

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO.: 1:15-CV-01046
	)	
Plaintiff,	)	
	)	JUDGE SOLOMON OLIVER, JR.
vs.	)	
CITY OF CLEVELAND	)	<b><u>MOTION TO APPROVE REVISED USE</u></b>
	)	<b><u>OF FORCE POLICIES</u></b>
Defendant.	)	
	)	
	)	

Pursuant to Paragraphs 49 through 83, 87 through 92, and 341 through 349 of the Consent Decree and the Fourth-Year Monitoring Plan in the above-captioned matter, the City of Cleveland (the “City”), on behalf of the Cleveland Division of Police (“CDP” or “Division”), submitted four revised Use of Force policies: (1) Definitions; (2) General; (3) Intermediate Weapons; and (4) Reporting, attached hereto as Exhibits A through D, respectively. No changes to the existing Use of Force – De-Escalation Policy are proposed.

The Monitoring Team has carefully reviewed the revised Use of Force policies. The Team has determined that the modifications to the policies—mostly minor in nature, relating to correcting certain language discrepancies and enhancing the consistency of terminology across the Division’s General Police Orders—help to improve understanding of CDP expectations around

the use of force. There also are a number of substantive changes around CDP’s use of force protocols that are reasonable and practical. The Monitoring Team therefore recommends that the Court approve CDP’s revised Use of Force policies.

## **I. SUMMARY OF CONSENT DECREE REQUIREMENTS REGARDING USE OF FORCE POLICIES**

The Consent Decree contains a host of substantive requirements regarding CDP’s Use of Force policies, addressing such issues as firearms, intermediate weapons, and reporting. Dkt. 7-1 at ¶¶ 49-83, 87. In addition to the substantive requirements around the use of force, the Division must, “[a]s needed, . . . develop, revise, and implement policies and procedures to fully incorporate the terms of this Agreement and comply with applicable law . . . [and] ensure that its policies and procedures are plainly written, logically organized, and use terms that are clearly defined.” *Id.* at ¶ 342. The Division must “review each policy or procedure related to this Agreement six months after it is implemented and annually thereafter, to ensure that the policy or procedure provides effective direction to CDP personnel and remains consistent with this Agreement, and current law.” *Id.* at ¶ 347.

## **II. PROCEDURAL HISTORY**

CDP previously revised its Use of Force policies, working closely with the Community Police Commission, the Department of Justice, and the Monitoring Team, to meet the requirements of the Consent Decree. By participating in various community engagement efforts, Cleveland residents had ample opportunities to shape the policies during the drafting process. The revised policies were submitted to the Court for approval in November 2016. Dkt. 83. The policies were fully implemented in the field, following officer training, on January 1, 2018. No changes were proposed or contemplated after six months, per Paragraph 347.

In early 2019, CDP reviewed and proposed some changes to four of its Use of Force policies: (1) Definitions; (2) General; (3) Intermediate Weapons; and (4) Reporting. The Monitoring Team and Department of Justice regularly reviewed drafts and shared feedback with the City and Division. On March 8, 2019, the Division submitted proposed final drafts of the four revised Use of Force policies.

### **III. STANDARD OF REVIEW**

The Monitoring Team’s role is to “assess and report whether the requirements” of the Consent Decree “have been implemented.” Dkt. 7-1 at ¶ 351; *accord id.* ¶ at 352 (requiring the Monitor to “review . . . policies, procedures, practices, training curricula, and programs developed and implemented under” the Decree). The task of the Monitoring Team here is to determine whether the four revised policies comply with the Consent Decree’s requirements.

### **IV. ANALYSIS OF THE REVISED USE OF FORCE POLICIES**

The four revised Use of Force policies contain minor modifications that improve terminology consistency across the Division’s General Police Orders, such as changing the word “must” to “shall” (Ex. B. at 2-3) and the phrase “witness narrative” to “Witness Statement Form” (Ex. D. at 3-4).

