



BURLINGTON POLICE DEPARTMENT
Antonio B. Pomerleau Building
One North Avenue
Burlington, Vermont 05401

Jabulani Gamache, Chair
Board of Police Commissioners

Telephone (802) 658-2704
Fax (802) 865-7579
TTY/TDD (802) 658-2700

MEETING OF THE BOARD OF POLICE COMMISSIONERS
CONTINUATION / RECESSED AGENDA
VIRTUAL MEETING
June 16th, 2020, 6:00 PM

Pending

Remote and Virtual Access ONLY: This continuation / recessed meeting of the Board of Police Commissioners will be entirely remote and virtual. There are a few ways to tune in:

1. Join via Zoom: <https://us02web.zoom.us/j/81147116801>
2. Call in for audio only: Phone number: 646-558-8656 Webinar ID: 811 4711 6801
3. CCTV YouTube Channel or on Burlington Telecom Channel 317.
<https://www.youtube.com/channel/UCJkWMLSqRNKLoyUZQiNoAcQ>

CONTINUATION/RECESSED AGENDA:

1. Call to Order
2. Roll Call
3. Review & discuss updated draft Use-of-Force Directives
4. Adjournment

This material is available in alternative formats for persons with disabilities. To request an accommodation, please call: (802) 540-2107 (voice) or e-mail: strammell@bpdvt.org
The latest approved Police Commission Meeting Minutes and Upcoming Meeting Agendas are posted on our website: <https://www.burlingtonvt.gov/Police>



BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE **DRAFT**
DD05.01 Use of Force Guidelines
Reviewed and published June XX, 2020

CONTENTS:

I.	Purpose
II.	Philosophy
III.	Definitions
IV.	Policy

I. PURPOSE

This directive articulates the use-of-force philosophy of the Burlington Police Department (BPD). It further describes the BPD's policy of objectively reasonable force and when and how officers may or may not use force in conducting their duties. In both philosophy and policy, the overarching goal is to protect human life.

II. PHILOSOPHY

It is the BPD's goal to protect human life, and to do so lawfully, with respect for civil rights, and without prejudice to anyone. Every officer's goal is resolving situations without using force. BPD officers will use deescalation when consistent with the safety of the public, officers, and subjects. But when a subject's behavior and/or circumstance makes force necessary, the BPD's philosophy is to use only *objectively reasonable force*.

As stated in Rule 8 from Department Directive 01, "Law Enforcement Role & Authority, Ethics, Organizational Structure, & Department Rules":

OFFICERS SHALL USE FORCE IN ACCORDANCE WITH THE LAW AND
DEPARTMENT PROCEDURES AND SHALL NOT USE MORE FORCE THAN IS
REASONABLY NECESSARY UNDER THE CIRCUMSTANCES.

III. DEFINITIONS

The Fourth Amendment of the Constitution of the United States requires officers to use objectively reasonable force, as defined in *Graham v. Connor* 490 U.S. 386 (1989). Objective reasonableness is based upon the totality of circumstances of any given incident, and is defined according to the perspective of an officer with similar training and experience placed in the same circumstances. The BPD guidelines that follow go beyond *Graham* by articulating expectations such as deescalation, deceleration, and verbal warnings, as well as duties to intervene, render care, and report all uses of force. The BPD acknowledges that *Graham* is a legal standard, but not the sole measure of internal expectations. The BPD may go beyond the *Graham* standards in determining discipline measures within the Department. ~~The BPD aspires to go beyond *Graham* to ensure officers use deescalation techniques when time permits and it is safe to do so.~~

Both the BPD and the community it serves wish to ensure that officers avoid the use of force whenever feasible and consistent with ~~the safety of the public, officers, and subjects~~officer safety and the safety of the public. When properly authorized members of the BPD do use objectively reasonable force, they must do so to accomplish lawful law-enforcement objectives as described in Vermont statutes.

- A. **Deescalation.** Force can often be avoided through the use of deescalation techniques and other non-dynamic law-enforcement tools such as police presence, containment, and communication. When feasible, officers will use deescalation and other techniques to reduce the immediacy of threats to peoples' safety and stabilize incidents. Whenever possible, officers will seek to *slow things down*. Not every situation or subject can be deescalated. Conversely, officer behavior can escalate a situation. Officers ~~should not intentionally~~must take care not to escalate situations unnecessarily.
- B. **Deceleration.** Whenever feasible and consistent with officer safety, officers should use distance and cover to create time. A "tactical pause" provides time to establish communications, reduce heightened emotional response, and bring additional resources to bear. Such resources can help resolve incidents without the use of force or help minimize the amount of force ultimately applied. Slowing things down enhances the likelihood of safe outcomes for everyone involved. Supervisors and officers should take as much time as necessary to address situations in ways that maximize the protection of human life. Training and tactics will emphasize the value of deceleration.
- C. **Force.** Force is understood to mean all conduct that is designed to assist an officer in controlling a situation or a subject's actions or behavior that involves the application of force against a subject that exceeds compliant handcuffing.

The application of force must end when control has been achieved.

There are times when the use of force is unavoidable. In nearly all instances, the need to use force is dictated by a subject's behavior and decision making. It can be influenced by a totality of circumstances, however. Officers ~~should~~must recognize that their conduct prior to using force may influence the degree and immediacy of force required, ~~and officers should always seek to minimize the necessity of responding with force~~. If objectively reasonable force becomes tactically necessary or otherwise unavoidable, the BPD will use proportionate force to ensure the safety of officers and the public.

1. *Excessive force* is force that is not objectively reasonable from the perspective of a reasonable officer in the same circumstances. **Excessive force will not be tolerated.** Using excessive force is a higher-level infraction as defined by the Agreement Between City of Burlington and the Burlington Police Officers' Association. It may result in criminal and/or civil liability, and it will result in department discipline, up to and including termination.
2. When objectively reasonable force becomes necessary, officers will *use the lowest level of force that is appropriate to achieve the officers' lawful objectives*. Force

should be proportionate, in keeping with the force superiority principle (which states that, to overcome a subject's resistance, an officer must often use a level of force slightly but reasonably superior to subject's use of the force).

- D. **Duty of care.** Officers have an affirmative duty to care for persons in their custody. Officers and supervisors are responsible for providing or obtaining appropriate medical attention to any person in their custody who is injured or complains of injury. This pertains whether injuries preceded custody, occurred during apprehension, or were sustained during custody. Additionally, officers have an affirmative duty to provide or obtain medical attention for members of the public who are injured as a result of police-involved actions. Failure to ensure timely medical treatment for a person in police custody is a higher-level infraction as defined by the Agreement Between City of Burlington and the Burlington Police Officers' Association.
- E. **Duty to intervene.** Officers have an affirmative duty to intervene if they witness the use of excessive force—i.e., force that is clearly not objectively reasonable. Failure to intervene in the use of excessive force is a higher-level infraction as defined by the Agreement Between City of Burlington and the Burlington Police Officers' Association. It may result in criminal and/or civil liability. It will result in department discipline, up to and including termination.
- H. **Duty to report.** Officers have an affirmative duty to report all uses of force. Accurate, timely reporting facilitates ethical leadership and oversight. Officers also have a duty to report force used against them, in order to paint an accurate picture of the risks they face and of subjects' behavior. Reporting officers' uses of force and subjects' resistance enhances transparency, which is a key part of maintaining community trust and police legitimacy.

IV. POLICY

BPD officers have committed themselves to keeping people safe by preventing and responding to crime and disorder, with and for the community. In the course of their duties, officers are exposed to danger and risk. Accordingly, the law allows officers to use an objectively reasonable amount of force to ensure public welfare. Officers should use only the force that is appropriate for compliance or control of a subject. Officers should use force only until compliance or control has been achieved. Officers will use deescalation when consistent with the safety of the public, officers, and subjects.

- A. **Objectively reasonable force.** In determining whether a particular response to resistance or use-of-force option is objectively reasonable, the officer must consider:
1. The seriousness of the offense the officer suspects when the force option is employed;
 2. Whether or not the subject poses an immediate physical threat to the officer or others;
 3. The degree of the threat posed by the subject;
 4. Whether the subject is actively resisting or attempting to evade arrest by flight;
 5. Whether the totality of the circumstances justifies the officer's response.

B. **No unreasonable risks.** This policy does not require officers to assume unreasonable risks. In assessing the need to use force, the paramount consideration should always be the safety of the public and the officer.

1. The reasonableness of an officer's decision to use force under this policy must be viewed from the perspective of a reasonable officer contemplating the same circumstances as the officer on the scene, who may often be forced to make split-second decisions in circumstances that are tense, uncertain, and evolve rapidly. Officers make these decisions without the advantage of 20/20 hindsight.

C. **Tools, training, and tactics.** For all uses of force, officers will use contemporary tactics and techniques as instructed by certified instructors and/or in accordance with current training and practice. Such training will include the BPD's Fair and Impartial Policing Policy. Officers trained or certified with devices and tools associated with use of force should carry them in approved holders when performing uniform patrol functions unless otherwise authorized by the Officer in Charge (OIC).

