



BRAINTREE POLICE DEPARTMENT

Policy and Procedure

USE OF FORCE

2018-28

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1.0

Policy Statement

The Braintree Police Department (BPD) places the highest value on the sanctity of human life, safety of its officers, protection of the public and respecting individual dignity. Because of their law enforcement and peacekeeping role, a Braintree Police Officer will be required at times to resort to the use of physical force to enable them to fully carry out their responsibilities.

Police Officers are continually confronted with situations requiring or resulting in the use of various degrees of force to affect a lawful arrest, ensure public safety, or to protect persons from harm. "Officers shall use only the force that is objectively reasonable to effectively bring an incident under control while protecting the safety of the officer and others." *Graham vs. Connor* Additionally, Officers "shall use only the level of force which a reasonably prudent officer would use under the same or similar circumstances." Force must be objectively reasonable and necessary, depending upon the facts and circumstances known to the officer at the time of the incident. The degree of force an Officer is required and permitted to use is dependent upon the seriousness of the event, amount of resistance by the subject, the subjects attempt to evade arrest by flight, and level of threat to the safety of the officers or others the situation produces. All force used shall be held to the reasonable Officer's standard. Only a reasonable and necessary amount of force may be used and is dependent upon the intensity of resistance or threat to safety that the situation presents, and the lack of viable alternatives.

The rationale for the use of force is to maintain and/or reestablish control over a situation. Since an officer will encounter a wide range of behaviors, the officer must be prepared to utilize a range of force options that are reasonable and necessary to maintain and/or reestablish control by overcoming resistance to the officer's lawful authority while minimizing injuries.

2.0
Policy
1.3.1

Personnel shall use force when it is reasonable to do so. Officers may use force to accomplish lawful objectives, effectively bring an incident under control or to protect his/her life and/or the lives of others. [1.3.1] The amount and degree of force which may be employed will be determined by the facts and surrounding circumstances known to the Officer at the time such force is employed. The Officer's use of force must be a "reasonable" response appropriate for the Officer's selection in order to gain subject compliance, control, and end the threat of use of force or use of force against another or themselves. In each individual instance, lawful and proper force is restricted to only that force necessary to control and terminate unlawful resistance and to prevent any further physical attack against the police officers or any other person. This would include lethal or less lethal force, with lethal and less-lethal weapons, or weapons of opportunity to terminate unlawful resistance and to prevent any further physical attack upon the officers or any other person.

Control is reached when a person complies with the officer's directions and/or the suspect is restrained or apprehended and/or no longer presents a threat to the officer or another.

Officers have a duty to intervene to prevent or stop excessive use of force.

No policy or procedure for deadly or less lethal force can cover every situation Officers may encounter. Officers are expected to respond to all situations decisively and use proper judgment, restraint and competence, whatever the level of force required. The amount and degree of force which may be employed will be determined by the surrounding circumstances including, but not limited to:

- The seriousness of the offense/event and Officers perception of those circumstances;
- The behavior of the subject against whom force is to be used/ perceived subject action(s) as threatening to the Officer or persons

- present;
- Behavior of subject; resisting or attempting to evade arrest by flight;
- Actions by third parties who may be present;
- Physical odds against the Officer;
- The feasibility or availability of alternative actions;
- The facts known to the Officer at the time of the incident;
- The need to make a decision in a tense, rapidly evolving situation.

3.0 Definitions

Deadly/Lethal Force - As used in this policy is defined as that degree of force which a reasonable and prudent person would consider likely to cause death or serious physical injury.

Less Lethal Force - Force that is not likely to cause serious physical harm or death but has potential to. It includes the use of approved defensive/physical tactics, chemical substances, the baton, Specialty Impact Munitions (SIM; bean bag), and K-9, electronic control weapon (taser), and restraint chair.

Reasonable Force - *Graham v. Connor*, 490 U.S. 386, 395 (1989). Force which is objectively reasonable because it is necessary to overcome resistance offered in a lawful police action to compel an unwilling subject's compliance with an officer's lawful exercise of police authority.

Necessary Force The least amount of force required to overcome the resistance offered.

Defensive Force The necessary use of physical force to overcome violent resistance from an attacker, or to protect others from assault, injury or death.

De-escalation Includes such techniques as command presence, warnings, and verbal persuasion. Overall, officers are directed to use de-escalation techniques whenever possible before resorting to using force-to attempt to "slow things down" to achieve the desired outcome of voluntary compliance. The use of tactics, communication skills and other interventions with the goal of non-violent positive compliance with lawful objectives. Once the officer has determined that de-escalation either is not appropriate or is no longer effective, the next consideration should be the use of less lethal force.

