




BUFFALO STATE

The State University of New York

State University Police Department

	SUBJECT Use of Force	GENERAL ORDER NUMBER 130.10
	DCJS STANDARDS 20.1, 20.5, 20.6, 21.1, 21.2, 32.3	EFFECTIVE DATE February 16, 2011
	APPROVAL Peter M. Carey, Chief of Police	REVISION DATE July 10, 2019 <i>Peter M. Carey</i>

A. Policy Statement:

It is the policy of the Buffalo State University Police Department that officers use only that level of force that is reasonable to control an incident, to affect an arrest, or to protect themselves or others from personal harm or death. The degree of force used by the officer should be within the limits established by Article 35 of the New York State Penal Law, Graham v. Connor case, and consistent with the training provided by the Buffalo State University Police Department and the guidelines established in this policy.

The authority to use force carries with it the need for accountability in order to safeguard the rights of the public and preserve the integrity of the Buffalo State University Police Department, as well as Buffalo State College. As such, it is this Department's policy that officers report ALL use of force incidents, as designated herein, in a timely, complete, and accurate manner, as prescribed by this policy. Any officer who uses force, is a witness to a use of force incident, or who authorizes conduct leading to the use of force incident, shall not be allowed to conduct the review/investigation. The use of force reporting will also be in compliance with New York State Executive Law section 837-t.

B. Definitions:

1. Critical Firearm Discharge: When an officer discharges a firearm. Range and training discharges, and discharges at animals, are not included under this section.
2. Force: Any physical strike, or contact with an instrument, of a person; any intentional attempted physical strike or instrumental contact that does not take effect; or any significant physical contact that restricts the movement of a person. The term includes: aiming of a firearm, discharge of a firearm, use of chemical agents, use of impact weapons, taking a subject to the ground, and any physical contact that includes control techniques. The term does include handcuffing a person with minimal or no resistance who is not arrested. Use of force is lawful if it is *objectively reasonable* under the circumstances to affect an arrest or protect the officer or other person.
3. Harm: Injury inflicted upon a person, whether visible or not.
4. Hard Hand Control: Impact oriented techniques that include knee strikes, elbow strikes, punches, and kicks. Control strikes are used to subdue a subject and include strikes to pressure points

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such as: the common peroneal nerve (side of the leg), radial nerve (top of the forearm), or brachial plexus origin (side of neck).

5. Deadly force: Any physical force that can reasonably be expected to cause death or serious physical injury. Officers must understand that lethal physical force is an extreme measure and shall only be used in accordance with the law.
6. Non-Deadly force: Any use of force not intended to cause, nor likely to cause, death or serious bodily harm.
7. Reportable Use of Force: All force used, including non-resistant compliant handcuffing of a person who is not arrested and drawing a firearm at low ready position when observed by a member of the campus community.
8. Resisted Handcuffing: When a person actively resists being placed in handcuffs and the officers must use reasonable force to gain compliance by forcibly moving the subject's wrists or arms, or to physically maneuver the subject's body so the handcuffs can be applied. The "resistance" may range from an active struggle to a person simply "locking" his/her arms to prevent compliant handcuffing. Conversely, "unresisting (cooperative) handcuffing" of a person who is not arrested occurs whenever the subject complies with the officer's verbal commands and/or unresistingly allows the officers to position their arms to apply handcuffs, or the subject positions their arm as commanded for the application of handcuffs.
9. Serious bodily injury: Injury that causes death or creates a substantial risk of death, permanent harm to health, disfigurement, permanent loss of functions by any organ in the body, or results in admittance to a medical facility. Note: minor treatment such as eye-washing, cleansing, and bandaging; evaluation with no injury discovered; etc., will be evaluated on a case-by-case basis by a supervisor, and absent extenuating circumstances, may not be designated as serious bodily harm.
10. Serious Use of Force: Any action by an officer that involves: 1) the use of deadly force, including all critical firearm discharges; 2) a use of force in which the person suffers serious bodily injury, or requires hospital admission; 3) a canine bite; or 4) the use of OC spray against a restrained person.
11. Soft Hand Control: The use of physical strength and skill in defensive tactics to control arrestees that are reluctant to be taken into custody and offer some degree of physical resistance. Such techniques are not impact oriented and include pain compliance pressure points, takedowns, joint locks, and simply grabbing a subject. Touching or escort holds may be appropriate for use against levels of passive physical resistance.
12. Supervisor: A supervisor includes a Lieutenant and above who is assigned responsibility for supervising officers.
13. Weapon: Any instrument, article or substance, including a vehicle, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious bodily injury.

