

Waltham Police Department

USE OF FORCE

CHAPTER 1

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PURPOSE:

The Waltham Police Department places the highest value on the life and safety of its officers and on the life and safety of the public. The Department's regulations, policies and procedures are designed to ensure that this value guides officers in their use of force.

POLICY: [1.1.2-2]

All officers of the Waltham Police Department will use only the force necessary to accomplish lawful objectives. **[1.1.1]** Officers may carry or use only those weapons and ammunition issued and authorized by the Chief of Police in the performance of their duties pursuant to MGL 41 § 98 **[1.1.0]**, **[1.1.9]**. Officers assigned to Northeast Massachusetts Law Enforcement Council (NEMLEC) are authorized to carry weapons issued by NEMLEC in the course of their NEMLEC duties, functions, and responsibilities. The training and weapon qualification records of NEMLEC officers will be submitted annually to the Waltham Police Department Training Division.

Only personnel who demonstrate proficiency in lethal and/or less lethal **[1.1.10-2A, B]** authorized weapons are authorize to carry those weapons **[1.1.10-1]**. Proficiency is determined through training in accordance with Municipal Police Training Committee guidelines and department policy and procedure. All officers must qualify for, keep, and maintain a License to Carry Class A firearms permit, issued by the Chief of Police of the Waltham Police Department. Periodic computer checks will be conducted for appropriate compliance. **[1.1.0]**

[1.1.13-1,2] All **new hires and any veteran officers** who are issued new weapons will be issued a copy of the agency's use of force policy **[A]** and will receive instruction on the policy **[B]** to include, at a minimum, de-escalation and duty to intervene **[1.1.1-2]**, **[26.0.4-3,4]**. The policy issuance and instruction **[C, D]** will occur during the new hire orientation at the Waltham Police Department upon completion of a Police Academy and will be documented in the accreditation file. Veteran officer training will be conducted, yearly during firearm qualifications. Additionally, duty to intervene is reviewed during formal in- service training **[26.0.4-5]**.

1. **DEFINITIONS:**

- a. **DE-ESCALATION:** Proactive actions and approaches used by an officer to stabilize a volatile situation so that more time, options, and resources are available to gain a person's voluntary compliance and to reduce or eliminate the need to use force including, but not limited to, verbal persuasion, warnings, slowing down the pace of an incident, waiting out a person, creating distance between the officer and a threat and requesting additional resources to resolve the incident, including, but not limited to, calling in medical or licensed mental health professionals. [1.1.2B]
- b. **NON-DEADLY FORCE:** The force that is neither likely nor intended to cause serious bodily injury or death. This includes but is not limited to the use of approved defensive physical tactics, pepper spray, the K-9, and the authorized baton.
- c. **LESS-LETHAL FORCE:** That force which is likely to have less potential for causing death or serious bodily injury than the use of deadly force. This includes, but is not limited to, the use of approved delivery systems and respective munitions.
- d. **DEADLY FORCE:** Physical force that can reasonably be expected to cause death or serious physical injury. That degree of force likely to result in death or serious bodily injury. This includes but is not limited to the use of department-approved firearms. [1.1.2A]
- e. **FORCE:** The amount of physical effort required by an officer to gain compliance from a person. This includes any use of force by an officer occurring in an official law enforcement capacity whether on or off-duty.
- f. **WEAPONLESS PHYSICAL FORCE:** Weaponless physical force includes, but is not limited to the MPTC Use of Force Model and Defensive Tactics areas of Contact Controls, Compliance Techniques, and Personal Weapon Techniques. Examples of weaponless force includes, but is not limited to: escorts, wristlocks, armbars, hand, elbow, feet and knee strikes. [1.1.6 (2)], [1.1.12-1B]
- g. **OBJECTIVELY REASONABLE:** In determining the necessity for force and the appropriate level of force, officers shall evaluate each situation in light of the known circumstances including, but not limited to the seriousness of the crime, the level of threat or resistance presented by the subject and the danger to the community.
- h. **SERIOUS BODILY INJURY:** Bodily injury that results in: permanent disfigurement; protracted loss of impairment of a bodily function, limb or organ; or a substantial risk of death. A serious bodily injury is an injury that may require the subject to be admitted into a hospital, and/or result in extended loss or impairment of the function of any bodily member or organ. [1.1.2D]
- i. **USE OF FORCE MODEL:** These are force options that are divided into five (5)

levels to guide the officer during a use of force situation.

