



# New Bedford Police General Order

Subject <b>USE OF DEADLY FORCE</b>	General Order Number <b>12-01</b>
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C.A.L.E.A. 1.2.2, 1.3.1-1.3.3, 1.3.5-1.3.13	Cross references MGL ch.38 s. 4, MGL ch. 41 s. 98, MGL ch.140 s.131 MGL ch. 140 s.131L

## I. PURPOSE

The purpose of this General Order is to establish guidelines for the Use of Deadly Force by sworn members of this department in the performance of their duties and govern the investigation and review of all incidents in which deadly force is used. The use of deadly force is probably the most serious act a police officer will ever perform. Use of deadly force is contrary to the reverence of human life exhibited by officers who often risk their own lives to save others. The consequences of deadly force is far reaching for all parties involved, even when death does not result. The physical and mental well being of police officers requires that they have a firm understanding of those circumstances in which they are authorized to use deadly force.

## II. POLICY

It is the policy of the New Bedford Police Department to place its highest value on the life and safety of its officers and the public. In the conduct of policing, all officers must embrace the obligation to ensure that the safety of the public is preserved to the fullest extent possible. Likewise, the safety of all officer must be appropriately safeguarded in all actions of the police. Safety of the public and the safety of the officers must be regarded with the highest priority. The procedures outlined in this General Order have been designed to ensure that this value guides police officers in the use of deadly force. Therefore, it is the policy of this department that police officers will use only that amount of force necessary to accomplish lawful objectives. (1.3.1) Nothing in this policy should be construed to prohibit officers from using whatever means are necessary, including the use of weapons or objects to protect the life of the officer or another person in an emergency situation.

When time and the totality of the circumstances permit, officers shall use de-escalation tactics in order to reduce the need for force.

Examples include:

- A. The use of verbal advisements, warnings, and persuasion.
- B. B. Attempts to slow down or stabilize the situation so that more time, options and resources are available.
- C. C. Officers should consider whether a subject's lack of compliance is a deliberate attempt to resist or is caused by an inability to comply.

### **III. DEFINITIONS (1.3.2)**

*Deadly Force*: Any use of force likely to result in death or serious bodily injury. Deadly force is also referred to as deadly physical force, which is any use of force likely to cause death or great bodily harm.

*De-escalation*: The tactical use of verbal and/or physical skills to prevent a potentially dangerous situation from escalating.

*Serious Bodily Injury*: a bodily injury which creates a substantial risk of death, or which is likely to cause serious or permanent disfigurement, protracted loss or impairment of any bodily function, part, limb or organ.

*Reasonable Belief*: when facts and circumstances would cause a reasonable and prudent police officer to act or think in a similar way under similar circumstances

*Imminent Danger*: a risk of harm that is perceived by a reasonable and prudent police officer as threatening, menacing, impending, proximate or immediate in nature

### **IV. GENERAL CONSIDERATIONS**

A./ The citizens of the Commonwealth have vested in their police officers the power to carry and use firearms in the exercise of their service to society. This power is based on trust and therefore must be balanced by a system of accountability. The serious consequences of the use of firearms by police officers necessitate the specification of limits for officer's discretion; there is often no appeal from an officer's decision to use a firearm. Therefore, it is imperative that every effort be made to ensure that each use of firearms is not only legally warranted, but reasonable.

B./ Police officers are equipped with firearms as a means of last resort to protect themselves and others from the immediate threat of death or serious bodily injury. The basic responsibility of police officers to protect life also requires that they exhaust all other reasonable means for apprehension and control before resorting to the use of

firearms. Firearms are but one type of force the police are authorized to use in carrying out their responsibilities. In addition, officers carry batons, OC spray, and other defensive equipment authorized by the Chief of Police during the normal performance of their duties. It is important that officers exercise reasonable care and restraint when using these devices, given the potential to cause serious injury or death.

C./ In determining when to use force, officers are to be guided by the principle that the least amount of force reasonably necessary in any situation is the greatest amount of force that is permissible. Any use of force must be justified. Only that amount of force, which is reasonable, shall be used to overcome resistance directed against the officer or to effect the safety of another. The reasonableness of a particular use of force must be judged from the perspective of the reasonable officer on scene, rather than with the 20/20 vision of hindsight. No policy can address every conceivable situation that may arise. However, officers are expected to act with the highest level of reasonable prudence and professional competence. Therefore, officers should not place themselves in a position of exposure to imminent danger of death or serious bodily injury if reasonable alternatives are available. Certainly, the reasonableness of any action is based on the time available, the opportunity of performing the action and the facts apparent to the officer before and during the incident. This includes the presence of innocent third persons.