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C. Force Levels

1. Level 1:

- a. A firearm is intentionally pointed at a person.
- b. Non-resistant compliant handcuffing of a person who is not arrested.
- c. Brandishes or displays a chemical agent, impact weapon or electronic control weapon.
- d. A weaponless defense technique is applied to a vulnerable area, excluding strikes (e.g., hair grab, pressure to mastoid or jaw line; and shoulder muscle grab),
- e. An on-duty firearm discharge to dispatch an injured animal.
- f. A weaponless defense technique control hold is applied:
 - (1) Escort (elbow);
 - (2) Twist lock;
 - (3) The use of any other weaponless control hold in accordance with department training;
 - (4) Arm-bar; or
 - (5) Bent-wrist.

2. Level 2:

- a. Chemical agent is applied to a person.
- b. The use of an Electronic Control Weapon (ECW) by another law enforcement agency in a mutual aid situation involving any of the following circumstances:
 - (1) When one or more probes impacts or penetrates the subject's clothing or skin;
 - (2) When the push stun arc touches the subject's clothing or skin; or
 - (3) An ECW is fired at a person, but misses.
- c. Any impact weapon, including specialty impact munitions, or any other instrument is used in an attempt to strike another person, but no contact is made.
- d. The impact weapon is used for a non-striking purpose (e.g., prying limbs, moving, or controlling a person).
- e. A weaponless defense technique, other than control holds, but excluding strikes to the head. Examples include:
 - (1) Hand/palm/elbow strikes;
 - (2) Kicks;
 - (3) The use of any other weaponless defense technique in accordance with department training;
 - (4) Leg sweeps; or
 - (5) Takedowns.
- f. An on-duty firearm discharge at an animal, other than to dispatch an injured animal.
- g. Any strike to the head (except for an intentional strike with an impact weapon).
- h. Chokehold or neck restraint is applied that does not result in the loss of consciousness.
- i. Use of impact weapons, including specialty impact munitions or any other object, to strike a subject and contact is made, regardless of injury.
- j. Another law enforcement agency's police canine bites the clothing or the skin of a subject, or otherwise injures a subject in a mutual aid situation.

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- k. Any use of force which results in injuries to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance.

Note: For the purposes of this order, an evaluation by a medical professional to assess a complaint of injury is not emergency medical treatment.

3. Level 3:

- a. Any use of force resulting in death.
- b. Any critical firearm discharge regardless of injury.
- c. Any force which creates a substantial risk of causing death.
- d. Any force which causes serious bodily injuries as identified in this policy.
- e. Any intentional impact weapon strike to the head.
- f. Any use of force that is elevated to Level 3 after investigation and approval by a Lieutenant.

D. Use of Force:

1. Officers use only that level of force which is reasonably necessary to control an incident, to affect an arrest, or to protect themselves or others from personal harm or death, pursuant to departmental policy and training.
2. If circumstances dictate, the officer may bypass lower levels of force and immediately respond with a higher level.
3. By law, an officer need not retreat in performance of their lawful duties, but a tactical retreat in the face of overwhelming odds may be a wise choice. This is true even when use of force may be legally justified. De-escalation techniques shall be employed prior to use of force whenever possible. Guidance on de-escalation techniques is provided in [General Order 130.30](#): De-escalation Strategies.
4. Only issued or approved equipment will be carried on duty and used when applying physical force, except in emergency situations when an officer must use any resources at his disposal.
5. Officers shall use authorized less-than-lethal substances and devices such as OC spray, pursuant to departmental policy and training. The use of an active countermeasure, the baton, or OC spray shall be considered a use of force.
6. 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. prisoner is very elderly or handicapped, etc.). The placing of handcuffs on a prisoner will be construed to be a use of physical force. When the handcuffs become an appliance to exert force necessary to further subdue a prisoner or where the suspect physically resists the application of handcuffs, a use of physical force has occurred.
7. The use of chokeholds or other physical manipulation to the throat or airway of a suspect, or a strike to the throat, back of the neck or spine of a suspect is not authorized unless utilized to combat the threat of deadly physical force against the officer or others. If utilized, and once the subject is under control, proper restraint and holds will be deployed pursuant to departmental policy and training.