- j. **COMPLIANT SUBJECT:** A subject who submits to the officer's authority and direction through either words or actions.
- k. **PERCEIVED SUBJECT ACTION:** The subject's actions as perceived by the reasonable officer that designate the subject at one or more of the Use of Force Model's compliant and/or non-compliant categories.
- l. **PERCEIVED CIRCUMSTANCES:** The reasonable officer's perspective of the severity of any crime, the existence of any and all safety threats to the officer or others, and the degree of compliance and/or non-compliance from the subject at the time of the encounter.
- m. **CONTROL SUPERIORITY PRINCIPLE:** A recognized officer advantage, and a recognized subject disadvantage.
- n. **CHOKEHOLD:** The use of a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing or block flow with the intent of or with the result of causing bodily injury, unconsciousness or death. [1.1.2C]

2. **PROGRESSION OF FORCE:**

The officer's response options within each of the five force levels identified in the Use of Force Model are not necessarily listed in the order of use and/or need. The officer may de-escalate, stabilize or escalate their response based upon their risk assessment and the perceptions of the subject's degree of compliance or non-compliance.

The force tactics listed in each of the five force levels identified in the Use of Force Model are those tactics that officers are trained in. The Department recognizes that there are other methods and tactics that can be used at each of the levels of authority. If a tactic is used that is not listed then it must be objectively reasonable as it relates to the officer's risk assessment and the subject's action.

3. **USE OF DEADLY FORCE:** [1.1.2]

The people of the Commonwealth have vested in their police officers the power to use deadly force in the exercise of their service to society. Officers are allowed to use deadly force as a means of last resort to protect themselves and others from the immediate threat of death or serious physical injury. Even though all officers must be prepared to use deadly force, when necessary, the basic responsibility of police officers to protect life also requires that the utmost restraint be exercised in its use and that officers exhaust all other reasonable means before resorting to the use of deadly force. This includes developing skills to de-escalate

volatile encounters, containing and awaiting assistance and avoiding tactics which may create the need to use deadly force. The use of neck restraints or control techniques, commonly known as choke holds, have a potential for serious injury and are strictly prohibited. [1.1.2, 3]

The guidelines for the use of deadly force have been developed with serious consideration for the safety of both the Officer and the public, and with the knowledge that Officers sometimes must make split second decisions in life and death situations. The policy and the rules set forth by Waltham Police Department are based on the following Municipal Police Training Committee's Use of Force Model. Officers may use deadly force in accordance with the MPTC Use of Force Model, where an officer reasonably possesses a lethal threat perception and the perceived subject's actions could cause serious bodily harm or death to the officer or others. Officers shall attempt to give verbal warnings before utilizing deadly force if it is tactically feasible, and does not pose an additional risk to the officer or others.

4. **USE OF FORCE MODEL:**

Members of this Department may use deadly force only when the officer reasonably believes that the action is in defense of human life, including the officer's own life or in defense of any person in immediate danger of serious physical injury, or death.

Officers may also use lethal force to prevent the escape and effect the arrest of an individual whom the officer has probable cause to believe has committed a felony involving the use, attempted use, or threatened use of deadly force and whom the officer reasonably believes will cause death or serious physical injury if apprehension is delayed (Tennessee vs Garner).

Officers should attempt to give verbal warnings in this situation, as to not create a safety risk to innocent bystanders.

LEVEL ONE: The Compliant Subject**Perceived Subjects Actions**

The officer perceives the subject's actions as cooperative and control is maintained via public acceptance, officer presence, verbalization skills, etc.