1. Tools ~~should~~will be removed only when their use is anticipated and shall be secured safely when not in use.
 - a. The pointing of certain tools (e.g., firearms and Conducted Electronic Weapons (CEWs)) constitutes a use of force even when the tool is not fired or deployed. Such use must be recorded.
2. Officers will not carry non-issued equipment that is solely intended for the use of force unless the officer is already certified to carry similar tools or has been authorized in writing by the Chief of Police and maintains certification and proficiency in that equipment.

Reviewed and adopted by the Burlington Police Commission on Month Date, 2020.

Jon Murad, Chief of Police (acting)

June XX, 2020
Effective Date

###



**BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE **DRAFT****

**DD05.02 Definitions, Factors in Choosing a Use-of-force Option,
Use-of-force Options, Excited Delirium, and Duty of Care**

Reviewed and published June XX, 2020

CONTENTS:	I.	Purpose
	II.	Definitions
	III.	Factors in Choosing a Use-of-force Option
	IV.	Use-of-force Options
	V.	Excited Delirium
	VI.	Duty of Care
	<u>VII.</u>	<u>Use of Force Reports</u>

I. PURPOSE

This directive defines use-of-force terms and describes use-of-force options. It also provides guidance for officers of the Burlington Police Department (BPD) to provide care for people in their custody and describes how officers may respond to people suffering agitated delirium.

II. DEFINITIONS

- A. **Active aggression.** Behavior that creates an imminent risk of physical injury to a subject, officer, or third party, but would not lead a reasonable officer to perceive a risk of death or serious bodily injury. Examples include but are not limited to an attack on an officer consisting of strikes, wrestling, undirected strikes with injury potential, kicks, shoves, or punches. Examples may also include words or behavior such as pre-assault cues that clearly indicate that such an attack or actions are imminent.
- B. **Active resistance.** Any affirmative action used by a subject to defeat an officer's ability to take the subject into custody.
 - 1. **Passive resistance.** A nonviolent response to lawful authority, in which a subject does not comply with lawful orders but offers no affirmative action to defeat the officer's ability to take the subject into custody.
- C. **Bodily injury.** Physical pain, illness, or any impairment of physical condition.
 - 1. **Serious bodily injury.** As per 13 VSA § 1021, serious bodily injury is any bodily injury that creates any of the following:
 - a. A substantial risk of death
 - b. A substantial loss or impairment of the function of any bodily member or organ
 - c. A substantial impairment of health

- d. Substantial disfigurement
 - e. Strangulation by intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person
- D. **Control / Restraint.** Techniques, empty-hand or with tools, that redirect movement or cause subjects to comply with an officer's directions.
- E. **Deceleration.** Using distance and cover to create time. A "tactical pause" provides time to establish communications, reduce heightened emotional response, and bring additional resources to bear. Deceleration, or "*slowing things down*," enhances the likelihood of safe outcomes for everyone involved.
- F. **Deescalation.** Physical or verbal tactics designed to reduce a subject's heightened emotions or stabilize a situation. The goal of deescalation is to minimize the need to respond to resistance with force. Deescalation applies to both verbal and physical control techniques. Deescalation may include but is not limited to techniques such as command presence, verbal persuasion, warnings, and verbal commands. It may be informed by crisis-intervention training, hostage-negotiation training, and active-listening training. It may also include the use of distance and cover to create time with the intention of decelerating encounters. Any of these techniques may result in a diminished need for force or the avoidance of force altogether.
- G. **Force.** Conduct that is designed to assist the officer in controlling a situation or a person's actions or behavior and that involves the application of force against a subject that exceeds compliant handcuffing.
 - 1. **Excessive force.** Force that is not objectively reasonable from the perspective of a reasonable officer in the same circumstances. EXCESSIVE FORCE WILL NOT BE TOLERATED. Using excessive force is a "higher-level infraction" as defined by the Agreement Between City of Burlington and the Burlington Police Officers' Association. It may result in criminal and civil liability and will result in department discipline, up to and including termination.
 - 2. **Force superiority.** Training dictates that officers should use a minimal level of force, but also that force should be one level above that used by the subject in order to overcome resistance and/or aggression.
 - 3. **Lethal force.** Lethal force, or deadly physical force, is force that creates a substantial likelihood of death or serious bodily injury. An officer may use lethal force to protect himself or herself or another person from what the officer reasonably believes to be an imminent threat of death or serious bodily injury. An officer may also use lethal force to prevent the escape of a suspect when the officer has probable cause to believe that the subject has committed a violent crime involving the infliction or threatened infliction of serious bodily harm or death AND has a reasonable belief that the suspect's escape poses an imminent threat of death or serious bodily injury to the officer or other persons.

4. **Non-lethal force.** Force that is used to control or immobilize a subject temporarily, but is not substantially likely to cause serious bodily injury or death. An officer is justified in using non-lethal force upon another person when, and to the extent that, the officer reasonably believes it necessary to arrest, detain, or effect custody, or to accomplish a lawful law-enforcement objective. An officer is also justified in using non-lethal force upon another person when, and to the extent that, the officer reasonably believes it necessary to defend the officer or a third person from what he/she reasonably believes to be the imminent use of non-lethal force.
- H. **Immobilization.** Immobilizing a subject may be accomplished with control and restraint techniques, impact techniques, chemical agents, conducted electronic weapons (CEWs), or impact weapons. Immobilization may be appropriate when a subject becomes actively resistant or there is reasonable fear for the safety of the subject or the safety of others.
- I. **Impact techniques.** Techniques used to strike or jab with the intent of immobilizing and/or gaining control of a subject.
- J. **Reasonable belief.** Facts or circumstances that would cause a reasonable officer to act or think in a similar way under similar circumstances.
- K. **Use of Force Reports.** A report/database entry will be completed whenever an officer uses force beyond that of persuasion or beyond compliant handcuffing, or whenever an officer takes any action that may reasonably result in injury to another person. The report shall include a description of the subject's actions that necessitated a particular use of force, the reasons why force was required, and a description of the type of force used. The report shall also include descriptions of any injuries to or complaint of injuries by the subject or the officer and a description of any medical treatment received.

III. FACTORS IN CHOOSING A USE-OF-FORCE OPTION

- A. **Assessment factors.** Whenever feasible and consistent with officer safety, officers ~~should~~will attempt to use deescalation and deceleration techniques to minimize the amount of force necessary or avoid the use of force. Circumstances that may be considered in the officer's assessment of physical threat and/or the officer's decision to use force include but are not limited to the following:
 1. Age of subject(s) or officer(s)
 2. Size of subject(s) or officer(s)
 3. Skill level of subject(s) or officer(s)
 4. Number of subjects or officers
 5. Instrumentality (e.g., weapons)
 6. Proximity to instruments that pose or could pose a danger
 7. Prior experience with or knowledge of the subject(s)
 8. Location of the encounter
 9. Background hazards or peripheral threats
 10. Whether a use of force may have potential second-order effects, e.g. on bystanders

- B. **Additional factors.** The BPD recognizes that individuals with physical, mental health, developmental, or intellectual disabilities may be more likely to resist police during police interactions, because their disability may affect their ability to understand or comply with commands from police. Intoxicated or otherwise altered individuals may also have a compromised ability to understand or comply with commands from police. When BPD officers have knowledge of these disabilities or conditions, they should factor this knowledge into their response to these individuals, so long as it is safe to do so.
- C. **Absence of a safe alternative.** Officers are not required to use or consider alternatives that increase danger to themselves or to others.

IV. USE-OF-FORCE OPTIONS

Every law-enforcement encounter has its own dynamics, which may frequently be tense and uncertain, and which may evolve rapidly and require split-second decisions. Officers should continually assess each situation and its changing circumstances, and seek to avoid escalation or to deescalate whenever possible. In addition to the factors listed in Section III above, use-of-force options are affected by three important considerations:

- **Officer safety.** Whenever possible, the BPD expects officers to deescalate potential threats, but officers are not expected to compromise their safety or the safety of the public to engage in deescalation tactics.
- **Distance + cover = time.** The availability of cover provides a tactical advantage. An officer in a position of cover may gain additional time to assess the need to use force without incurring significant additional risks. There are inherent disadvantages posed by action/reaction lag time. This, coupled with the uncertainty of any instrument to instantaneously stop a threat, creates additional time considerations during any use of force encounter.
- **No duty to retreat.** A BPD officer who makes or attempts to make an arrest need not retreat merely because the subject resists. When an officer acts in accordance with the law and training to effect an arrest, prevent escape, or overcome resistance, the officer shall not be deemed the aggressor nor lose the right to self-defense by the use of objectively reasonable force because deescalation failed or was not feasible.

It is impossible to categorize and define what levels of force may be appropriate in all situations. It is, however, reasonable to categorize the continuum or levels of force that may be used to various degrees in any situation. When an officer determines that the use of force is necessary and appropriate to respond to resistance, keep people safe, and/or accomplish lawful law-enforcement objectives, the officer shall only use objectively reasonable force as determined by totality of circumstance.