## **V. DE-ESCALATION**

**A. De-escalation:** Whenever reasonable according to Department policies and training, officers shall use de-escalation tactics to gain voluntary compliance and seek to avoid or minimize the use of physical force.

1. When safe and feasible, officers shall:

a. Attempt to slow down or stabilize the situation so that more time, options and resources are available.

i. Mitigating the immediacy of the threat gives officers more time to call additional officers or specialty units and to use other resources.

ii. The number of officers on scene may make more force options available and may help reduce overall force used.

**B. Consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:**

Medical conditions

Mental/Behavioral Health Crisis

Developmental disability (such as Autism or Asperger's syndromes)

Physical limitation

Language barrier  
Drug or alcohol use

Such considerations, when time and circumstances reasonably permit, should then be considered when planning a response.

**C. De-escalation tactics include, but are not limited to:**

1. Placing barriers between an uncooperative subject and an officer.
2. Moving from a position that exposes officers to potential threats to a safer position.
3. Reducing exposure to a potential threat using time, distance, cover or concealment.
4. Communication from a safe position intended to gain the subject's compliance, using verbal persuasion, advisements or warnings.
  - a. Avoidance of physical confrontation, unless immediately necessary (e.g. to protect someone or stop dangerous behavior.)
  - b. Using verbal techniques to calm an agitated suspect and promote rational decision making.
  - c. Calling additional resources to assist, including more officers, CIT officers and officers equipped with less-lethal tools.
  - d. Removing unnecessary persons from the scene.
  - e. Effective verbal communication skills can reduce potentially violent situations and prevent or minimize the need for physical force. Profanity and offensive language can have a damaging effect on public perception of police behavior. Therefore, officers should restrict their use of profanity and offensive language. This will not only improve the quality of their interactions but also reduce the allegations and/or judgements of excessive force.

## **VI. FIREARMS**

A./ A police officer is authorized to carry a firearm at all times while on duty pursuant to Massachusetts General Laws, Chapter 41, Section 98. They may carry a firearm while off duty within the Commonwealth of Massachusetts pursuant to Massachusetts General Laws Chapter 140, Section 131. (1.2.2)

1. All officers, while on duty, shall be armed with a firearm and holster of a make and model authorized by the Chief of Police. A list of all authorized firearms and

holsters shall be maintained by the Firearms Division Commander. The primary duty firearm issued by the Department is a Glock Model 23, 40 caliber Semi-Automatic Pistol. (1.3.9(a))

2. All ammunition carried by officers in an issued or authorized firearm must be of a type approved by the Chief of Police. A list of all authorized ammunition shall be maintained by the Firearms Division Commander. (1.3.9(b))

3. An officer shall not alter nor modify his/her issued or authorized firearm or ammunition in any way without permission from the Chief of Police.

4. All issued firearms may be carried by officers while off duty provided they are carried in compliance with law.

5. Firearms must be kept clean and in workable condition. Officers will be responsible for the safe handling of their firearms at all times and must secure their firearms when they are not under their direct control. Officers shall take all reasonable precautions to ensure that firearms issued to them by the department are protected from loss, misuse or theft. (1.3.9(f))

6. No weapon shall be removed from a holster for cleaning or display purpose except in designated areas as outlined below.

- a) *Headquarters* - The male and female locker rooms in front of the bullet containment box, and the Office of the Firearms Division
- b) *Station #1* - Locker rooms and containment box
- c) *Station #2* - The Armory Room.
- d) *Station #3* - The Armory Room or garage
- e) Any other area as determined by the Chief of Police

7. Officers are allowed to remove weapons at their locker for storage at the beginning and at the end of their tour of duty. Lockers shall remain locked and secured at all times. (1.3.9(f))

8. Officers are prohibited from cleaning their personal weapons while on duty.

9. All personnel are reminded of, and should be familiar with M.G.L. ch. 140, s. 131L concerning storage of weapons.

10. Rifles and shotguns assigned to vehicles must be removed and properly stored prior to the vehicle being sent for maintenance.

11. All special weapons and ammunition authorized for use shall be listed and maintained by the Firearms Division Commander. Whenever the Chief of Police authorizes special weapons such as shotguns or rifles, all officers shall

demonstrate proficiency before being authorized to utilize such specialized weapon. The Firearms Division Commander will maintain a listing of all officers who have qualified with each special weapon, a copy of which shall be sent to the Training Division.