Perceived Circumstances Are: *STRATEGIC*

The officer must maintain a minimum level of awareness and preparedness to enhance the overall and ongoing status of officer safety anytime he/she is working.

The reasonable officer responses are *COOPERATIVE CONTROLS*.

The cooperative controls would include, but not be limited to, those force tactics listed below.

COOPERATIVE CONTROLS [1.1.12-1b]

Officer Presence:	Appearance
Communication Skills:	Dialogue Verbal commands
Approach Techniques:	Relative positioning Contact/cover officer tactics Control Superiority Principle
Frisk Techniques:	1 officer on 1 subject 2 officers on 1 subject
Searching Techniques:	1 officer on 1 subject 2 officers on 1 subject
Restraining techniques:	Handcuffing: 1 officer on 1 subject 2 officers on 1 subject
Transporting Techniques:	One officer unit Patrol wagon

LEVEL TWO: The Resistant (passive) Subject**Perceived Subjects Actions**

This is the preliminary level of subject non-compliance. The subject offers no physical or mechanical energy enhancement toward the resistant effort. The subject has not directed his or her physical strength and energy in establishing, achieving, and/or maintaining a posture of resistance.

Perceived Circumstances Are: *TACTICAL*

The officer perceives an increase in the threat potential within the confrontational environment, which would initiate the process where specific tactics and procedures would now be deployed.

The reasonable officer responses are *Contact Controls* [1.1.12-1b]

These would include, but not be limited to, those force tactics listed below.

CONTACT CONTROLS

Officer Presence:	Appearance
Contact Controls:	Escort position Handcuffing control position

LEVEL THREE: The Resistant (active) Subject

Perceived Subjects Actions

The subject's non-compliance has increased in scope and intensity and now includes energy enhanced physical or mechanical defiance. The individual has directed his or her physical strength and energy in establishing, achieving and/or maintaining a posture of resistance.

Perceived Circumstances Are: *VOLATILE*

The officer is now confronted with the presence and/or potential of an increase in the threat intensity, severity, etc. The officer recognizes this increase in the threat potential and must deploy techniques and tactics that would overcome and/or control this increased risk.

The reasonable officer responses are *COMPLIANCE TECHNIQUES*.

These compliance techniques would include, but not be limited to, those force tactics listed below.

COMPLIANCE TECHNIQUES

Compliance Techniques:	Front wristlock Baton Controlling Techniques Rear Wristlock Pressure Points Arm bar Distraction Techniques Bent wristlock
Non-Chemical Agents:	Pepper Spray Oleoresin Capsicum

LEVEL FOUR: The Assaultive (bodily harm) Subject

Perceived Subjects Actions

The officer's attempt to gain lawful compliance has concluded in a perceived or actual attack on the officer or another person(s). The officer makes the reasonable assessment that such actions by the subject would result in bodily harm to him/herself or another.

Perceived Circumstances Are: *HARMFUL*

The officer perceives an accelerated assessment of danger. The situation has reached a degree where the physical well-being of the officer or another person is in jeopardy if the subject is not stopped and controlled.

The reasonable officer responses are *DEFENSIVE TACTICS*.

These defensive tactics would include, but not be limited to, those force tactics listed below.

DEFENSIVE TACTICS

Personal Weapons Techniques:	Head Hands Elbows Knees Feet
Impact Weapons Techniques:	Expandable Straight Baton Super Sock Munitions

LEVEL FIVE: The Assaultive (serious bodily harm, death) Subject**Perceived Subjects Actions**

The officer is now confronted by an assaultive act that reaches the ultimate degree of danger. The officer perceives that if these actions are followed through with, that the officer or others would be subject to death or serious bodily harm.

Perceived Circumstances Are: *LETHAL*

The officer perceives the highest degree of threat towards his/her or another's safety. The officer reasonable assessment would be that if this situation were allowed to continue that he/she or another could be seriously injured or killed. A maximized system of defense must be initiated.

The reasonable officer responses are *DEADLY FORCE*.

These deadly force tactics would include, but not be limited to those force tactics listed below.