The Definitions policy removes the term “Officer-Involved Shooting” and introduces the term “Critical Firearm Discharge,” defined as the “[d]ischarge of a firearm by a member including, but not limited to accidental discharges, discharges at animals, other than to euthanize, and discharges at individuals where no one is struck, as well as discharges by officers employed by an outside law enforcement agency within the jurisdiction of the Division of Police.” Ex. A. at 1. This definition expressly includes accidental firearm discharges, unlike the “Officer-Involved Shooting” definition in the former policy. One consequence of this new definition is that the

Division's Force Investigation Team (or a subset of the Team, as determined by the Internal Affairs Superintendent and the Bureau of Special Investigations Commander) will investigate accidental firearm discharges going forward.

In the General policy, revisions include a change as to when a supervisor is required to respond to the scene of a reportable use of force incident. Under the revised policy, officers need not request a supervisor to respond to the scene following the pointing of a firearm at an individual; rather, officers "shall notify a supervisor and the officer shall complete the proper use of force entry." Ex. B. at 4.

Under the Intermediate Weapons policy, CDP officers may deploy oleoresin capsicum (OC or pepper spray) and ASP baton/impact weapons "[w]here grounds for an arrest or detention are present and the subject is actively or aggressively resisting and lesser means would be ineffective[.]" Ex. C. at 2-3. Previously, officers could deploy only controlled electrical weapons (Tasers), and not OC spray or impact weapons, as an intermediate weapon under such circumstances.

Under the Reporting policy, the un-holstering of a firearm "is subject to the data collection process and shall be included in the officer's disposition when clearing an assignment using the Computer Aided Dispatch System." Ex. D. at 4. This language provides more clarity to the former Reporting policy, which referenced only a "future data collection process."

These various proposed changes come from real-world lessons learned and issues that have surfaced as the Division has proceeded to implement the policies. Altogether, they are reasonable changes to policies that the Monitoring Team had previously described as "consistent with the Consent Decree because they promote officer and public safety, enhance effective and proactive

law enforcement, and advance constitutional policing in a manner consistent with the values of Cleveland's communities[.]” Dkt. 83 at 2.

**V. CONCLUSION**

The task of the Monitoring Team is to duly consider whether the City's four revised Use of Force policies satisfy the terms of the Consent Decree. The Monitoring Team concludes that the policies meet the terms of the Consent Decree. Accordingly, the Monitor approves the revised Use of Force policies in their entirety and requests that this Court order them effective immediately.

Respectfully submitted,

/s/ Matthew Barge

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 12, 2019, I served the foregoing document entitled Motion to Approve Revised Use of Force Policies via the court's ECF system to all counsel of record.

/s/ Matthew Barge  
MATTHEW BARGE

# EXHIBIT A



# CLEVELAND DIVISION OF POLICE

GENEDAI



EFFECTIVE DATE: 04-05-2019	CHAPTER: 2 – Legal	PAGE: 1 of 3	NUMBER: 2.01.01
SUBJECT:	USE OF FORCE – DEFINITIONS		
CHIEF:			

**PURPOSE:** To define terminology used in the Cleveland Division of Police Use of Force policies.

## DEFINITIONS:

**Canine Apprehension:** When a canine is deployed and plays a clear role in the capture of a person. The mere presence of a canine at the scene of an arrest or use of a canine solely to track a subject will not count as a canine apprehension.

**Critical Firearm Discharge:** *Discharge of a firearm by a member including, but not limited to accidental discharges, discharges at animals, other than to euthanize, and discharges at individuals where no one is struck, as well as discharges by officers employed by an outside law enforcement agency within the jurisdiction of the Division of Police.*

**De Minimis Force:** Physical interactions meant to guide and/or control a subject that do not constitute reportable force (e.g., use of control holds that do not cause pain and are not reasonably likely to cause pain; using hands or equipment to stop, push back, separate, or escort a person in a manner that does not cause pain, and is not reasonably likely to cause any pain).

**De-escalation:** The process of taking action to stabilize the situation, reduce the immediacy and level of a threat so that more time, options, and resources are available to resolve the situation and gain voluntary compliance. De-escalation techniques may include, but are not limited to, gathering information about the incident, assessing the risks, verbal persuasion, advisements and warnings, and tactical de-escalation techniques, such as slowing down the pace of the incident, waiting out subjects, creating distance (reactionary gap) between the officer and the threat, repositioning, and requesting additional resources (e.g., specialized CIT officers or negotiators).