## **VII. TRAINING AND QUALIFICATION**

A./ At least annually, all sworn officers authorized to carry weapons are required to receive in-service training and testing on the Department's Use of Force policies and demonstrate proficiency with all approved *lethal weapons* that the officer is authorized to use. In-service for other *less-lethal weapons* and weaponless control techniques shall occur at least biannually. (1.3.10)(1.3.11,1.3.12). All officers shall be given a copy of the Department's Use of Force policies and must annually pass a written examination before being authorized to carry a weapon. Proficiency training shall be provided by a certified weapons or tactics instructor qualified in the respective less-lethal force weapons. (1.3.11,1.3.12)

B./ Firearm qualification shall be under the direction of a certified firearms instructor on an approved course and in accordance with standards established by the Municipal Police Training Committee. (1.3.11(a)) Prior to qualifying, the Firearms Division Commander, or certified firearms instructor, shall inspect and approve all issued and authorized firearms officers intend to qualify with to ensure that it is in good working order. All defective or unsafe firearms shall be removed from service. (1.3.9(c,d))

C./ All firearm training, qualifying scores, policy issuance and examination results shall be documented and maintained by the Firearms Division Commander, a copy of which shall be sent to the Training Division. (1.3.11(b))

D./ Whenever an officer fails to obtain a qualifying score with his/her duty firearm or fails to meet proficiency on use of force policies, the officer will be temporarily re-assigned and relieved of all police duties requiring a firearm. The Firearms Unit Commander subsequently will undertake an intensive training regimen with the officer involved until all qualification requirements are met. Any officer who fails to qualify after such intensive training period will be subject to re-evaluation as to his/her fitness to continue to perform the duties of a police officer. (1.3.10)(1.3.11(c))

E./ Officers wishing to qualify with personal firearms while on duty will notify their supervisor of their intent to do so and shall be authorized to possess those firearms(s) for the sole purpose of qualifying. This authorization shall be temporary and will only allow the employee to carry the personal firearm to and from the range. The personal firearm(s) shall be secured prior and subsequent to completion of the qualification course. Prior to carrying such firearm, it must be inspected and approved by the Firearm Weapons Instructor or Firearm Division Commander, satisfactory to the Chief of Police. Firearms determined by such instructor or Firearm Division Commander to be unsafe may not be used. All ammunition carried in an approved off-duty weapon

must be of a type approved by the Chief of Police. The Firearms Division Commander shall maintain a record of all authorized firearms and ammunition.

F./ Officers may have to activate themselves during off-duty situations where there is a need to draw a personal firearm and the possibility exists to use such weapon. Upon self-activation, the officer's actions are guided by all Department rules and regulations, therefore there is a need to show familiarization with personal firearms which are carried off duty. All officers who are licensed to carry firearms pursuant to M.G.L. c. 140 s. 131 and who may act in the capacity as a law enforcement officer while off duty, armed with a personal firearm must be qualified with that firearm. Qualification may be obtained during regular in-service periods and officers shall provide their own ammunition. Any officer who desires to carry an authorized off-duty firearm must submit a written request to the Chief of Police detailing a complete description of the firearm. If the firearm is approved by the Chief of Police, the officer must qualify annually in the use of the weapon.

## VIII. USE OF FIREARMS

A./ A police officer shall avoid the unnecessary display of firearms and not draw a firearm except when there is justification for its use to accomplish a proper police purpose. In responding to any dangerous situation in which an officer reasonably believes that personal safety is at risk, a police officer should carry his firearm in a position where it can be used speedily and effectively, if necessary. An officer shall point his firearm only when he reasonably believes the use of deadly force may be necessary. Whenever an officer draws his/her firearm and points it at any person, group or vehicle, the officer will complete a Use of Force Report and submit it to the shift commander prior to completing his/her tour of duty. The report shall address the name of the officer and other persons concerned, witnesses present, including other police officers, the circumstances under which the force was used, the nature of any injury inflicted and the medical care given to the injury party.

B./ A police officer *is authorized* to use a firearm in the following circumstances if there is no other reasonable alternative available:

- 1) to protect themselves or another person from imminent danger of death or serious bodily injury. (1.3.2)
  - a) police officers will identify themselves, use warnings and verbal advisements in attempt to de-escalate and state their intent to use deadly force, unless the delay of deadly force will put the life of the officer or another person in imminent danger
  - b) no officer will be disciplined for not discharging a firearm if

the discharge might threaten the life and safety of an innocent person, or if the discharge is not clearly warranted by the policy of the department