DEADLY FORCE

Service weapons:

Handgun

Patrol Rifle

Tools of Immediate Means & Opportunity

5. **DE-ESCALATION:**

When feasible, officers should attempt to gain voluntary compliance utilizing de-escalation tactics. Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter and enable an officer to have additional options to gain voluntary compliance or to mitigate the need to use a higher level of force, while still maintaining control of a situation. The Waltham Police Department shall conduct pre-service and annual training on de-escalation for full and part-time sworn members. [1.1.1-2]

Officers shall not use physical force upon another person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to effect the lawful arrest or detention of a person; prevent the escape from custody of a person; or prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm; provided, however, that a law enforcement officer may use necessary, proportionate and non-deadly force in accordance with the regulations promulgated jointly by POST and the Municipal Police Training Committee.

De-escalation tactics are defined as: proactive actions and approaches used by an officer to stabilize a law enforcement situation so that more time, options and resources are available to gain a person's voluntary compliance and to reduce or eliminate the need to use force including, but not limited to, verbal persuasion, warnings, slowing down the pace of an incident, waiting out a person, creating distance between the officer and a threat and requesting additional resources to resolve the incident, including, but not limited to, calling in medical or licensed mental health professionals to address a potential medical or mental health crisis.

6. **DUTY TO INTERVENE:** [1.1.2-5,6], [26.0.4]

The Waltham Police Department has zero tolerance against the use of excessive force and deadly force beyond that which is necessary or objectively reasonable based on the totality of the circumstances [1.1.2-6A]. All officers of the Waltham Police Department should be aware of their personal responsibility during a use of force encounter. An officer present and observing other officer(s) using or about to use physical force, including deadly force, beyond that which they perceive as necessary or objectively reasonable based on the totality of the circumstances, shall intervene [1.1.1-5], regardless of department rank, and without *fear* of retaliation or *actual* retaliation, to prevent the use of unreasonable force unless intervening would result in imminent harm to the officer or another identifiable individual. [26.0.4-1]

Retaliation for reporting or testifying in an agency, court, or POST proceedings can include the discharge of the employee, any change to their official rank, grade or compensation, denying a promotion or taking any other adverse action against an officer or employee or *threaten* to take any such action for providing information to the agency

or POST. [26.0.4-9, 10]

In all such cases a supervisor shall be immediately notified both verbally and in writing and the officer shall submit a detailed written report to the Officer in Charge prior to the end of their shift [1.1.1-6], [26.0.4-2]. A supervisor not directly involved in the use of force incident shall also complete a report which will include the reporting officer's statement. [1.1.2-6C] All duty to intervene reports shall be forwarded to the Chief of Police by the Officer in Charge. [26.0.4-3]

Failure to intervene may subject them to disciplinary action, civil liability and/or criminal prosecution, as well as possible certification revocation by POST. [26.0.4-6,8]

7. **CALL FOR ASSISTANCE WHEN POSSIBLE:**

An officer acting alone may be required to resort to a much greater degree of force than would be necessary if another officer or officers had been present. Therefore, unless immediate action is required, an officer should call and wait for assistance whenever possible and appropriate.

8. **WARNING SHOTS:**

The use of warning shots is only authorized in situations where deadly force would otherwise be justified and only when doing so will not unreasonably endanger innocent bystanders. Shooting to signal for help, is only authorized in situations where officer safety is jeopardized and only when doing so will not unreasonably endanger innocent bystanders. [1.1.3a]

9. **USE OF FIREARMS AND MOVING VEHICLES: [1.1.2-4]**

Waltham Police Officers shall not discharge any firearm into or at a fleeing motor vehicle, A law enforcement officer shall not discharge any firearm into or at a fleeing motor vehicle unless, based on the totality of the circumstances, such discharge is necessary to prevent imminent harm to a person and the discharge is proportionate to the threat of imminent harm to a person. Officers shall NOT discharge their firearms *at* a moving vehicle unless the operation of the vehicle constitutes an imminent threat of serious bodily injury.

