another identifiable individual
 - a. An officer who observes another officer using force, including deadly force beyond that which is necessary or objectively reasonable based on the totality of the circumstance shall report the incident to a supervisor (in-writing) as soon as reasonably possible but no later than the end of the officer's shift.
 - b. Any harassment, intimidation or retaliation against an officer who makes such a report regarding the witnessed excessive force shall be a violation of the policy and shall upon a sustained internal investigation shall be subject to departmental discipline up to and including termination.

 4. PERCEIVED CIRCUMSTANCES: The level of force used by an officer shall be a response based upon:
 - a. Threat Perception - the reasonable officer's perspective of the situation in reference to the severity of any crime, the existence of an immediate safety threat to the officer or others, and the degree of compliance from the subject;
 - b. Perceived Subject Action(s) - the subject action(s) as perceived by the reasonable officer.
 - 1) Compliant: The officer maintains or gains compliance to desired directives via options of tradition, time, communication skills, etc.
 - 2) Passive Resistive: The subject's degree of noncompliance is free of physical or mechanical enhancement, other than sheer unresponsiveness.
 - 3) Active Resistive: The subject's noncompliance has become more active in scope and intensity to a level of energy enhanced physical or mechanical defiance.
 - 4) Assaultive (Bodily Harm): An actual attack upon the officer or others. The scope and severity of the attack would not support the reasonable officer's assessment of death or serious bodily harm to occur to the officer or others.

- 5) Assaultive (Serious Bodily Harm/Death): The reasonable officer could conclude that death or great bodily harm may be inflicted as a result of the subject's actions.

5. REASONABLE OFFICER RESPONSES

- a. Cooperative Controls: (Compliant) - Includes the subject's acceptance of authority by the use control techniques including; communication skills, common tactics, body language, etc.
- b. Contact Controls: (Passive Resistant) - "Hands on" techniques used to guide or direct the subject. The primary force component at this level could be non-pain compliance techniques, etc.
- c. Compliance Techniques: (Active Resistant) - The force forms could include elements of pain compliance, chemical irritants, joint restraints, electrical weapons in drive stun mode, etc.
- d. Defensive Tactics: (Assaultive) - The officer is justified in taking appropriate steps to immediately cease the assaultive action and to gain compliance and maintain control of the subject. Force could include weapon (baton) strikes, electrical weapon deployment, and canine apprehension.
- e. Deadly Force: (Lethal) - Absolute and immediate tactics must be deployed to stop the lethal risk and secure conclusive compliance and control. Force options could include those leading to permanent debilitation or even death, including firearms and weapons of available means.

C. Use of Deadly Force [1.3.2]

1. Officers are authorized to use deadly force:
 - a. Once de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances; and
 - b. Such force is necessary to prevent imminent harm to a person and the amount of force used is proportionate to the threat of imminent harm.
 - c. To protect the officer or others from what is reasonably believed to be a threat of death or serious bodily injury; and/or
 - d. To effect an arrest only if⁴:
 - 1) The arrest is for a felony; and
 - 2) The officer reasonably believes that the force employed creates no substantial risk to innocent persons; and
 - 3) The officer reasonably believes that:

- a) The crime for which the arrest is to be made involved conduct including the use or threatened use of deadly force; or
 - b) There is a substantial risk that the person to be arrested will cause death or serious bodily harm if such person's apprehension is delayed.
2. Where practical prior to discharging a firearm, officers shall identify themselves as law enforcement officers and state their intent to shoot.
 3. Officers may use deadly force to euthanize an animal that represents a threat to public safety or as a humanitarian measure where the animal is seriously injured when the officer reasonably believes that deadly force can be used without harm to the officer or others.
 4. If an officer uses an improvised technique, tactic or weapon in a dynamic and rapidly evolving situation, the officers will specifically articulate the need to do so. Also, the officer shall articulate and describe the improvised technique, tactic or weapon used.
 5. In the performance of duty, pointing a weapon (firearm or Taser) at any person, group or vehicle TO GAIN COMPLIANCE is a use of force and requires a report.
 6. Officers may utilize any means (except for chokeholds) necessary to stop a threat in life threatening situations where serious bodily injury or death will be the likely result from a suspect's behavior.

D. Deadly Force Restrictions

1. A law enforcement officer **shall not use deadly** force upon a person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to prevent imminent harm to a person and the amount of force used is proportionate to the threat of imminent harm. [1.3.2]
2. WARNING SHOTS: Firearms **shall not** be discharged as a bluff, warning, or signal shot. [1.3.3]
3. MOVING VEHICLES: Officers s may not discharge a firearm at or into a moving or fleeing vehicle unless, based on the totality of the circumstances, such discharge is necessary to prevent imminent harm to a person and the discharge is proportionate to the threat of imminent harm to a person)occupant is using or threatening to use deadly force). Officers shall not shoot when the vehicle is no longer an imminent threat. Officers shall not shoot from a moving vehicle.
4. The use of neck restraints or control techniques, commonly known as choke holds, have a potential for serious injury therefore are **not authorized**.