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8. At no time shall officers utilize “hogtying” as a method to restrain an individual. Hogtying is defined as a four-position binding of a person’s wrists and ankles together behind the back.
9. After physical force is used, an officer shall as soon as practical evaluate the need for medical attention or treatment for that person upon whom the physical force was used and arrange for such treatment when that person has a visible injury, complains of injury or discomfort, or requests medical attention.
 - a. Serious or potentially life-threatening incidents require immediate aid by medical professionals.
 - b. A supervisor shall be immediately advised of all injuries observed or reported.
 - c. If medical aid is not provided, heightened observation to detect obvious changes in physical condition should take place.
 - d. If OC spray was utilized, the eyes and other affected areas should be flushed with water, and an evaluation by medical professionals should be considered.
10. Any officer, whose actions or use of force in an official capacity results in death or serious physical injury, shall be immediately assigned to administrative duties and shall not return to field assignments until an investigation has been satisfactorily completed and the officer has been determined to be fit for duty. Administrative leave may be requested when appropriate.
 - a. Due consideration shall be given to provide post-incident debriefing, counseling, or other necessary support for the officer involved.

E. Duty to Intercede:

Any officer present and observing another officer using force that is **clearly beyond that which is objectively reasonable** under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

F. Medical Considerations:

After any use of force, medical assistance shall be obtained for any person who **exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious**. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

G. Use of Deadly Physical Force:

1. Buffalo State University Police officers will respond to any complaints involving armed individuals, robberies or other dangerous incidents that occur during their tours of duty.
2. Members of the Buffalo State University Police Department may use deadly physical force only as authorized by the provisions of Section 35 of the Penal Law, including but not limited to, section 35.30. An officer may use deadly physical force in order to protect the officer or another person from what is reasonably believed to be an immediate threat of death or other serious physical injury, or to prevent the escape of a fleeing felon, as stated in section 35.30, whom the

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officer has reasonable cause to believe will pose a significant threat to human life should escape occur.

3. Deadly force is not authorized against persons who only pose a danger to themselves.
4. University Police officers are not required to retreat in lieu of the justifiable use of deadly physical force. Nevertheless, an officer should evaluate and use a less drastic means of force without unreasonably endangering the officer or another person.
5. No officer shall draw or exhibit any firearm unless the circumstances establish a reasonable cause to believe that it may be necessary to use the firearm in conformance with this policy.
6. It shall be this department's policy that a University Police officer is justified in firing of his or her firearm in the following limited circumstances:
 - a. The defense of their own life, or
 - b. The defense of a fellow officer's life or the life of a third person; or
 - c. To prevent the actual commission of a violent felony, (those stated in Article 35.15, 35.20, and 35.30 of the N.Y.S. Penal Law) where human life is being jeopardized by the subject.

The above-mentioned instances relate solely to self-defense of a third person from deadly physical force.

- d. Firearms may be used against animals:
 - (1) With the destruction of an animal for humanitarian purposes.
 - (2) When they are attacking or presenting an imminent danger to any person.
 - (3) For critically sick or injured wild animals.
7. Firearms should not be discharged when it appears that a third party may be injured as a result.
8. Shooting warning shots is prohibited.
9. Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force, other than the vehicle, is directed at the officer or others.
10. Unauthorized use of a firearm shall be cause for disciplinary action up to and including termination. The reckless or criminally negligent conduct by a Buffalo State University Police officer in the use of a firearm amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody, will result in that individual officer being personally responsible for justifying his or her action, both criminally and civilly.

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H. Supervisory Responsibilities

1. General:

- a. The Lieutenant, after being notified of a Level 3 use of force, shall immediately respond to the scene and conduct a preliminary investigation into the use of force.
- b. If a Lieutenant is not on duty for a Level 3 use of force, discharge of a firearm at an animal other than to dispatch the animal or any injury that requires admittance to the hospital, the Dispatcher shall immediately notify the Assistant Chief of Police or Chief of Police in accordance with [General Order 114.20](#) Upward Notifications.
- c. The Lieutenant, after being notified of a Level 3 Officer Involved Shooting, shall follow the procedures set forth in [General Order 130.20](#), Officer Involved Shooting.
- d. While at the scene of a Level 2 or 3 use of force, the Lieutenant shall visibly inspect the subject(s) for injury, interview the subject for complaints of pain, and ensure that the subject receives needed medical attention.
- e. While at the scene of a Level 3 use of force, the Lieutenant or Investigator will photograph or videotape all claimed or visible injuries, and all areas where the officer reports striking the subject. Photographs of the subject shall be taken even when there are no signs of injury.