- A. **Officer presence / verbal commands.** An officer's mere presence, in uniform or when identified as an officer by other overt means, may be used to accomplish lawful law-enforcement objectives. Presence is enhanced by verbal and non-verbal commands that

direct a subject or let a subject know what is expected of him/her. When time permits and it is safe to do so, an officer should:

1. Make reasonable efforts to identify himself/herself as a police officer
2. Inform the subject of the reason for the law-enforcement encounter
3. State by what authority the subject is being detained, arrested, or otherwise taken into custody
4. Offer clear instructions describing what the subject must do to comply
5. Make clear statements about what consequences may attach for lack of compliance
6. Warn that force may be used, unless the officer has the objectively reasonable belief that verbal warning will jeopardize the officer or another person
7. Document their verbal commands.

When multiple officers are at an incident, verbal commands work best when delivered by one designated officer, or “contact officer.”

B. Control / restraint and impact techniques. Officers use a variety of techniques in accordance with their training to gain compliance of passively or actively resistant subjects. These include but are not limited to techniques using hands, elbows, arms, feet, and bodies as well as techniques using tools such as straight batons, PR-24 batons, expandable batons, and other items. These also include soft empty-hand control techniques such as arm bars and wrist locks.

1. Any restraint or technique that applies pressure to the carotid artery, jugular vein, trachea, or the neck that may render the subject unconscious by restricting airflow or the flow of blood to and from the brain is to be AVOIDED and should be used ONLY under circumstances that would otherwise warrant the use of lethal force.

C. Aerosol agents. Oleoresin Capsicum (OC) is the inflammatory agent used by the BPD. It may be issued in one of several delivery systems including individual “stream” spray and individual “fog” spray. A ~~crowd~~riot-control “fog” system may only be used in special circumstances as authorized by the Officer in Charge (OIC). Aerosol agents may be used to respond to various threat levels, including addressing subjects who are actively resisting.

1. Officers ~~should avoid using~~will not use OC to overcome passive resistance.
2. Officers should avoid using OC on visibly pregnant subjects, elderly subjects, and subjects known or suspected to have chronic respiratory conditions.
3. When OC has been used the officer shall, as soon as practical, provide the subject with the BPD’s Administrative Warning form in preparation for providing care for the subject contaminated by the product.

D. Conducted Electrical Weapon (CEW): A less-lethal enforcement device that delivers an electrical pulse to the body of a subject in either “drive stun” or “probe” mode. See DD05.04 for further information regarding CEW use.

1. When a CEW has been used the officer shall, as soon as practical, provide the subject with the BPD's Administrative Warning form in preparation for providing care for the subject.

E. **Police batons.** The side-handle baton and straight baton (standard or expandable) can be used in accordance with approved techniques and against approved bodily target areas. Batons can be used as tools for control and restraint techniques, impact techniques, and as instruments to assist in moving individuals or groups of individuals.

F. **Canines.** The BPD recognizes that using a specially trained canine constitutes a real or implied use of force. As such, officers may only use that degree of force that is reasonably necessary to achieve a lawful objective. All use of canines shall be consistent with Department Directive. Canines are considered to be a level of force commensurate to impact weapons.

~~GF.~~ **Less Lethal Impact Munitions (LLIM).** A class of extended-range impact weapon that includes a variety of munitions, including pepperball launchers, and munitions designed to be launched from the 12-gauge shotgun, 37-millimeter launcher, 40-millimeter launcher, or thrown by hand. For additional information, see DD05.02 Appendix.

~~HG.~~ **Firearms or other lethal force.** When the decision is made to use lethal force, officers may continue its application until the subject surrenders or no longer poses an imminent danger. Even when lethal force is permissible, officers should assess whether its use creates a danger to third parties that outweighs the likely benefits of its use. For additional information, see DD05.02 Appendix.

V. EXCITED DELIRIUM

Excited Delirium is a condition recognized by the American College of Emergency Physicians. It is sometimes known as "Agitated Delirium" and "Agitated Chaotic Event." It is important to recognize that this represents a medical emergency with the potential for death or long-term disability for the subject. Inadvertent deaths in custody have occurred with this condition. In most cases, the subject does not have intent to harm others, but, because of intense paranoia, may react violently to efforts to control behavior.

- A. **Common causes.** Common causes of Excited Delirium include the recent use of cocaine or amphetamines, or recent abrupt discontinuation of psychiatric medications. Officers should try to elicit information about these causes from family or bystanders, if possible.
- B. **Indicators.** Indicators that a subject is suffering from Excited Delirium include: intense paranoia; extreme agitation; severe emotional swings; disorientation about time, place, and purpose; hallucinations; incoherent speech or screaming; pressured speech; grunting guttural sounds or agonal breathing; violent behavior; bizarre behavior; "eight ball" eyes; shedding clothing due to elevated body temperature; profuse sweating; and destructive behavior.

- C. **Emergency medical assistance.** If the officer recognizes indicators that the subject is suffering from Agitated Delirium and time permits, the officer should summon emergency medical assistance. Staging assistance prior to engaging in a use of force to control the subject is preferable, if possible.
- D. **Restraint.** The officer or officers should attempt to control and restrain the subject as soon as possible and shall seek medical attention for the subject immediately. The Officer should be aware that many persons with this condition have demonstrated acts of “superhuman strength” in resisting restraint. Restraint should control all of the extremities, but it should minimize any restraint in the prone position, especially restraint that included pressure over the torso or chest. (See “Positional asphyxia,” below.) When possible given circumstances, once the subject is in restraint, the subject should be in the supine position, preferably secured on an emergency medical services transport gurney, with the upper body elevated. Respiratory support should be give if available and necessary. Transport to the hospital emergency department should be expedited.
- E. **Positional asphyxia.** Officers restraining a subject should be cognizant of and avoid positional asphyxia. BPD prohibits prolonged face-down prone restraint.
- F. **Medical treatment.** The officer should inform medical personnel that the officer believes the subject is suffering from Excited Delirium. If possible, the officer should obtain and document any permissible medical information related to: toxicology, stimulant drug presence, core body temperature, blood pressure, heart rate, pH level, and potassium levels. In addition, officers should, to the extent possible, obtain photographs or video of a subject suffering Excited Delirium to document any trauma or lack thereof.

VI. DUTY OF CARE

Whenever a person in an officer’s custody sustains an injury, becomes unconscious, displays a further altered mental status, or states that he/she is injured, the officer must provide or obtain appropriate medical attention. This pertains whether the officer used force or not, and whether or not the person’s condition preceded custody. It is incumbent on the officer to render aid commensurate with the officer’s training and experience and/or to summon emergency medical assistance as quickly as possible under the circumstances at hand.

VII. USE OF FORCE REPORTS

A written report will be generated whenever an officer uses force.

- A. The initial Use of Force Report shall include a description of the subject’s actions that necessitated a particular use of force, the reasons why force was required, and a description of the type of force used. The report shall also include descriptions of any injuries to or complaint of injuries by the subject or the officer and a description of any medical treatment received. Amendments may be added at a later time owing to memory recall or other factors. Deletion of initial reports is forbidden, however.

B. Use of Force Reports must be must be completed prior to the end of the officer's shift, unless exceptions apply as described below. In such cases, the report shall be completed as soon as is practical once the mitigating circumstance(s) has been resolved. Exceptions are:

1. The Chief of Police and/or his/her designee determines that mitigating circumstances exist that prohibit expeditious completion of the report.
2. The officer is incapacitated.
3. An external investigation is initiated that precludes the officer from completing the report.

C. Officers will submit a written report of the circumstances surrounding all on-duty uses of lethal force, including firearm discharges, with the following exceptions:

1. Firearms discharges during authorized range practice.
2. Firearms discharges used to dispatch injured animals.

Reviewed and adopted by the Burlington Police Commission on Month Date, 2020.

Jon Murad, Chief of Police (acting)

June XX, 2020
Effective Date

###



BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE DRAFT
DD05.02 APPENDIX 01: LLIMs
Reviewed and published June XX, 2020

CONTENTS: I. Less Lethal Impact Munitions (LLIMs)

I. LESS LETHAL IMPACT MUNITIONS

- A. **Less Lethal Impact Munitions (LLIM).** LLIMs are an extended range impact weapon. It describes a variety of munitions, including pepperball launchers, and munitions designed to be launched from the 12-gauge shotgun, 37-millimeter gun, 40-millimeter gun, or thrown by hand. LLIMs are designed to achieve immobilization of a suspect without causing serious bodily injury or death when used by a trained operator (Grenadier) following established rules of engagement. LLIMs may be used to deliver lethal force under specific circumstances. Weapons intended for use as delivery systems for less lethal impact munitions are dedicated to that purpose only and distinctively marked.
- B. **Use of LLIMs.** LLIMs are designed to function as extended range impact weapons and their use is justified whenever use of an impact technique is appropriate. The intended role of LLIMs is to immobilize resistant persons at safe distances to prevent injury to officers or the public. Officers are not required to assume unreasonable risks by deploying LLIMs against a suspect threatening to use deadly force. LLIMs may be used to prevent the escape of suspects if the suspects' continued freedom will pose an immediate threat to the public~~under appropriate circumstances. In these cases, the severity of the threat posed by the continued freedom of the suspect must be carefully weighed.~~ LLIMs are also effective in ~~crowd-control~~ing civil disturbances and riot situations.
- C. **Grenadier.** Denotes an officer trained and certified in the use of LLIMs. During a deployment, it describes any officer armed with and ready to use LLIMs. The title differentiates the LLIM-armed officer from conventionally armed officers who would also be present during a confrontation, thus minimizing possible confusion when orders are given. Only officers trained as Grenadiers by certified instructors will be authorized to carry and use LLIMs. Grenadiers are responsible to maintain an understanding of the proper application of munitions and considerations for selecting shot placement such as level of threat, target distance, size, and clothing.
1. Prior to actually firing one or more LLIMs, the Grenadier will first receive authorization from the Officer in Charge (OIC) unless the situation evolves so quickly that prior authorization is not practical. When lethal force is justified, or when a situation escalates to that point, no authorization is necessary.