Probable Cause - Probable cause exists if, at the time of an arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed or is committing the crime for which the arrest is being made.

Reasonable Belief - The known facts and circumstances that would cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

Bodily Harm – Refers to physical pain, or temporary disfigurement, or transitory impairment of a physical condition.

Serious Bodily Harm – Refers to bodily harm which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

**4.0
Parameters
for the
Use of
Less Lethal
Force
1.3.4**

The application of less lethal force by an Officer in the performance of duty is generally limited to situations where it is necessary: **[1.3.4]**

- For self-defense or the defense of another against unlawful violence or attack to his/her person or property; or
- To overcome resistance to arrest, to conduct searches and seizures, and to prevent escapes from custody; or
- To preserve the peace, prevent the commission of offenses, or prevent suicide or self-inflicted injury; or
- To bring an unlawful situation safely and effectively under control.

**5.0
Tools of
Immediate
Need**

Only issued or approved equipment will be carried on duty and used when applying any level of force. In the event an Officer is faced with a situation where there is a substantial risk of physical injury or death to themselves or another, and access to approved tools and weapons is not available or tactically feasible, he or she may resort to using a tool of immediate opportunity.

In such cases an Officer may use a tool or object that is in-hand or readily accessible (i.e. flashlight, radio, ticket book, handcuffs) to fend off the immediate assault; however, as soon as is reasonable and practical, the Officer shall transition from the tool of immediate means to Department approved equipment to resolve the situation.

6.0 Handcuffing

Use of restraining devices shall be utilized on all detainees, unless in the officer's judgment unusual circumstances exist which make the use of restraining devices impossible or unnecessary (detainee is handicapped, etc.). The mere placing of handcuffs, physical contact to guide subject or empty hand contact controls to guide or remove subject from an area and handcuff will not be construed to be a use of physical force or an arrest.

7.0 Less Lethal Use of Force Options 1.3.4

Aerosol Control Spray - A Department issued or approved aerosol substance used to overcome resistance or an assault, deter riotous or violent behavior, or deal with armed and/or dangerous subjects in a barricaded situation. See Policy Oleo-resin Capsicum Spray Use of Less Lethal Weapons.[1.3.4]

Physical Strength/Weaponless Hand Control - The level of force normally required to overcome passive resistance that is not intended as an act of overt aggression toward the officer when an individual refuses to comply with verbal instructions.[1.3.4]

Restraint Techniques - Those techniques used to take down and control subjects who are exhibiting active resistance. These techniques may be applied by using the hands or the baton. The Department does not authorize the use of neck restraints, or other similar weaponless control techniques with a potential for serious injury except in cases of imminent death or serious injury.[1.3.4]

Impact Weapons/Defensive Strikes - This includes the use of Impact Munitions, canine, the baton as an impact weapon, approved striking techniques used by an officer to defend him / herself or others from the threat of serious physical injury. See Policies Baton Use of Less Lethal Weapons.[1.3.4]

Canine - A trained police dog utilized in conjunction with its handler. See Policy K-9 Canine.[1.3.4]

Restraint Chair - mechanical restraint of a detainee used to protect them from injury or destruction of property. See policy Restraint Chair.[1.3.4]

8.0 Deadly Force General Guidelines

The purpose of the following section is to set forth guidelines for members of this Department in making decisions regarding the use of Deadly Force. The guidelines have been developed with serious consideration for the safety of both the police officers and the public, and with the knowledge that police officers are often called upon to

make split-second decisions in circumstances that are tense, uncertain, and rapidly evolving. The value of human life is immeasurable in our society.

This Department places its highest value on the life and safety of its Officers and the public. The Department's policies and procedures are designed to ensure that this value guides Officers in their use of deadly force.

9.0
Use of Deadly
Force
Parameters
1.3.2
1.3.3

Officers shall not use deadly force except in situations where the Officer reasonably believes that such action is needed to protect himself/herself or another person from imminent death or serious physical injury. **[1.3.2]**

Officers should avoid, whenever practical, discharging their firearms when doing so will unreasonably endanger innocent persons.

Officers encountering a situation where the use of deadly force is necessary shall, if circumstances and safety considerations allow, issue a verbal warning first and identify themselves as an Officer.

Officers shall not use deadly force to apprehend a fleeing felon unless:

The felony involved the use or threatened use of deadly force; and
The Officer reasonably believes that the force employed creates no substantial risk of injury to innocent persons; and
The escape of the felon would result in imminent death or serious physical injury to the Officer, or another, if apprehension were delayed.