2. Level 1 Use of Force

- a. When notified of a Level 1 use of force, the shift Lieutenant shall do the following:
 - (1) Document and review the officers [Use of Force Report form](#);
 - (2) Obtain, review, and sign the completed Use of Force Report form from each officer as soon as possible;
 - (3) Evaluate the basis for the use of force and determine whether the officer's actions were within Department policies;
 - (4) Forward a copy of the signed completed Use of Force Report form to the Assistant Chief as soon as possible.
- b. The Assistant Chief shall review the Use of Force Report and the supervisor's findings and:
 - (1) If necessary, return the report to the shift Lieutenant to correct any identified deficiencies;
or
 - (2) Approve the report and forward to the Chief.
- c. The Chief may in his or her discretion return the Level 1 use of force investigation to the supervisor for further review and investigation.

3. Level 2 Use of Force:

- a. When notified of a Level 2 use of force the Lieutenant shall do the following:
 - (1) Document, as necessary, the scene of the incident.

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- (2) Interview any physician or qualified health care provider concerning the injuries sustained and their consistency with uses of force reported.
 - (3) In cooperation with the Investigator, collect or cause to be collected all evidence of use of force.
 - (4) Identify and interview witnesses other than officers as appropriate.
 - (5) Obtain and review the completed [Use of Force Report](#) form from each officer(s) prior to the end of the tour of duty.
 - (6) Summarize his or her investigation and findings in the appropriate section of the Use of Force Report before signing the form.
 - (7) Forward a copy of the signed completed Use of Force Report to the Assistant Chief of Police prior to the end of the tour of duty.
- b. The Assistant Chief shall review a Lieutenant's Level 2 reports/reviews as soon as possible.
 - c. The Chief shall review all Level 2 Use of Force Investigations and findings made by the supervisor.
4. Level 3 Use of Force:
- a. In cases involving a Level 3 or a serious use of force as defined by this policy, the Lieutenant shall:
 - (1) Immediately respond to and secure the scene;
 - (2) Insure that officers and citizens receive appropriate medical attention;
 - (3) Notify the Assistant Chief of Police that an officer has been involved in a confirmed Level 3 use of force;
 - (4) Document, as necessary, the scene of the incident;
 - (5) Secure, or cause to be secured, all evidence of use of force for appropriate processing by the investigative units;
 - (6) Identify witnesses, both officer and civilian, and insure that they are segregated for interview by investigating units;
 - (7) As soon as possible, secure the weapon(s) used by the involved officer(s).
 - b. Dispatch will immediately notify the Chief of Police. The Chief of Police will initiate an Internal Affairs investigation to determine whether the officer(s) followed Department policy.
 - c. The Lieutenant, after being notified of a Level 3 officer involved shooting, shall follow the procedures set forth in [General Order 130.20](#), Officer Involved Shooting.

I. Assistant Chief Responsibilities

1. Ensure that the Lieutenants respond to the scenes of reportable use of force as required.
2. Review Use of Force investigations submitted by the Lieutenant, and:
 - a. Verify that all applicable Use of Force Report Forms and accompanying paperwork were submitted as soon as possible;
 - b. Ensure that the Use of Force Report Forms and accompanying paperwork were reviewed and signed by the immediate supervisor; and