To minimize the threat a moving vehicle can present, officers are to use sound tactics when approaching vehicles and should whenever possible, position themselves in such manner that the vehicle cannot be used against them as a weapon. Officers shall NOT discharge their firearms *from* a moving vehicle unless circumstances warranting deadly force exist *and* no other reasonable means are available. [1.1.2-4]

10. WEAPONS TO BE CARRIED ON AND OFF DUTY:

Only lethal and less lethal weapons and ammunition authorized by the Waltham Police Department can be used by agency personnel to perform their duties and responsibilities on and off duty [1.1.9- 1,2], [1.1.12-1A, B]. The use of a personal firearm by an off-duty officer for any lawful and appropriate purpose shall not, in and of itself, be considered to be a grossly negligent act and shall not, in and of itself, be cause for loss of personal indemnification by such officer [1.1.9], [1.1.10- 2C], [41.3.4-1]. No other weapons or ammunition are authorized to be used or carried by members of the department on duty, except when the Chief of Police so designates. [1.1.9-1]

This policy shall not be interpreted as restricting any member, who possesses a valid License to Carry a Firearm from carrying any firearm under conditions of law while off duty.

WEAPONS: [1.2.2], [1.1.9-A, B], [1.1.9 G, H]

- a. **Pistol:** Glock Model 19 GEN5. All officers when on duty shall be armed with the department issued sidearm only (except as noted below).
- b. **Pistol:** Glock Model 43, 9mm (Issued only to Police Command Staff and designated Drug Detectives.)
- c. **Baton:** Monadnock MX 24 Expandable Baton or Monadnock Autolock 22” or 26” models with or without Hindi Cap.
- d. **Chemical Weapon:** (Department Issued) Sabre Red Pepper Spray, 1.33% Major Capsaicinoids, 10% Oleoresin Capsicum, 2,000,000SHU in a Stream Configuration. [1.1.9C, D]
- e. **Patrol Rifle:** Colt LE Carbine, Caliber: Remington .223 (5.56mm)
- f. **Smith & Wesson .38:** Model 342PD (Issued only to designated Drug Detectives).
[1.1.9 G, H]

11. SAFE HANDLING / SECURITY OF FIREARMS:

All officers shall be responsible for the safe handling of their firearms at all times. They shall ensure the security of their firearms at all times, both on-and off-duty. Weapons must be secured in such a manner as to prevent theft and unauthorized/accidental use. All department-issued firearms shall be stored in accordance with MGL Chapter 140 Section 131L. The department shall supply every officer with a locking device for each weapon issued. [1.1.9 15]

12. FIRST AID/MEDICAL TREATMENT: [1.1.5]

In an effort to minimize pain and suffering and further injuries, officers shall as soon as possible render first aid to individuals injured as a result of law enforcement action including the use of force. **[1.1.5D]** Appropriate emergency medical transportation and treatment shall be obtained when reasonably safe and tactically feasible and/or when an individual, including a suspect or detainee requests it **[1.1.5E]**. This includes treatment of injuries from lethal weapons, less than lethal weapons, weaponless tactics and any other injuries. **[1.1.5 A, B, C]** Medical aid shall always be provided on calls for service or during the detention or arrest of a person when there is an obvious severe injury to the person, they are in medical distress (unable to breath, labored breathing, wheezing, etc.) and when a person is unresponsive or unconscious. **[1.1.5F]**

Appropriate medical aid does not necessarily mean having the injured person immediately evaluated at a medical facility. It could include observation and monitoring of conditions, flushing chemical agents from the eyes, applying first aid, evaluation by paramedics, etc.

13. DUTY TO REPORT USE OF WEAPONS OR THE APPLICATION OF PHYSICAL FORCE: [1.1.6]

Each and every officer who deploys a weapon or applies physical force, shall make a verbal report to the OIC and complete a use of force supplement (to the narrative) form in QED. This includes, but is not limited to:

- a. An officer has used any authorized lethal or non-deadly weapon or applied physical force as defined by the Department. **[1.1.6A, B, C]**
- b. The officer has taken action (including weaponless use of force) that results in or is alleged to have resulted in an injury or death to another person. **[1.1.6 A, B, C, D], [1.1.12-1B]**
- c. The officer has drawn and/or displayed a firearm when dealing with a member of the public.
- d. The officer discharges a firearm or a non-lethal/less-lethal weapon for other than training or recreational purposes. **[1.1.6 A]**

Narrative Reports and Use of Force Form #1-1 should be submitted within a reasonable amount of time, with due regard for the individual and circumstances of each incident.