Officers shall not use deadly force in an attempt to threaten or subdue persons whose actions are only destructive of property or harmful to themselves and not directed towards other persons.

Under no circumstances may an Officer discharge his / her weapon for the purpose of providing a warning or to threaten another. **[1.3.3]**

10.0
Pointing of
Firearms

Officers shall avoid pointing firearms at persons in circumstances, which are clearly unjustifiable. However, the mere production of a weapon or the pointing of a firearm, even if coupled with a threat to cause death or serious bodily injury, does not constitute the use of deadly force so long as its purpose is limited to creating an apprehension of harm, rather than actual harm. Although these actions are not specifically defined as an actual use of force, any officer who points a firearm at another individual shall be required to fully document the incident in a Use of Force Report.

**11.0
Motor Vehicles
and
Discharging of
Firearms**

Officers shall not discharge their firearms at a moving vehicle, unless there is an imminent threat of death or serious injury to the Officer or others.

Firearms shall not be fired at a fleeing vehicle unless the Officer or another person is currently being threatened with deadly force other than the vehicle and there is no means of escape.

Officers shall not discharge their firearms at any vehicle in an attempt to disable that vehicle.

As a general rule, firearms shall not be discharged by an Officer while driving or occupying a vehicle engaged in continuous pursuit except:

- i.) To defend himself or others when being fired upon; **or**
- ii.) 1. When the occupants of the vehicle being pursued may have committed a felony in which deadly force was used; **and**
 2. The Officer has personal knowledge **or** positive information that the occupants are the actual offenders; **and**
 3. Their immediate apprehension is necessary for public safety; **and**
 - 4 There are no other means available to prevent their escape and secure their arrest.

In all cases, every precaution shall be taken to ensure the safety of the general public in the vicinity.

**12.0
Medical Aid
1.3.5**

In an effort to minimize pain, suffering and further injuries, Officers shall, as soon as practical, render appropriate medical aid (based on officers training on level of care) to individuals after the use of lethal or less lethal weapons, less lethal force or other use of force incidents as defined by this policy, whenever a person: **[1.3.5]**

- Has a visible injury;
- Is unconscious;
- Complains of injury or requests medical attention.

The Fire Department / E.M.S. may be asked to perform an examination of the subject either at the scene of the deployment or at the police station. All medical attention received shall be noted in the Officer's report. **[1.3.5]**

The Officer shall promptly notify his immediate Supervisor of the incident as soon as practical. When possible, Officers shall make a

reasonable attempt to locate and identify all witnesses, documenting their statements.

13.0
Duty to Report
Use of Weapon
or Physical
Force
1.3.6 a-d

Department personnel shall submit a report to the Shift Commander whenever they:

- Apply force through the use of any lethal or less lethal weapon; **[1.3.6 c]**
- Apply weaponless physical force (i.e. weaponless hand control or restraint techniques) involving the use of striking techniques or utilize a restraint technique on an actively resisting person; **[1.3.6 d]**
- Take actions that result in or are alleged to have resulted in an injury or the death to another person; **[1.3.6 b]**
- Discharge, deliberately or unintentionally, of a firearm or less lethal weapon, whether on or off duty, other than for training, ballistic identification, weapon maintenance, legal hunting, legitimate firearms competition, or target practice at an approved range. **[1.3.6 a]**

On occasion, an Officer may be required to use his/ her service weapon to destroy an animal for humane purposes, or to protect persons, other animals, or property. Before discharging a firearm for the purpose of destroying an animal, the Officer must consider the following factors:

- a. The Officer must first confer with his/her supervisor and provide the reasons why the Officer feels it is necessary to destroy the animal in this fashion.
- b. The Officer must exercise extreme caution so as not to pose any risk to surrounding persons or property.
- c. If the Officer uses a firearm to destroy an injured animal, the Officer is required to submit a report via email to his / her immediate Supervisor

14.0
Review of
Reports
1.3.7
1.3.13

Copies of all reports concerning the discharge of firearms/weapons or use of physical force shall be forwarded to the Deputy Chief, who shall review the incident to determine whether the use of force was consistent with Department policy, Department training, and Officer/Public safety. In cases where the Deputy Chief is involved in the incident under review, the Chief of Police will assign a Supervisor not involved in the incident the review responsibilities. **[1.3.7]** The Deputy Chief may also utilize the input from the Department Firearms instructor.

The Chief of Police with the assistance from the Deputy Chief will conduct an annual analysis use of force reports. **[1.3.13]**
Use of Force reports shall be stored and filed by the Deputy Chief. Any information or reports released to the media shall be at the discretion and authorization of the Chief.