2. When LLIMs are anticipated to be used for crowd control, the Grenadier will obtain clearance from the OIC prior to deploying one or more LLIMs.
- D. **Animal attack.** LLIMs may be used against wild and domestic animals, to drive them away, or to deter an attack. Where an animal poses a threat of bodily injury or must be euthanized, conventional firearms should be used.
- E. **Availability of LLIMs.** When LLIMs are available, all certified Grenadiers will sign out at least one LLIM system at the beginning of each shift. The Grenadier will check out the designated LLIM system and carry it with him/her in the field. All officers and dispatchers should know who the designated Grenadiers are for their shift.
- F. **Pre- and post-deployment.** Grenadiers shall ensure that all LLIMs brought into the field for use have current “expiration” dates and if deployment methodologies or guidelines are listed on the munitions; that those guidelines display ONLY the current BPD practice. Any munitions that are “expired”/out of warranty or those that display non-current deployment guidelines should be removed from service. If LLIMs are deployed, an effort should be made to the extent it can be done safely, to recover any deployed canisters or containers post-deployment so that they may be tagged into evidence. Grenadiers shall also document their LLIM application on the deployment log and notify the LLIM supervisor.

Jon Murad, Chief of Police (acting)

June XX, 2020
Effective Date

###



BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE **DRAFT**
DD05.02 APPENDIX 02: FIREARMS
Reviewed and published June XX, 2020

CONTENTS:

I.	Firearms Proficiency
II.	Duty Weapons, Handguns
III.	Shotguns
IV.	Patrol Rifles
V.	Officer-owned Rifles
VI.	Firearms Safety
VII.	Firearms Inspections

I. FIREARMS PROFICIENCY

- A. As required by VSA Title 20, Chapter 151 §2358 and Rule 13 of the Vermont Criminal Justice Training Council Rules & Regulations, Burlington Police Department (BPD) officers will receive annual firearms training and will demonstrate proficiency with any/all approved weapon(s) that the officer is authorized to use.
- B. Training in use of force will only be conducted by instructors certified by the Vermont Criminal Justice Training Council. All instruction in use of force will be documented and reported to the Administrative Deputy Chief.
- C. In the event an officer fails to qualify with his/her duty weapon in accordance with the Vermont Criminal Justice Training Council Firearms Standards (Rule 13), they shall be given onsite remedial training by a firearms instructor and provided with two more attempts to qualify during the training day. If the officer fails to qualify on the second attempt, the officer will be given onsite remedial training by a different firearms instructor. If the officer fails to qualify after the third attempt he/she will not be given another attempt to qualify on that day, however he/she will continue to participate in the rest of the scheduled training. If an officer fails to qualify the firearms instructors will notify the Firearms Supervisor and Deputy Chiefs of the failure to qualify, suspected reason for failure, and remedial actions taken during the training day. The firearms instructor will also complete and file an outline with the Firearms Supervisor and Training Unit of the remedial training conducted.
- D. If the officer fails to qualify before his/her regularly scheduled shift, the officer will not be authorized to carry his/her duty weapon and will be assigned to administrative duty until he/she qualifies and demonstrates proficiency.
- E. The Training Unit, in conjunction with the BPD's firearms instructors, will arrange a remedial training plan for the officer to ensure that annual qualification is achieved. Whenever remedial training is required or needed, a firearms instructor will be present

and conduct the training. After completion of the remedial training plan, the officer will be given three more attempts to qualify. If the officer fails to qualify after these three attempts (six total), the firearms instructors will notify the Firearms Supervisor and Deputy Chiefs of the failure to qualify, suspected reason for continued failure and remedial actions taken during the training day. The firearms instructor will also complete and file an outline with the Firearms Supervisor and Training Unit of the onsite remedial training conducted. Following the continued failure to qualify the officer shall be assigned to administrative duty pending further review by the Chief of Police.

II. DUTY WEAPONS, HANDGUNS

- A. While on duty, all BPD officers will carry only those handguns and ammunition that are issued by the BPD.
- B. Duty weapons will be 9mm Glock pistols. All duty weapons will be “factory” approved.
- C. Only BPD-approved ammunition may be used in any weapon carried on duty, and the ammunition must be factory fresh (new).
- D. Any modifications or accessories that permanently modify the BPD weapon must have the prior written approval of the Firearms Committee and the Chief of Police. Any temporary modification or accessories added to the BPD weapon must be approved by the Firearms Supervisor and installed by a Department Armorer.
- E. The Administrative Services Bureau will maintain all BPD firearms records.
- F. Prior to being authorized to carry a weapon on duty, officers must qualify with the weapon under BPD standards and as required by 20 VSA §2355(a)(4) and §2358, and Rule 9 of the Vermont Criminal Justice Training Council Rules & Regulations. Before being qualified to carry a weapon, the officer must demonstrate knowledge of the weapon as to parts, field stripping, cleaning and safe handling techniques. The officer must also be able to demonstrate the ability to clear a level 1, 2, and 3 malfunction.
- G. All weapons should be inspected by the Department Armorer or Firearms Instructor prior to use on duty and will be kept serviceable by the carrying officer as follows:
 - 1. The firearm will be cleaned after training use, before the next tour of duty.
 - 2. The firearm will be kept clean from dust, lint and other particles that tend to collect on the weapon through daily carrying.
 - 3. The firearm will be kept properly lubricated.
 - 4. When on duty the firearm will be fully loaded with a round in the chamber.
- H. All duty leather will be of similar type and style as is currently issued by the BPD. Uniformed officers are required to carry a double magazine pouch with two extra magazines. Plainclothes officers are required to carry at least one extra magazine.

- I. Officers on patrol will carry two BPD-issued pistol magazines in an approved magazine carrier (in total, officers are to carry no more than three pistol magazines on their person).
- J. All officers, while outside police headquarters during regular work hours, shall carry a firearm and be equipped to reload the weapon as designated above. The affected officer's Deputy Chief may authorize exceptions to this requirement. Officers in plainclothes who are carrying a firearm that is visible should display a badge and/or identification simultaneously to the extent possible.

III. SHOTGUNS

- A. Shotguns are an integral part of the field officer's equipment and may be deployed at the officer's discretion using the standards as set forth in DD05.03 "Lethal Force" and this Appendix.
- B. The Officer in Charge (OIC) shall:
 1. Ensure that shotguns are signed out and inspected.
 2. Ensure that shotguns are returned empty with the safety on, action open and undamaged prior to placing in storage.
 3. Notify the Administrative Services Bureau of damage or malfunction.
 4. Conduct periodic familiarization of the shotgun with officers under their immediate command.
- C. If an officer chooses to carry a shotgun while on patrol the officer shall:
 1. Inspect and perform a safety and function check of the shotgun at the beginning of each shift, and sign the shotgun out on the equipment inventory sheet before each tour of duty.
 2. Report any malfunction of a BPD shotgun to the OIC.
 3. Secure the shotgun in a locked rack within the police vehicle.
 4. Secure the shotgun in the equipment requisition room of USB at the end of each tour of duty empty, with the action open and with the safety on. Notify OIC of the return of the weapon.
- D. Department Armorers shall:
 1. Inspect and maintain all BPD weapons. They shall ensure that all BPD shotguns are fired no less than once annually.
 2. All repairs shall be made by a Department Armorer and he/she shall maintain current record of all maintenance performed.
- E. Cruiser Carry of Shotgun:
 1. A loaded BPD shotgun carried in a police vehicle shall contain five rounds of .00 buckshot in the magazine, action closed, and the safety shall be in the "ON" position.

A shotgun shall not be carried in a police vehicle with a round of ammunition in the chamber.

2. Shotgun slugs shall also be available for duty use.
3. Shotguns while being carried by an officer in a non-tactical situation shall be carried with the muzzle pointing up and the height of the top of the muzzle should be above the head of the tallest person within the general area.
4. The loading and unloading of BPD shotguns shall be done outside of Police Headquarters. Shotguns stored in reserve shall be maintained in the equipment room unloaded, action open and the safety shall be in the "ON" position.