5. A law enforcement officer shall not use a chokehold **under any circumstance(s).**
6. A law enforcement officer shall not be trained to use a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing or blood flow [1.3.4]

E. Use of Non-Lethal Force

1. Where deadly force is not authorized, officers may use only that level of force that is reasonably necessary to bring an incident under control. [1.3.4]
2. A law enforcement officer **shall not use non-lethal** force upon a person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to prevent imminent harm to a person and the amount of force used is proportionate to the threat of imminent harm. [1.3.4]

3. MOVING VEHICLES

- a. Officers may not discharge the Taser (Drive Stun Mode or Probe deployment) at or into a moving or fleeing vehicle.

4. NON MOVING VEHICLES

- a. Officers may discharge the Taser in Drive Stun mode on the operator or passenger of a non-moving motor vehicle if:⁵
 1. The vehicle is not operational or is in park and not likely to be engaged into drive, and
 2. The subject(s) is actively resisting, and
 3. The subject(s) has been advised of the Taser use if the subject(s) do not comply.

5. Officers are authorized to use department-approved, non-deadly force techniques and issued equipment to:

- a. Protect the officer or others from physical harm;
- b. Restrain or subdue a resistant individual, while making a lawful arrest or placing a person in protective custody; and/or
- c. Bring an unlawful situation safely and effectively under control.

6. The mere placing of handcuffs on a prisoner will not be construed to be a use of physical force. Use of restraining devices is mandatory on all prisoners, unless in the officer's judgment unusual circumstances

- exist which make the use of restraining devices impossible or unnecessary (e.g., very young juvenile, handicapped, injured).
7. The use of chokeholds and other similar neck restraints that restrict the airway **shall not** be utilized by members of the department in non-lethal force situations.

F. After Care

1. ELECTRICAL WEAPONS: See PP 1.03 Electrical Weapons
2. Chemical Weapons
 - a. Pepper Spray
 - 1) Suspects subdued through the use of pepper spray may need to be decontaminated. Officers should refrain from decontaminating detainees while they are violent or assaultive.
 - 2) Remove suspect from contaminated area. If the subject was sprayed in a closed room or vehicle, ventilate the area.
 - 3) Suspects should be instructed to try to be calm and not to touch their face. If wearing contact lenses, remove as soon as reasonably possible.
 - 4) Decontamination wipes may be used if available.
 - 5) Allow suspect access to a running hose, holding cell sink or eye wash station if circumstances permit. The affected area may be washed with soap and water.
 - 6) Creams and oils should be avoided as they lock the capsicum against the skin.
 - 7) If symptoms such as breathing difficulties, gagging, profuse sweating and loss of consciousness persist, seek medical attention.
 - b. Tear Gas – CN, CS, CR
 - 1) Remove suspect from contaminated area to fresh air. Wind or a fan blowing on the suspect will remove particles.
 - 2) Avoid rubbing eyes. Wash affected area with soap and water.
 - 3) Remove contaminated clothing.
 - 4) Be careful to avoid becoming cross contaminated.

G. Medical Attention [1.3.5]

1. After any level of force is used (including weaponless tactics), the officer shall immediately evaluate the need for medical attention or

- treatment for that person upon whom the force was used and arrange for such treatment when:
- a. The suspect is in obvious need of medical attention.
 - b. The suspect has a serious visible injury; or
 - c. The suspect complains of injury or discomfort and requests medical attention.
2. Injury to Prisoner: See department policy on **1.02 Use of Force Reporting**.
3. Any person requesting and/or deemed in need of immediate medical attention shall be evaluated by medical personnel or transported (in accordance with the departmental policy **3.01 Transportation of Detainees**) to the appropriate hospital or medical facility. All medical treatment received shall be noted in the officer's report.
- a. If the suspect displays Impaired thinking, disorientation, hallucinations and/or delusions, intense paranoia, violent and/or bizarre behavior AND during the arrest exhibits great strength, a diminished sensitivity to pain, the individual may be showing signs of Excited Delirium. During the arrest or immediately after the struggle sudden death may ensue. Arrestees displaying these symptoms should be checked by medical personnel.
 - b. Persons suffering from Cocaine Intoxication, particularly if additional alcohol is used, are subject to increased blood pressure, heart rate and body temperature. Sudden death may occur in such persons. Arrestees displaying these symptoms should be checked by medical personnel.
 - c. Psychiatric patients who display hyperthermia (over heating), are in and out of consciousness and have lumpiness of skeletal muscles may be suffering from Neuroleptic Malignant Syndrome and may also be prone to sudden death. Arrestees displaying these symptoms should be checked by medical personnel.

H. Reporting Use of Force: See the department policy regarding **1.02 Use of Force Reporting**.

¹ *Com. v. Klein*, 372 Mass. 823, 363 N.E.2d 1313 (1977)

² *Com. v. Haddock*, 46 Mass.App.Ct. 246, 704 N.E.2d 537 (1999)

³ *Com. v. Martin*, 369 Mass. 640, 341 N.E.2d 885 (1976)

⁴ *Com. v. Klein*, 372 Mass. 823, 363 N.E.2d 1313 (1977)

⁵ *Brown v. Cwynar*, 3rd Circuit Court 2012