**15.0
Investigation
When Use of
Force Results in
a Death or
Serious Injury**

Whenever a Department member acting in an official capacity performs actions or uses force that results in death or serious physical injury, the Shift Commander shall immediately notify the Deputy Chief, Chief of Police, the District Attorney's Office of Norfolk County and the State Police CPAC unit.

In the event of a fatal motor vehicle crash a department certified Crash Analysis / Reconstructionist shall be notified. In the event a Department certified Crash Analysis / Reconstructionist is unavailable the Shift Commander may notify either the State Police Crash Analysis and Reconstruction Team or another local department's certified Crash Analysis / Reconstructionist.

The Chief of Police will assign the Deputy Chief or Detective Lieutenant to investigate the matter as an administrative internal investigation. If the Deputy Chief or Detective Lieutenant is involved in the incident, the Chief of Police shall assign another Lieutenant to internally investigate the matter.

The authority and responsibility for final Departmental disposition of the administrative internal investigation rests solely with the Chief of Police.

During the course of the investigation, no police personnel will give information concerning the incident to any members of the public or news media without the express authority of the Chief of Police. See Policy Public Safety Statement, Internal Affairs

**16.0
Shift
Commander
Officer
Responsibilities
In a Death or
Serious Injury
1.3.6 b**

The Shift Commander shall file a preliminary report prior to the conclusion of the tour of duty during which the incident occurred, and will complete a detailed report and submit it to the Chief of Police as soon as possible. **[1.3.6 b]**

The first uninvolved Supervisor on scene shall preserve the weapon(s) used in the incident in the condition that he/she finds it, following proper evidence procedures. If the incident involves a Department vehicle, any vehicle involved should not be moved unless safety is a concern. The on scene Supervisor shall photograph vehicles in their resting position and the surrounding area prior to moving any vehicle.

A department Armorer will be contacted by the Shift Commander to issue a replacement weapon to the Officer as soon as practical. In instances where there is a protracted delay in issuing a replacement weapon, the Officer will be advised when a replacement weapon will be issued.

17.0
Employee
Re-assignment
1.3.8

Any Department member whose actions or use of force results in death or serious physical injury shall be immediately re-assigned to temporary administrative leave approved by the Chief or his designee.

Due to the abnormal stress placed on officers whose use of force results in death or serious physical injury, involved officers should go to the hospital or to a physician for evaluation. **[1.3.8]**

Involved employees shall be provided an opportunity to contact their family as soon as possible after the incident, so that the family does not learn about the incident through other sources.

Whenever an Officer is involved in an incident that results in a serious injury or death, the Officer will be referred to the appropriate employee assistance program and or Peer Support Unit.

Officers assigned to administrative duty leave, shall remain on administrative leave until an administrative review is concluded by a supervisor not involved in the incident and the officer's needs are met. **[1.3.8]**

Officers assigned to administrative duty shall be available to assist the Department in the investigation of the incident.

Review policy **Public Safety Statement.**

**18.0
Requirements
for Issuing
Departmental
Weapons
1.3.9 e
1.3.10
1.3.12**

Personnel shall be issued this policy, and any other applicable use of force policy or procedure, and be instructed in it prior to being authorized to carry any weapon. This provision includes new Officers receiving initial weapons, and veteran Officers who are issued a new type of weapon. The policy issuance and instruction shall be documented. **[1.3.12]**

Only Officers trained, demonstrating appropriate proficiency, and qualified with a particular weapon may be issued and carry that type of weapon. This includes both new Officers receiving initial weapons and veteran Officers issued a new type of weapon. **[1.3.10]**

All issued weapons will be signed for by the receiving Officer on an inventory form. This form will also be signed by the issuing Officer (Armorer or Firearms instructors) and shall be properly dated and contain the make, model, description and serial number of the weapon (if available). Review policy Firearms Department Issued. **[1.3.9 e]**

**19.0
Weapons
Lethal/Less
Lethal
Training and
Qualification
1.3.11a-c**

Training and qualifications shall include the legal, moral and ethical aspects of firearms and weapons use, use of force, safe handling and proficient marksmanship. Officers shall receive annual documented training on the Use of Force policy (policy distributed) by the departments Firearms Instructor or the Firearms Instructor's designee and Annual weaponless control technique training by a certified instructor in conformance with standards set by the Massachusetts Police Training Committee. Firearms training re-certification shall be required at a minimum annually. The instructor shall document the officer's weapons, scores, and training information on the appropriate forms. The Department issued firearm will be used for this training and off duty weapons if applicable.