IV. PATROL RIFLES

- A. The AR-15 patrol rifle, in configurations approved by the Firearms Committee, is the primary patrol rifle available for use in the field as an assigned rifle to an individual officer or assigned daily. Only BPD-approved ammunition shall be used as recommended by the Federal Bureau of Investigation.
- B. The Sig Sauer MPX SBR, in configurations approved by the Firearms Committee, is also available for use in the field as assigned at the direction of a supervisor. Only BPD-approved ammunition shall be used as recommended by the Federal Bureau of Investigation.
- C. Shared rifles will be available to officers not issued a rifle. Shared rifles will be sighted by the BPD firearms instructors annually. Officers will sign out rifles at the beginning and return them at the end of each shift.
- D. Issued rifles will be provided to a designated group of individual officers for long term use and are not transferable unless authorized. Issued rifles may be subject to approved modifications only as specified below.
- E. Officers carrying rifles are required to qualify annually as specified by the firearms committee.
- F. The OIC shall:
 1. Ensure that officers assigned or issued a patrol rifle have them during their shift are accounted for and inspected.
 2. Notify the Administrative Services Bureau and Firearms Supervisor of damage or malfunction.
- G. Officers assigned or issued a patrol rifle are required to have them in the field and available while on patrol. Officers may seek permission from the OIC, under special circumstances not to carry the rifle with them while on patrol. The request will be noted on the OIC daily log.

1. Inspect and perform a safety and function check of the rifle in approved area at the beginning of each shift.
2. Report any malfunction of a BPD patrol rifle to the OIC.
3. Secure the rifle in a locked rack within the police vehicle or in a hard or soft sided case in the trunk of the vehicle. The vehicle must be locked at all times.
4. Secure the rifle in its case in their department locker or in designated secure locations at the end of each tour of duty. All ammunition and magazines removed, chamber cleared and safety on.
5. With prior written approval from a BPD Firearms Supervisor or Deputy Chief an officer may train with his/her issued rifle at an official "rifle" range while off duty (i.e. one of the local fish and game clubs).

H. Cruiser-carrying of the patrol rifle and Sig Sauer MPX SBR:

1. A loaded BPD rifle carried in a police vehicle shall contain a magazine-loaded two (2) rounds below the manufacturer's stated capacity (e.g. 28 rounds in a 30-round magazine). The bolt will be forward, the chamber empty and the dust cover closed. The safety selector will be set in the ON position. A rifle shall not routinely be carried in a police vehicle with a chambered round. Officers shall charge the weapon when they deploy it from the vehicle for possible use. Following deployment, as soon as it is prudent, they will download any chambered rounds before returning the weapon to the rack and/or case in the vehicle. When clearing the rifle of a chambered round the rifle will be pointed in a direction that ensures minimal risk of damage or injury in the event of an accidental firing.
 2. Rifles will be transported by officers in non-tactical situations with the muzzle up or slung with the muzzle down.
- I. Department Armorers shall inspect and maintain all BPD weapons annually. They shall ensure all BPD patrol rifles are fired no less than once annually.
- J. All repairs shall be made by a Department Armorer or other qualified sources, approved by a Department Armorer. A record shall be maintained of all maintenance performed.
- K. Officers issued a patrol rifle or using their authorized personally-owned rifle will be permitted to purchase, at their own expense, approved non-magnified sights (e.g., EOTech, Aimpoint, or Vortex). Officers can also add a stand-alone magnifier as long as the magnifier can be immediately disengaged from the sight system so that the sight can be used without magnification. (An example of this type of magnifier is the EOTech 3x spring-loaded magnifier.)
- L. With the approval of the Firearms Supervisor, officers may be authorized to use 1x variable low power optic with a front objective lens no larger than 2 inches (50mm). These optics must allow a true one-power on the low end of its designated range and while also providing the officer with the ability to manually adjust the magnifier to engage threats at greater distances on the high end of its designated range. Examples of these types of variable powered optics are the Vortex Viper PST 1-4x24, the Vortex

Strike Eagle 1-6x24 or 1-8x24, the Trijicon AccuPower 1-4x24, the Burris MTAC 1-4x24, or the Eotech Vudu 1-6x24. The officer shall complete all annual training with the sight in place prior to using it while on patrol. At no time will the BPD be responsible for lost or damage to sights or magnifiers that are personally owned.

- M. Officers issued a patrol rifle may, at their own expense, be allowed to add an approved fore-end pistol grip. The officer shall complete all annual training with the grip in place prior to using it while on patrol. At no time will the BPD be responsible for lost or damaged grips that are personally owned.

V. OFFICER-OWNED RIFLES

- A. Officers who have completed their probationary period may be allowed to carry a personally-owned rifle while on duty.
1. Officer-owned rifles will be presented and approved by the firearms committee and/or rifle instructors prior to use on duty.
 2. The serial number of the officer owned rifle will be checked and recorded once a calendar year during rifle training.
- B. Officer-owned rifles must meet the following requirements:
1. Rifles will be of the AR-15 designation and chambered to fire the NATO 5.56mm/.223 caliber ammunition and must be made to mil-spec with no modifications so that rifle function is identical to BPD-owned AR-15 rifles.
 - a) Piston-driven AR-15 rifle systems may also be used in place of direct impingement.
- C. The only ammunition approved for on-duty carry will be issued by the BPD.
- D. Officers using an external vest carrier may carry two visible rifle magazines on their person. This will not restrict the carrying of additional magazines out of view within pockets or on special response vests that are not the normal Class C uniform.
- E. Training
1. Officers will ONLY be allowed to carry a personally owned AR-15 rifle on duty upon completion of a BPD approved training course and qualification. This training must be conducted by BPD instructors.
 2. Officers who fail to meet the annual qualification requirement will not be allowed to carry a rifle (personal or BPD-owned) on duty until such time as the qualification is completed.
- G. Officer responsibilities:

1. Officers will be responsible for care and maintenance of the rifles and their approved attachments and accessories. Any repairs to the rifle are required to be completed by an authorized AR-15 armorer.
 - a. Officer-owned weapons will be inspected by a Department Armorer at a minimum of once a calendar year, and an armorer may inspect officer-owned weapons at any other time without notice.
 - b. Any rifle not found to be in good working order must be immediately taken out of service and the officer will not be permitted to carry the rifle until such time as it is repaired.
 - c. If the rifle cannot be repaired by a Department Armorer, it is the officer's responsibility to have the rifle repaired by the manufacturer.

H. Storage and use:

1. Officers approved to carry their owned rifle will carry that rifle with them every shift.
2. If an officer is unable to carry his or her owned rifle on a shift, the officer will immediately notify the on-duty OIC or relevant supervisor.
3. While on duty, officer-owned rifles must be carried "cruiser ready" and in the same manner as BPD-owned rifles per this Appendix.

I. On-duty discharge:

1. If an officer-owned rifle is discharged in the line of duty, that weapon will be submitted for evidentiary reasons as part of the investigation.

J. Off-duty officers are responsible for ensuring the proper operation of any personally owned rifle and compliance with all applicable firearms laws; the BPD shall not be liable for any claim or injury associated with a personally owned rifle when the officer is not on duty.

K. The BPD reserves the right to rescind an officer's approval to carry a personally owned rifle for any reason at any time.

L. All relevant BPD directives shall apply to personally owned rifles.

VI. FIREARMS SAFETY

- A. The Department does not require the carrying of a firearm while off-duty. If an officer chooses to carry a firearm other than the BPD-issued firearm off-duty, the officer is encouraged to demonstrate and document proficiency with the firearm.
- B. Except for general maintenance, storage or authorized training, officers will not draw or exhibit any firearm in public unless circumstances create a reasonable belief that it may be necessary to lawfully use the weapon in conformance with other sections of this policy.

- C. An officers will not point or direct a firearm at a person unless circumstances create reasonable belief that it may be necessary to lawfully use the weapon in conformance with other sections of BPD directives. Such pointing is a use of force and must be documented.
- D. An unintentional discharge barrel will be available for loading and unloading of weapons. The muzzle of the weapon will be pointed into the unintentional discharge barrel when chambering or ejecting a live round.
- E. The BPD encourages storing BPD-approved weapons securely at Headquarters when off duty. Wherever an officer chooses to store her/his weapon it must be secured in such a way as to reasonably insure that no unauthorized person will have access to or gain control of the weapon. The BPD encourages officers to store their weapon unloaded.
- F. Officers will exercise all customary safety precautions and obey all appropriate rules or directives while practicing on the range.
- G. Officers shall keep their firearms in clean, in working condition with special care taken to clean and lubricate the weapon after firing.
- H. No alterations in the mechanical action or functions of any weapon carried on duty shall be made unless by the Department Armorer for that weapon.
- I. Any unintentional firearms discharges of a department owned/approved weapon while on or off duty or any unintentional firearms discharges while inside the BPD or special assignment locations (CUSI/DEA) that do not connect with any living thing shall be documented in a departmental memorandum explaining in detail how the discharge occurred within 48 hours of the alleged unintentional discharge unless the Chief or his/her designee determines that mitigating circumstances exist which prohibits expeditious completion of the report. In such cases, the report shall be completed as soon as is practical once the mitigating circumstance(s) has been resolved. If the officer is off duty, the officer must notify his/her immediate supervisor who will notify the appropriate Deputy Chief. If deemed necessary by the Chief of Police, a review of the circumstances will be conducted by the firearms group or a designee of the Chief of Police. Upon completion of the review, the firearms group along with the training unit will complete a remedial training plan for the involved officer at the direction of the Chief of Police or his/her designee.