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

- a. That person has a visible injury; or
- b. That person complains of injury or discomfort and requests medical attention.

14. COMPREHENSIVE REPORTING:

In addition, the following steps shall be taken:

- a. The officer shall promptly notify his supervisor of the incident.
- b. All medical treatment received shall be noted in the officer's report.
- c. The officer shall attempt to locate and identify all witnesses, documenting their statements.
- d. The officer shall prepare and submit all required reports, including Department Use of Force checklist.
- e. If a use of force incident results in an injury or claim of injury, each officer utilizing force shall complete a separate supplemental report outlining their actions and/or observations in the incident.

The Patrol Supervisor shall immediately respond to the scene of any police use of force incident where a detainee or person has a visible injury or complains of an injury or an officer is injured as a result of the officer's use of force. Further, the on-scene Supervisor shall:

- a. Ensure that the detainee or person and/or officer receive any necessary assistance, including medical treatment, and that any injuries whether visible or not, are promptly documented by photograph.
- b. Determine if a detective should respond to the scene and the level of investigative services to be utilized (including photographs, measurements, and diagrams).
- c. Report the incident to the OIC.
- d. Conduct an initial review of all reports submitted concerning the use of force incident to ensure appropriate detail and accuracy.

The OIC shall review the preliminary report, all supplements and Use of Force supplements associated with the incident and ensure their respective detail and accuracy.

15. REVIEW BY COMMANDING OFFICER: [1.1.7]

All reports referred to above, shall be forwarded to the officer's Division Commander,

who shall review the matter and turn all reports over to the Training Division. The Training Division shall enter all reports into the Use of Force Data System and review each incident in order to identify and address any training needs. Training shall then forward all reports to the Supervisor of the Administration Division for yearly analysis. [1.3.13] If any Commander is involved in a use of force incident, the Chief shall designate a Superior Officer, not involved, to assume these responsibilities.

When an officer has discharged a firearm, or when the use of force has resulted in serious injury, or when in the opinion of the Division Commander the matter requires further action or investigation, copies shall be forwarded to the Chief of Police.

The Chief of Police will review the information and forward the package to the Commander- Internal Affairs Unit, if necessary. Review by Internal Affairs should include, but not be limited to, determining whether or not the use of force was consistent with the Department Policy, Department Training, as well as officer and public safety.

16. INVESTIGATION WHEN USE OF FORCE RESULTS IN A DEATH OR INJURY:

Whenever an employee uses force that results in a death or an injury that may result in a death, the Commanding Officer - Platoon on Duty shall immediately notify the following:

- a. Chief of Police / Deputy Chief of Police
- b. Officer's Division Commander
- c. Commanding Officer - Detective Division
- d. Commanding Officer Employee Support Unit

The incident shall be investigated by the Commanding Officer - Internal Affairs, with the full assistance of the Investigative Division and the Middlesex County District Attorney's Office. The Range Master and/or State Police Ballisticians shall secure the weapon or weapons used for examination.

17. RE-ASSIGNMENT AFTER FORCE RESULTING IN DEATH OR INJURY: [1.1.8]

When an employee has used force or any action that has resulted in a death or serious injury, or when an officer discharges a firearm that has resulted in any injury, that officer shall be removed from operational assignment and re-assigned to temporary administrative leave. This assignment shall remain in effect pending an administrative review of the circumstances surrounding the incident. Such re-assignment shall not be considered punishment or any indication of wrongdoing. During this time of administrative leave, post-incident debriefing and counseling for those involved shall be administered. Cross Reference: Chapter 1B post-shooting incident procedures [1.1.8].