[1.3.11 b]

The Department firearms instructor(s) shall be certified by the MPTC (or approved MPTC agency) as a weapons proficiency trainer instructor **[1.3.11 a]** and will develop and implement remedial training as needed for any Officer who fails to qualify with their Department issued firearm.

This remedial training should first be addressed at the range on the day of training. If this cannot be accomplished the firearms instructor shall reschedule a remedial training session as soon as practical.

[1.3.11 c]

An Officer who fails to qualify shall be reassigned to in-house duty until successfully re-qualifying. Officers assigned to in-house duty shall be precluded from working their regular assignment, department overtime, and paid details. An in-house duty assignment shall not preclude that Officer from working a dispatch or station officer assignment where they will have no contact with the public. Officers assigned to in-house duty will not be allowed to remove their Department issued firearms from the station.

In the event that an Officer on their third attempt at recertification fails to qualify for a third time, the Deputy Chief and the Firearms Instructor will review the matter as an administrative internal investigation. The Chief of Police will take an action to remedy the problem to include, but not limited to, an administrative schedule, outside training, or suspension for failing to maintain standards of the police profession.

20.0
Requirements
for Carrying
Departmental
Weapons
1.3.9 e f

Only department issued weapons and ammunition shall be used by agency personnel while in the performance of their responsibilities. **[1.3.9]** Review Policy Firearms Department Issued.

Police Officers may be subject to disciplinary action for the following:
-For not exercising good judgment with respect to carrying firearms when their physical or mental health is impaired.
-For carrying firearms not specifically authorized by the Department.
-For carrying authorized weapons without required training.
-For violation of the aforementioned guidelines.

The Department Armorer shall retain an itemized list of all issued weapons and ammunition, including their types and specifications. Any weapons not issued will be maintained in good working order and secured in the department armory. **[1.3.9 e, f]**

21.0
Carrying Off-
Duty Firearms
1.3.9
1.3.10
1.3.11

Any firearm that an Officer routinely carries on his/her person while off-duty, to enable him/her to take action as an Officer, excluding the Officer's issued service firearm, will be considered an off-duty firearm. Off-duty firearms shall not be carried while on duty.

Any Officer who desires to carry an off-duty firearm to enable him to take an action as an Officer shall first submit a Braintree Off-Duty Firearm Request Form detailing a complete description of the firearm and ammunition to the Supervisor of Training. The request will be reviewed with the Department Armorer, the Officer will qualify at the range, and the form and qualification record will be forwarded to the Chief of Police for approval. **[1.3.9]** Once approved, the use of the Off-

duty firearm is governed by the Department's Use of Force policy and the Officer is subject to annual qualification with said firearm.

[1.3.10][1.3.11] Only Department-approved ammunition may be carried in authorized Off-duty firearms.

This policy will not prohibit an Officer from carrying any Off-duty firearm that he/she wishes in conjunction with his/her license to carry firearms. Officers should be aware that failure to seek approval of Off-duty firearms may result in the failure of the Department to indemnify an Officer in an action resulting from its use for law enforcement purposes

22.0
Maintenance
and Inspection
of Weapons
1.3.9 c d

A qualified weapons instructor or armorer will review, inspect and approve all weapons prior to them being issued and carried by an Officer or member of the Department. Any weapon returned to the Department Armory will be documented and inspected by the Armorer. All inspections will be documented. This will include pepper spray and baton. **[1.3.9 c]**

Officers are responsible for the proper care and maintenance of all issued weapons and ammunition, including keeping issued firearms clean, lubricated and in good working order at all times. A weapon that malfunctions or fails an inspection due to a mechanical defect will be returned to a Department armorer as soon as practical. **[1.3.9 d]** No officer shall alter or modify any Department issued firearm, impact weapon, aerosol control spray, baton, chemical munitions or ammunition without the express authorization of the Chief of Police.

23.0
Weapons Safety
1.3.9 d

Officers shall handle department issued weapons safely at all times. Any Officer possessing an unsafe weapon shall secure the weapon and report the problem to their immediate supervisor, who shall notify an armorer. The secured weapon will be turned over to the armorer, who will take remedial action and/or replace the weapon, as required. **[1.3.9 d]**

24.0
Firearms
Storage
1.3.9 f

Department members shall ensure the safe and proper storage of their Department issued firearms. Unsecured firearms shall not be left unattended. A Department issued firearm left at the station after a tour of duty, shall be maintained in a secure gun locker or properly secured in a locked personnel locker. **[1.3.9 f]**

If an Officer takes a Department-issued firearm home, they shall follow all legal requirements in securing their weapon. **[1.3.9 f]**