VII. FIREARMS INSPECTIONS

- A. Every department approved duty weapon will be inspected annually during firearms qualifications. Weapon shall be visually inspected by a certified firearms instructor to insure that they are in proper working order. Additionally, firearms instructors may conduct periodic weapons inspections at roll call.

- B. Written documentation shall be required for each inspection stating the date of the inspection as well as the serial number of each weapon and the name of the employee authorized to carry it. Copies of the firearms inspection report shall be maintained in the Office of Training and Recruitment.

Jon Murad, Chief of Police (acting)

June XX, 2020
Effective Date

#



BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE **DRAFT**
DD05.03 Lethal Force
Reviewed and published June XX, 2020

CONTENTS:

I.	Purpose
II.	Lethal Force
III.	Justification
IV.	Prohibitions
V.	Incident Command
VI.	Administrative Investigation
VII.	Use of Force Reports

I. PURPOSE

The purpose of this directive is to ensure that officers use force consistent with the law and with Burlington Police Department (BPD) policy. The decision to use lethal force or deadly physical force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of the lawful authority to use it, and the serious consequences of doing so.

II. LETHAL FORCE

The BPD declares that every person has a right to be free from excessive force by officers acting under color of the law. BPD officers will use lethal force only when necessary in defense of human life.

- A. In determining whether lethal force is necessary, officers will evaluate each situation in light of the particular circumstances of each case. Officers must use other available resources and techniques if safe and feasible to an objectively reasonable officer.
- B. Where feasible, prior to using lethal force, officers will make reasonable efforts to identify themselves as a police officer and warn that lethal force may be used unless the officer has the objectively reasonable belief that a verbal warning will jeopardize the officer or another person. It is acknowledged that during critical events heightened stress and other physiological responses may impede the ability to make such warnings.
- C. Lethal force should be a last resort. When time permits, officers should exhaust all other reasonable means, or a situation must exclude all other reasonable means, before resorting to the use of lethal force. It is acknowledged that incidents related to use of lethal force are often uncertain and evolve rapidly, and this must be considered during review of such incidents.

- D. Any neck restraint technique should be used only under circumstances that warrant the use of lethal force.
- E. Firearms may be used to kill a dangerous animal or one so badly injured that its removal from further suffering is humane and when no other disposition is reasonably practical.

III. JUSTIFICATION

BPD officers are justified in using lethal force against another person only when the officer reasonably believes that such force is necessary for either of the following reasons:

- A. To defend against an imminent threat of death or serious bodily injury to the officer or another person.
 - 1. A threat of death or serious bodily injury is considered imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the ability, opportunity, and apparent immediate intent to cause death or serious bodily injury to the officer or another person.
 - 2. Serious bodily injury is bodily injury that creates any of the following:
 - a. A substantial risk of death
 - b. A substantial loss or impairment of the function of any bodily member or organ
 - c. A substantial impairment of health
 - d. Substantial disfigurement
 - e. Strangulation by intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person
- B. To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, IF the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

An officer's decision to use lethal force shall be evaluated from the perspective of a reasonable officer in the same situation. This justification must be based on the totality of the circumstances, meaning all facts known to the officer at the time of the incident, including the conduct of the officer and of the subject leading up to the use of lethal force. The totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force. The totality of the circumstances does not include the benefit of hindsight.

IV. PROHIBITIONS

The following prohibitions shall apply.

- A. **Warning shots.** Warning shots are strictly prohibited.

- B. **Discharging a firearm at or from moving vehicles.** An officer will not discharge a firearm at or from a moving vehicle unless:
 - 1. The vehicle is operated in a manner deliberately intended to strike a person, and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle; or
 - 2. A person in the vehicle is threatening the officer or another person with lethal force by means other than the vehicle.
- C. **Danger to self.** The BPD shall not use lethal force against a subject based solely on the danger the subject poses to himself or herself. If an objectively reasonable officer believes the subject does not pose an imminent threat of death or serious bodily injury to the officer or another person, other than the subject, the officer will not use lethal force.
- D. **Unholstering Firearms.** Pistol firearms will not be drawn in any public place unless an officer has reason to fear for his/her safety or the safety of others.
- E. **Alcohol or Drugs.** Officers will not use any BPD-approved firearm while under the influence of alcohol or regulated drugs.

V. INCIDENT COMMAND

In the event that an officer has employed lethal force, or takes an action that results in (or is alleged to have resulted in) serious bodily injury or death, the following will occur:

- A. Officers should render the scene safe.
- B. Officers shall immediately call for an ambulance and immediately provide or obtain appropriate medical attention.
- C. The ranking officer on scene shall assume incident command, and immediately request the response of the on-duty Officer in Charge (OIC). Upon arrival, the OIC shall take control of the incident scene.
- D. The incident location should be secured for purposes of investigation.
- E. The involved officer should be removed from the scene to BPD Headquarters or a treatment facility if necessary.
 - 1. An officer should be assigned to stay with the involved officer. If available, a Peer Officer Support Team (POST) member should be assigned this task.
- F. Circumstances permitting, the involved officer will provide a Public Safety Statement prior to leaving the scene. The Public Safety Statement should be made as

contemporaneously to the event as possible (i.e., it should be obtained prior to the end of the involved officer's shift when practical).

1. The Public Safety Statement is a compelled statement. It will consist of the following:

- a. Type of lethal force used.
- b. Approximate number of shots fired by the involved officer and subject(s), if applicable, and the direction of fire.
- c. Location of injured or dead persons.
- d. Description of outstanding subject(s), including direction of travel, time elapsed since the suspect was last seen, and any subject weapon(s).
- e. Description and location of any known victims or witnesses.
- f. Description and location of any known evidence.
- g. Other information as necessary to ensure officer and public safety and assist in the apprehension of outstanding suspects.

G. When practical, the involved officer should walk through the scene to facilitate recollection of the event prior to the end of the officer's shift.

1. Involved officers will be allowed to view their body-worn camera footage prior to the end of the officers' shifts, absent extreme circumstances determined at the discretion of the Chief of Police or his/her designee.

H. Appropriate personnel should be contacted, including but not limited to the Detective Services Bureau supervisor, Deputy Chiefs of Operations and Administration, Chief of Police, and POST members or counselors as necessary.

VI. ADMINISTRATIVE INVESTIGATION

Whenever agency members have employed lethal force, the BPD will immediately initiate an Administrative Investigation.

- A. The Office of Quality Control and Investigations will oversee the Administrative Investigation. At his or her discretion, the Chief of Police may also request an independent review or investigation by an outside agency or entity.
- B. The involved weapon will be taken from the officer for the purpose of investigation.
 1. The officer will be issued a replacement weapon unless denied by the Chief of Police.
- C. An investigating supervisor will interview the involved officer(s) as soon as is practical, considering the need to balance proper investigative follow up with the medical or psychological needs of the officer(s).
- D. The Administrative Investigation should generally be completed within five (5) days.

1. The officer shall be placed on administrative leave or assigned to the Administrative Services Bureau pending completion of the Administrative Investigation.
 - a. If the officer is placed on administrative leave and the Administrative Investigation is not completed within five (5) days, the officer's duty status shall be reevaluated, with preference for returning the officer to duty.
 2. In the event that an outside law-enforcement agency with jurisdiction initiates and authorized investigation into the incident, the Administrative Investigation may be delayed until the outside investigation is complete.
- E. The Chief of Police will direct the officer to obtain psychological follow-up for post-incident trauma. The City will bear the responsibility of paying for such services. With prior approval from the Chief of Police, an officer may seek psychological follow-up from a licensed professional of his/her choice. Initial psychological follow-up must be completed by an officer before the officer is reassigned to duty.
- F. The officer shall be kept informed of the progress of the Administrative Investigation and upon completion, notified in writing of the outcome.
- G. The Chief of Police or his/her designee shall notify the State's Attorney, ~~and~~ the City's legal counsel, and the Police Commission (in executive session) of the Administrative Investigation's outcome.

~~VII. —~~ USE OF FORCE REPORTS

~~A written report will be generated whenever an officer uses force.~~

- ~~A. The initial Use of Force Report shall include a description of the subject's actions that necessitated a particular use of force, the reasons why force was required, and a description of the type of force used. The report shall also include descriptions of any injuries to or complaint of injuries by the subject or the officer and a description of any medical treatment received. Amendments may be added at a later time owing to memory recall or other factors. Deletion of initial reports is forbidden, however.~~
- ~~B. Use of Force Reports must be must be completed prior to the end of the officer's shift, unless exceptions apply as described below. In such cases, the report shall be completed as soon as is practical once the mitigating circumstance(s) has been resolved. Exceptions are:~~
- ~~1. The Chief of Police and/or his/her designee determines that mitigating circumstances exist that prohibit expeditious completion of the report.~~
 - ~~2. The officer is incapacitated.~~
 - ~~3. An external investigation is initiated that precludes the officer from completing the report.~~

Lethal Force (June ~~15~~5, 2020 **DRAFT**)

~~C. Officers will submit a written report of the circumstances surrounding all on-duty uses of lethal force, including firearm discharges, with the following exceptions:~~

- ~~1. Firearms discharges during authorized range practice.~~
- ~~2. Firearms discharges used to dispatch injured animals.~~

Reviewed and adopted by the Burlington Police Commission on Month Date, 2020.