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- c. Verify that the use of force is reported accurately and completely, and that all information concerning the incident/arrest is consistent in all reports.
3. Where there are discrepancies between the reports, or the Assistant Chief determines that further investigation is required, he/she shall return the investigation to the appropriate supervisor for corrections, clarification, and additional investigative steps as needed.
4. Once the investigation is approved, determine the disposition for each allegation of use of force:
 - a. Justified, Within Department Policy – a use of force is determined to be justified, and during the course of the incident the subject officers did not violate a Buffalo State University Police Department policy; or
 - b. Justified, Policy Violation – a use of force is determined to be justified, but during the course of the incident the subject officers violated a Buffalo State University Police Department policy; or
 - c. Justified, Training Opportunity – a use of force is determined to be justified, no Buffalo State University Police Department policy violations occurred, but the investigation revealed tactical error(s) that could be addressed through non-disciplinary, tactical improvement training; or
 - d. 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 violated Buffalo State University Police Department policy.
5. The Assistant Chief shall submit findings and conclusions to the Chief as soon as possible after receipt of the investigative case file from the investigating supervisor.
6. The Chief shall hold supervisors accountable for the quality of their performance reviews and investigations.
7. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when a supervisor fails to conduct a timely and thorough investigation, neglects to recommend appropriate corrective action, or neglects to implement appropriate corrective action.
8. The Assistant Chief of Police or Chief of Police will submit the DCJS use of force report form for all use of force incidents that meet the data collection requirement of New York State Executive Law section 837-t. through the DCJS data collection mechanism.

J. Use of Force Report

1. Any officer, who uses force, is a witness to a use of force incident, or who authorizes conduct leading to the use of force incident, shall as soon as possible complete their individual [use of force report](#). All officers are required to report to their immediate supervisor any use of force by any officer. [Use of Force Report Writing Guide](#)
2. All officers are required to **immediately** report any voluntary or involuntary discharge of a firearm, whether occurring on or off duty, to the Chief of Police through the chain of command.

Exception: This requirement excludes recreational shooting, practice or training.

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3. Other circumstances requiring completion of a Use of Force Report:

- a. Whenever long guns have been deployed at a scene or incident.
- b. Any circumstance where a subject has been placed in handcuffs, but not subsequently charged with an offense requiring custodial transportation and arrest processing.
- c. Whenever a firearm is used to destroy an animal.
- d. Any voluntary or involuntary discharge of a firearm unrelated to a use of force.

Exception: Practice or recreational shooting as previously noted in this directive.

- (1) The officer, and all witnessing officers, shall include the full circumstances of the weapon's discharge and all relevant information related to the incident.

4. Any officer who takes any action which results in, or is alleged to have resulted in, the injury or death of another person, which did not result from the use of force or other action normally requiring a Use of Force Report, shall complete a police report describing the details of the incident. The Chief will consult with the District Attorney regarding the appropriate agency to conduct any follow-up investigation that may be required.

5. [Use of Force Report Form](#) Filing Instructions:

- a. Submit a full account of the incident by completing all applicable fields from field # 1 through # 29.
- b. In field # 18, use yellow highlighter to indicate area of injury. To turn off the highlighter, use the escape key and complete narrative.
- c. Save the report electronically by selecting File and then Save As
- d. Name the file "UOF 18-700000 (entering the CD number)
- e. Print a copy of the report and attach to the police report.
- f. Email a copy of the electronic report to all Lieutenants.
- g. A Lieutenant reviews the report and completes fields # 30 through # 37.
- h. Lieutenant saves the report and emails the report to Assistant Chief and Chief of Police.

K. Procedures Following an Officer-Involved Shooting

1. In the event that a discharge of a firearm involves the shooting of a suspect or other person, the Chief or his designee shall notify the District Attorney's Office in a timely manner.
2. An internal investigation shall be commenced, and the results of such investigation shall be reported to the Chief.
3. The officer shall be immediately assigned to administrative duties and shall not return to field assignments until an investigation has been satisfactorily completed and the officer has been determined to be fit for duty.
 - a. Due consideration shall be given to provide post-incident debriefing, counseling, or other necessary support for the officer involved.

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4. The Chief, or Assistant Chief, in turn, must provide an update on the status of said investigation to the Vice President for Finance and Management within 48 hours.
5. The Chief of Police will make a determination as to whether the firing of the weapon was justified with the guidelines of NYS Penal Law and department policy.
6. The District Attorney's Office is to determine whether the shooting was within the guidelines of the NYS Penal Law, and if necessary, the results of said investigation will be forwarded to a Grand Jury to determine if the firing was within the law.

L. Training

The Department shall coordinate and review all use of force policies and training to ensure quality, consistency, and compliance with applicable law and Department policy. Department shall provide the appropriate training that will enhance the abilities of supervisors to conduct effective, complete, and thorough use of force investigations.