- 2) to apprehend a fleeing felon when;
  - a) the officers knows as a virtual certainty that the felony committed involved the use or threatened use of deadly force AND
    - i. there is a substantial risk that the person to be arrested will cause death or serious bodily injury if apprehension is delayed
    - ii. the use of force employed creates no substantial risk of injury to innocent persons
- 3) to euthanize a dangerous animal that represents a threat to public safety or when an animal is so badly injured that humanity requires its removal from further suffering. In the case of an injured animal, the permission of the owner should be obtained whenever possible. Great care should be taken to protect persons and property from a ricocheting bullet. Whenever practical, the killing of an animal should be used only when the services of Animal Control are unavailable.
- 4) officers may discharge their firearm, without the intent to kill or disable, if it is reasonable to believe that he/she has no alternative method of convincing a would-be attacker that he/she is ready and able to defend himself/herself or others if the potential threat is not discontinued. The provisions of this paragraph shall be limited to *extraordinary circumstances* because of the possibility that a bullet could ricochet and cause injury to officers, other innocent persons, or may prompt either return fire from the suspect(s), or precipitate the use of firearms by other officers.
- 5) An officer may discharge his/her weapon as a last resort to summons assistance when no other means may reasonably be utilized.
- 6) For authorized target practice, competition, test firing or other approved recreational purpose

C./ Under the laws of the Commonwealth, persons under the age of 17 accused of a crime are normally proceeded against as delinquent children and their records are likely to be expunged upon reaching their adulthood. Officers shall therefore, use all reasonable means to avoid the use of firearms against persons known or thought to be under the age of 17, except where no less drastic means are available to protect themselves or another person from imminent death or serious bodily injury. Officers



should be aware however, that a juvenile offender may pose as serious a threat to public safety as an adult offender.

D./ A police officer is *not authorized* to use a firearm in the following circumstances:

- 1) Firearms shall not be used as a signaling or warning device, or to warn a fleeing subject to stop, except as otherwise provided in paragraph VII (B)(4). (1.3.3)
- 2) To effect an arrest for a misdemeanor.
- 3) Deadly force is not to be used to effect an arrest on mere suspicion that a crime has been committed or that a particular person has committed a crime.
- 4) Flight in and of itself, is not necessarily evidence of the commission of a crime and is not a sufficient reason for the use of firearms.
- 5) As retaliatory in nature or used as punishment
- 6) Against unarmed individuals, who only verbally confront officers, unless the officer(s) is facing an imminent threat of death or serious bodily injury to themselves or a third person
- 7) At or from a moving vehicle, except to protect themselves or another person from imminent danger of death or serious bodily injury. In all cases, every precaution shall be taken to ensure the safety of the public because of the following;
  - a) bullets fired at moving motor vehicles are extremely unlikely to stop or disable the motor vehicle
  - b) bullets fired may miss the intended target or ricochet and cause injury to officers or other innocent persons
  - c) the vehicle may crash and cause injury to officers or other persons if the bullet(s) disable the operator

#### **IX. MEDICAL ATTENTION** (1.3.5)

A./ After any level of force is use, the officer shall immediately evaluate the need for medical attention or treatment for that person upon whom the force was used and arrange for such treatment when;

- 1) the suspect is in obvious need of medical attention
- 2) the suspect has a serious injury; or
- 3) the suspect complains of injury or discomfort and requests medical attention

B./ Any person requesting and/or deemed in need of medical attention shall be evaluated by medical personnel or transported in accordance with department policy to an appropriate hospital or medical facility. All medical treatment received shall be included in the officer's report. If the suspect displays impaired thinking, disorientation, hallucinations and/or delusions, intense paranoia, violent and/or bizarre behavior and during the arrest exhibits great strength, or a diminished sensitivity to pain, the individual may be showing signs of excited delirium. During the arrest or immediately after the struggle sudden death may ensue. Therefore, arrestees displaying these symptoms should be checked by medical personnel.

C./ Persons suffering from cocaine intoxication, particularly if used in conjunction with alcohol, are subject to increased blood pressure, heart rate and body temperature. Since sudden death may occur in such persons, medical personnel should check arrestees displaying these symptoms.

D./ Psychiatric patients who display hyperthermia (over heating), are in and out of consciousness, and have lumpiness of skeletal muscles may be suffering from Neuroleptic Malignant Syndrome and may also be prone to sudden death. Arrestees displaying these symptoms should be checked by medical personnel.

## **X. DUTY TO INTERVENE**

Sworn employees have an obligation to protect the public and other employees. If officers witness colleagues using excessive, unnecessary or unreasonable force, or anticipate a colleague is about to use excessive, unnecessary or unreasonable force in any situation, they are required to immediately take action to stop any use of excessive or unnecessary force.