Jon Murad, Chief of Police (acting)

June XX, 2020
Effective Date

#



BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE DRAFT
DD05.04 Conducted Electrical Weapons (CEWs)
Reviewed and published June XX, 2020

CONTENTS:	I.	Purpose
	II.	Policy
	III.	Definitions
	IV.	CEW Use and Deployment Procedure
	V.	Post-deployment Procedure
	VI.	Training Requirements
	VII.	Measurement and Calibration
	VIII.	Review of Policy

I. PURPOSE

The purpose of this directive is to define the parameters in which properly authorized officers of the Burlington Police Department (BPD) may use Conducted Electrical Weapons (CEWs).

II. POLICY

When properly used, Conducted Electrical Weapons (CEWs) can be an effective and efficient law enforcement tool that can reduce injuries to suspects, bystanders, and law enforcement officers. This policy sets forth recommended minimum standards for training officers on using CEWs, the circumstances under which officers should use CEWs, and the procedures officers should follow after using CEWs. Although this policy contains provisions and principals that may apply to several different types of force, it focuses on CEWs and does not specifically address all other lawful types of force law enforcement officers may use in a given situation. This CEW policy is designed to supplement rather than replace any existing use of force policies.

It is the BPD's policy to clearly delineate the use of the CEW to remain in line with BPD training guidelines, CEW training guidelines, and Vermont Statute Title 20 VSA 151 Section 2367. (Internal Security and Public Safety, Vermont Criminal Justice Training Council, Statewide policy; electronic control devices; reporting.)

III. DEFINITIONS

- A. **Conducted Electrical Weapon (CEW).** A less-lethal law-enforcement device that delivers an electrical pulse to the body of a subject in either a "drive stun" or "probe" mode. When used in "probe mode" the device discharges two probes that remain connected to the CEW via wire and that, upon impact, deliver an electrical pulse designed to incapacitate a subject temporarily. When used in "drive stun" mode, the device makes direct contact with and delivers an electrical pulse to the body of a subject, but does not result in the same temporary incapacitation of a subject as when used in "probe" mode.

CEWs include “Electronic control devices” that are defined at 20 VSA § 2367(a)(1) as “device[s] primarily designed to disrupt an individual’s central nervous system by means of deploying electrical energy sufficient to cause uncontrolled muscle contractions and override an individual’s voluntary motor responses.”

- B. **Special populations.** Members of special populations include subjects an officer has reason to believe are:
- Cognitively impaired such that they are unable to comply with an officer’s instructions.
 - Experiencing an emotional crisis that may interfere with the ability to understand the consequences of their actions or to follow directions.
 - Persons with disabilities whose disability may impact their ability to communicate with an officer, or respond to an officer’s directions.
 - Under 18 years of age.
 - Pregnant.
 - Over 65 years of age.
 - Physically infirm, subject to or diagnosed with a heart condition, or epilepsy, or a seizure disorder.
- C. **Special circumstances.** Special circumstances include situations where an officer has reason to believe the subject is:
- Operating a motor vehicle.
 - Standing in an elevated area, near water, or near flammable materials (including but not limited to alcohol-based chemical sprays).
 - Restrained.
- D. **Special consideration.** A consideration of: (i) the potential additional risk of harm posed by deploying a CEW against a member of a special population or a subject in special circumstances; and (ii) whether other types of force are reasonably available to effectuate custody of or facilitate control over a member of a special population or a subject in special circumstances while still preserving the safety of that person, third parties, and the responding officer(s).
- E. **Active Resistance.** A subject using physical activity to resist or takes an affirmative action to defeat an officer’s ability to take the subject into custody or to seize the subject, but the subject’s actions would not lead a reasonable officer to perceive a risk of physical injury to him/herself, the subject, or a third person. Examples of active resistance include pulling away, escaping or fleeing, struggling and not complying on physical contact, or other energy enhanced physical or mechanical defiance. Refusing to move upon verbal direction or chaining oneself to an object does not constitute active resistance.
- F. **Active Aggression.** Behavior that creates an imminent risk of physical injury to a subject, officer, or third party, but would not lead a reasonable officer to perceive a risk of death or serious bodily injury. Examples include but are not limited to an attack on an officer consisting of strikes, wrestling, undirected strikes with injury potential, kicks,

shoves, or punches. Examples may also include words or behavior such as pre-assault cues that indicate that such an attack or actions are imminent.

- G. **Critical Incident.** A deployment of a CEW that results in serious bodily injury or death of the subject.

IV. CEW USE AND DEPLOYMENT PROCEDURE

- A. Only officers who complete training on the use of CEWs containing the minimum elements set forth in Section 4 of this policy, as approved by the Vermont Criminal Justice Training Council, shall be authorized to carry CEWs.
- B. Prior to the start of each shift, an officer authorized to carry a CEW shall conduct a spark test of the CEW to ensure that it is properly functioning. Only properly functioning CEWs shall be carried for use. CEWs that are not properly functioning shall be taken out of service and sent for repair.
- C. When it is safe to do so, BPD officers will display the CEW and provide a verbal warning prior to deploying a CEW.
- D. Officers may only deploy CEWs in the following circumstances:
1. In response to either:
 - a. A subject exhibiting active aggression.
 - b. A subject actively resisting in a manner that, in the officer's judgment, is likely to result in injury to the subject, the officer, or third persons.
 2. If, without further action or intervention by the officer, injuries to the subject, the officer, or others will likely occur.
 3. To deter vicious or aggressive animals that threaten the safety of the officer or others.
- E. Neither an officer, a subject, nor a third party has to actually suffer an injury before use of a CEW may be justified.
- F. An officer should attempt to avoid deployment to a subject's head, neck, chest, genitals, female breast, and stomach of a pregnant woman.
1. When targeting a subject from the front, the preferred target area is a horizontal line approximately two (2) inches lower than the sternum and below. An ideal probe deployment from the front will "split the hemispheres" having one probe strike a subject above the belt line and the other probe striking the subject in the thigh or leg thereby activating the hip flexor.
 2. When targeting a subject from the back, the preferred target area is below a horizontal line drawn even with the shoulders across the neck and below.
- G. Officers should use the minimum number of cycles necessary to take a suspect into custody or mitigate their assaultive behavior.

- H. CEWs shall not be used in a punitive or coercive manner and shall not be used to awaken, escort, or gain compliance from passively resistant subjects. The act of fleeing or destroying evidence, in and of itself, does not justify the use of a CEW.
- I. When it is safe to do so, officers should attempt to deescalate situations. However, officers are not required to use alternatives to a CEW that increases the danger to the officer, another person, or the public.
- J. Officers should avoid deploying more than one CEW on a single subject at the same time unless circumstances exist such as an ineffective probe spread on the first CEW or the first CEW fails to achieve immobilization of the subject and a second deployment is independently justified. Before deploying a second CEW, officers should consider the feasibility and safety of attempting to control the subject with a lesser type of force.
- K. Officers having reason to believe they are dealing with a member of a special population or are dealing with special circumstances shall give special consideration to deploying a CEW. Officers having reason to believe they are dealing with an individual with a psychiatric disability shall consider consulting with the area designated mental health agency.

V. POST-DEPLOYMENT PROCEDURE

- A. Following CEW use, officers should only use restraint techniques designed to minimize the risk of impairing a suspect's respiration. Once restrained, the subject should be moved into a recovery position that facilitates breathing.
- B. As soon as practicable after CEW deployment, the CEW probes shall be removed from the subject. The probes shall be treated as a biohazard. In the following cases, officers should wait for EMS to remove the probes:
 - 1. The probes embedded in a sensitive area such as the face, neck, throat, groin, female breast, or stomach of a pregnant woman.
 - 2. The officer encounters problems when attempting to remove the probe.
- C. Medical attention shall be offered to all individuals subjected to a CEW deployment.
- D. Emergency medical services shall be contacted if a subject:
 - Suffers an obvious injury.
 - Does not appear to recover properly and promptly after deployment.
 - Is a member of a special population.
 - Has been subjected to three or more CEW deployments or a continuous deployment exceeding 15 seconds.
 - Has been subjected to a deployment to his or her chest.

- Exhibits signs of extreme uncontrolled agitation or hyperactivity prior to the CEW exposure
 - Or the subject was involved in a lengthy struggle or fight prior to the CEW exposure.
- E. If a subject refuses additional medical attention, that refusal should be documented.
- F. When an officer has reason to believe the officer is responding to a situation that may necessitate emergency medical services, the officer shall make reasonable efforts to summon such services in advance.
- G. With the exception of the required spark test and accidental discharges that do not connect with any living being, each time a CEW is deployed and/or displayed it shall be documented in a use-of-force report within 24 hours of the deployment unless otherwise authorized by a supervisor. This use-of-force report shall contain the following, at a minimum:
- The date, time, and location of the incident.
 - The officer(s) involved in the incident, identifying which officer(s) used CEWs.
 - The type of CEW deployment, i.e., display, drive stun, or probe mode.
 - Identifying and descriptive information for the subject, including any information indicating if the subject was a member of a special population or encountered during an incident involving special circumstances. If law enforcement consulted with any mental health agencies that fact should be noted.
 - A list of other known witnesses.
 - The number of CEW cycles used, the duration of each cycle, and the duration between cycles.
 - The level and description of resistance encountered.
 - Whether CEW use was effective.
 - The type of crime/incident in which the subject was allegedly involved.
 - The approximate range at which the CEW was used.
 - The point of impact.
 - Whether law enforcement used or attempted to use any other types of force.
 - The medical care provided to the subject, including any refusal of additional medical attention after initial screening by EMS.
 - The type of injuries, if any, sustained by any of the involved persons including the officer(s).
 - When possible, photographs of the CEW probe entry sites.
- H. The department shall also collect the download data, cartridges, probes, and wires from the CEW that was deployed and shall maintain them pursuant to its evidence policies. The download shall occur as soon as reasonably practical after the CEW is deployed.
- I. When possible, in instances in which more than one CEW has been deployed, a sampling of the AFID tags should also be collected and maintained pursuant to the department's evidence policies.

- J. Accidental discharges that do not connect with any living thing shall be documented in a departmental memorandum explaining in detail how the discharge occurred within 48 hours of the alleged accidental discharge unless otherwise authorized by a supervisor.
- K. All use-of-force reports and departmental memorandum required under this policy shall be reviewed by the officer's supervisor. The BPD will conduct a use-of-force review in the following situations:
 - The BPD receives a complaint of excessive use of force.
 - The supervisor recommends conducting a use-of-force review.
 - The encounter resulted in death or serious bodily injury.
 - The individual exposed to the CEW is a member of a special population.
 - An individual was exposed to three or more CEW cycles or a cycle that lasted longer than 15 seconds.
- L. Upon request, the subject of a CEW deployment, or his/her next of kin, shall be kept informed of the procedural status and final result of the review.
- M. Annually each law enforcement agency shall report to the Vermont Criminal Justice Training Council all incidents involving the use of a CEW in a form to be determined by the Council.

VI. TRAINING REQUIREMENTS

- A. Training for officers authorized to carry CEWs shall be conducted annually.
- B. Training shall not be restricted solely to training conducted by the manufacturer of the CEW. However, training shall include the recommendation by manufacturers for the reduction of risk of injury to subjects, including situations where a subject's physical susceptibilities are known.
- C. Training shall emphasize that CEWs may be less-lethal weapons, but are not non-lethal nor less-than-lethal weapons.
- D. Training shall also incorporate, at a minimum:
 - Instruction on the use-of-force continuum.
 - Techniques to avoid or deescalate confrontations.
 - The underlying technology and operation of CEWs.
 - The physiological effects upon an individual against whom such a CEW is deployed.
 - The proper use of the weapon, including both the proper mechanical use of the weapon and the circumstances under which it is appropriate to use the weapon.
 - Scenario-based training.
 - Proper removal of CEW probes.
 - The potential medical needs of a subject who has been subjected to a CEW deployment.
 - The post-deployment reporting requirements.

- Instruction on interacting with individuals experiencing a mental health crisis, emotional crisis or other type of crisis, as recommended by the Vermont Criminal Justice Training Council.

E. Departments should also evaluate the value of requiring or allowing officers to feel the effects of a CEW as part of training. If an officer decides to feel these effects, the training shall include an explanation of the potential differences between that officer's experience and the experience of a subject in the field. Departments requiring or allowing its officers to undergo a CEW deployment shall, beforehand, provide a thorough explanation of the potential injuries an officer could incur as a result of the deployment even within a controlled training environment.

VII. MEASUREMENT AND CALIBRATION

- A. CEWs shall be calibrated to ensure the electrical output of the device is within manufacturer's specifications under the following circumstances:
- Upon receipt by a law enforcement agency and prior to use in the field, only if measurement and calibration equipment is available in the state.
 - Annually, only if measurement and calibration equipment is available in the state.
 - After a critical incident, regardless of whether there is measurement and calibration equipment available in the state or the unit needs to be sent back to the manufacturer for testing.
- B. CEWs that are self-calibrating are not subject to these provisions unless a law-enforcement agency requires calibration pursuant to its own policies and procedures or there are reasonable grounds to believe that the self-calibration is not functional.
- C. If a CEW's electrical output is determined to be outside of manufacturer's specifications it shall not be used in the field until it has been found to have output within manufacturer's specifications.

VIII. REVIEW OF POLICY

Vermont's Law Enforcement Advisory Board shall review this policy annually.

Reviewed and adopted by the Burlington Police Commission on Month Date, 2020.

Jennifer Morrison, Chief of Police

Month Date, 2020
Effective Date

###



BOARD OF POLICE COMMISSIONERS
MINUTES OF MEETING
Tuesday, June 16, 2020

I. Call to Order
Chair Gamache

The meeting resumes from recess at 6:09 pm.

II. Roll Call and Determination of Quorum
Chair Gamache

Commissioners Present: Chair Jabulani Gamache, Commissioner Randall Harp, Commissioner Mark Hughes, Commissioner Yuol Herjok, Commissioner Michele Asch, Commissioner Shireen Hart, Commissioner Ny Miles (arrived at 6:17pm), and Youth Commissioner Landen Nipper. Quorum was met.

Also Present: Acting Chief Jon Murad, Deputy Chief Matt Sullivan, and Commission Clerk Shannon Tranter

Counsel for this meeting: Joy Hovestadt

A motion was made by Commissioner Hart, seconded by Commissioner Herjok, to resume discussion on the Use-of-Force Policy. The motion carried by the following vote:

Aye: Gamache, Harp, Hughes, Herjok, Asch, Hart

No: 0

Absent: Miles

III. Review & Discuss Updated Draft Use-of-Force Directives

Chair Gamache opened the floor for discussion on the Updated Draft Use-of-Force Directives.

Commissioner Hughes expresses a point of concern that he hasn't had sufficient time in reviewing the document and will be abstaining from voting if it goes to a vote during this meeting.

Commissioner Harp would like to express his appreciation for the document and the work that was done to get to this point. He would like to address the following points in further meetings, but said it would not keep him from voting on the policy at this meeting:

- a. Reconcile DD05.03 Section III "Justification," last full paragraph in that section. Would like to make sure there is no inconsistency with that statement and others made throughout the document about where the policy imposes additional obligations of officers beyond the "Reasonable Officer Requirement"
- b. To make sure the Police Commission has the information needed to evaluate how this policy, if adopted, is having an effect on policing to evaluate how the policy is being implemented.

Commissioner Herjok asked Acting Chief Murad to clarify if the policy has been updated to include the Department giving the Police Commission a summary of Use-of-Force incidents twice a year?

- a. Acting Chief Murad replied that it has not been added to the Use-of-Force Directives, but to the Use-of-Force Policy of the Police Commission document. And stated that he would like to see summaries provided monthly to the Commission; not only just twice a year.

Commissioner Herjok would like to know if the following will be provided in the monthly Use-of-Force summary (if not, he would like them included):

- a. Officer involved, demographic (age, gender, race), justification, type of use-of-force, outcome, and the relevant documentation (written and/or video).

Commissioner Asch felt there was a deep dive done at the last meeting, and expressed her appreciation to Acting Chief Murad for updating the document. She looked at her notes and the changes that were done and felt everything from the last meeting was captured and is good with all of the changes.

Commissioner Hughes raised a question regarding Commissioner Herjok's previous concerns; and whether they belong in the Role of the Police Commission document or in these Use-of-Force Directives. His opinion is that if they are not in the "rule" [Directives], then there isn't anything to hold the Department accountable for reporting these use-of-force summaries to the Commission.

- a. Commissioner Asch provides some clarity that this came from a resolution from City Council; that they gave the responsibility of drafting a document to the Commission of its role, and once it is completed, it goes back to the Public Safety Committee and is a resolution by the City and that is how the document gets codified.
- b. Joy Hovestadt will get further clarification on this.

Commissioner Harp requests clarification in DD05.02 Section VII, "Use-of-Force Reports" regarding amending reports and deleting information.

DD05.02 Section VII (A)

Last sentence should read "Deletion of any text in initial reports is forbidden, however."

A motion was made by Commissioner Asch, seconded by Commissioner Harp, to move forward in voting for the policy that includes the proposed change Commissioner Harp requested tonight.

Aye: Miles, Asch, Hart, Harp, Gamache

No: Herjok, Hughes

A motion was made by Commissioner Harp, seconded by Commissioner Asch, that the Commission adopt the Use-of-Force Directives with indicated changes for BPD.

Aye: Asch, Harp, Gamache, Miles, Hart

No: Herjok

Abstains: Hughes

Use-of-Force Policy is adopted with the indicated changes for BPD.

IV. Adjournment

A motion was made by Chair Gamache, seconded by Commissioner Asch, to adjourn the meeting.

Aye: Gamache, Miles, Harp, Hart, Asch, Herjok

Abstains: Hughes

Meeting adjourns at 6:49 pm.

Respectfully Submitted,



Shannon Trammell
Executive Assistant to the Chief of Police
Clerk of the Police Commission

7/29/2020