It shall be the policy of this Department that every sworn employee present at any scene where physical force is being applied to either stop or attempt to stop another employee when force is being inappropriately applied or is no longer required.

Sworn employees witnessing or having knowledge of any instance where excessive, unnecessary, or unreasonable force has been applied shall notify his or her Division Commander immediately and submit a written report through the Division

Commander to the Chief of Police forthwith, which shall include the following information:

- A. Name of the victim, officer(s) involved and other witnesses
- B. The extent of the victim's injuries
- C. Details of the excessive, unnecessary or unreasonable use of force

## **XI. USE OF FORCE REPORTING AND REVIEW**

A./ A police officer who discharges a firearm for other than training or recreational purposes or uses force that results or is likely to result in serious bodily injury or death shall notify his/her Division Commander immediately and submit a written report through the Division Commander to the Chief of Police forthwith, which shall include at least the following information: (1.3.6)

- 1) Name and address of any injured person(s) and witnesses.
- 2) The extent and treatment of any injuries, the hospital where treated and/or the doctor who provided such treatment.
- 3) The number of shots fired and the reasons and circumstances that required the use of firearms.

B./ Upon receiving notification of a firearm discharge by an officer, or an incident of force that results or is likely to result in death or serious bodily injury to another, the Division Commander shall be responsible for initiating an investigation by assigning a supervisor to respond to the scene of the discharge or incident of force as expeditiously as possible and shall conduct an investigation to determine the facts of the incident and the extent to which the incident complied with departmental policy.

- 1) The supervisor shall submit his findings to the Division Commander who initiated the investigation in written report form. The Division Commander shall submit said report, together with his own written findings and recommendation(s), to the office of the Chief of Police for review. (1.3.7)

C./ It should be remembered that the purpose of this policy is to protect lives and safety, as well as to protect the officers and the department from liability. This policy also pertains to the use of firearms "in the line of duty" whereas another person is killed or injured by use of a service weapon.

D./ Whenever a person is killed or injured as a result of the discharge of a firearm by a sworn member of this department, or an incident of force results or is likely to result in death or serious bodily injury to another, the regular investigation by a supervisor shall be augmented by an on-scene investigation carried out by the Commanding Officer of the Detective Division. A parallel administrative investigation shall also be conducted under the auspices of the Commanding Officer of the Division of Professional Standards. (1.3.7)

E./ Whenever a person is killed or injured as a result of the discharge of a firearm by a sworn member of this department, or an incident of force results or is likely to result in death or serious bodily injury to another, the officer involved shall turn in his/her service firearm to their Commanding Officer until completion of an investigation.

1) The Commanding Officer of the Detective Division and the Commanding Officer of the Division of Professional Standards, shall respond to the scene, investigate, and report their findings in writing to the Chief of Police.

F./ In the event that property damage occurs as a result of the discharge of a firearm by a sworn member of this department, the regular investigation by a supervisor shall be augmented by an on-scene investigation carried out by the Division of Professional Standards.

G./ In the event that an officer is involved in any shooting incident, including being shot at, or other incident of force that results or is likely to result in death or serious bodily injury, supportive stress services will be initiated for the officer and/or family members.

H./ It is the policy of this department that whenever a sworn officer is deemed to be involved in a "personal crisis situation", which may affect their physical or mental well-being, the officer will turn in their service and personal firearm(s) to the Chief of Police until completion of an investigation, or until the Chief determines that the crisis has been resolved. When appropriate, supportive stress services will be made available.

## **XII. ADMINISTRATIVE DUTY**


Whenever an officer has been involved in any type of incident whereby the use of a service firearm results in death or bodily injury, or an incident of force results or is likely to result in death or serious bodily injury to another person, the officer involved shall be removed from line-duty assignment pending an evaluation of an administrative review. (1.3.8) This process is for the benefit of the officer and to protect the community's interest and should not be interpreted or construed as disciplinary in nature.

## **XIII. ANNUAL ANALYSIS and REVIEW**

The Division of Professional Standards is responsible for ensuring that all Use of Force reports are complete and accurate and are reviewed by the appropriate chain of command for adherence to policy. The Division of Professional Standards shall produce and forward to the Chief of Police an annual analysis of all Use of Force Reports for indications of patterns or trends that could indicate training needs, equipment upgrades and or policy revisions (1.3.13). This annual report shall be made available to the public, upon request.

The Commission on the Police Use of Force Policies (appointed by the Mayor), shall review this policy annually and make appropriate recommendations to the Mayor. The recommendations may include training needs, equipment upgrades, and/or policy revisions.

CC: policy manual  
all divisions and bureaus

  
Paul J. Oliveira  
Chief of Police