**Deadly Force:** Any action that is likely to cause or does cause death or serious physical harm. It may involve a critical firearm discharge, but also includes any force or instrument of force (e.g., vehicle, edged weapon) capable of causing death or serious physical harm. Deadly force includes firing at or in the direction of a subject, head and/or neck strikes with any hard object, and any action that restricts the blood or oxygen flow through the neck.

**FIT (Force Investigation Team):** A team within the Internal Affairs Unit comprised of personnel who possess training and expertise from various specialized units. FIT membership shall be tailored to the circumstances of each investigation, but normally includes one or more FIT detectives, the FIT Sergeant, an Office of Professional Standards investigator, an Internal Affairs investigator, and a Homicide Unit supervisory officer, who will serve as the Team's leader. OPS investigators will not participate in criminal investigations.

**Force:** Means the following actions by an officer: any physical strike, (e.g., punches, kicks), any intentional contact with an instrument, or any physical contact that restricts movement of a subject. The

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term includes, but is not limited to the use of firearms, beanbag shotgun, Conducted Electrical Weapon (CEW- e.g., Taser), ASP, chemical spray, hard empty hands, or the taking of a subject to the ground. Reportable force does not include escorting or handcuffing a subject, with no more than minimal resistance.

**Intermediate Weapons:** Weapons that interrupt a subject's threatening behavior so that officers may take control of the subject with less risk of injury to the subject or officer than posed by greater force applications, including but not limited to ASP batons, and Conducted Electrical Weapons (CEWs), Oleoresin Capsicum (OC) Spray and the beanbag shotguns.

**Law Enforcement Officer:** Includes, without limitation, all City of Cleveland police officers and any other law enforcement officers (including federal agents, state and county enforcement officers, and any other police officer of a foreign agency).

#### Levels of Force:

**Level 1 Use of Force:** Force that is reasonably likely to cause only transient pain and/or disorientation during its application as a means of gaining compliance, including pressure point compliance and joint manipulation techniques, but that is not reasonably expected to cause injury, does not result in an actual injury and does not result in a complaint of injury. It does not include escorting, touching, or handcuffing a subject with no or minimal resistance. Un-holstering a firearm and pointing it at a subject is reportable as a Level 1 use of force.

**Level 2 Use of Force:** Force that causes an injury, could reasonably be expected to cause an injury, or results in a complaint of an injury, but does not rise to the level of a Level 3 use of force. Level 2 includes the use of a CEW, including where a CEW is fired at a subject but misses; OC Spray application; weaponless defense techniques (e.g., elbow or closed-fist strikes, kicks, leg sweeps, and takedowns); use of an impact weapon or *beanbag shotgun*, except for a strike to the head, neck or face with an impact weapon or *beanbag shotgun*; and any canine apprehension that involves contact.

**Level 3 Use of Force:** Force that includes uses of deadly force; uses of force resulting in death or serious physical harm; uses of force resulting in hospital *confinement* due to a use of force injury; all neck holds; uses of force resulting in a loss of consciousness; canine bite; more than three applications of a CEW on an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different officers; a CEW application for longer than 15 seconds, whether continuous or consecutive; and any Level 2 use of force against a handcuffed subject.

#### Levels of Resistance:

**Active Resistance:** Refers to instances in which a subject takes physical actions to defeat an officer's attempts to place the subject in custody and/or take control, but is not directed toward harming the officer. Active resistance may include but is not limited to pushing away, hiding from detection, fleeing, tensing arm muscles to avoid handcuffing or pulling away from an officer who is using force in the lawful performance of their duties. Verbal statements alone do not constitute active resistance.

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**Aggressive Physical Resistance:** Refers to instances in which a subject poses a threat of harm to the officer or others, such as when a subject attempts to attack or does attack an officer; exhibits combative behavior.

**Passive Resistance:** Refers to instances in which a subject does not comply with an officer's commands and is uncooperative but is nonviolent and prevents an officer from placing the subject in custody and/or taking control. Passive resistance may include but is not limited to standing stationary and not moving upon lawful direction, falling limply and refusing to move (dead weight), holding onto a fixed object, linking arms to another during a protest or demonstration, or verbally signaling an intention to avoid or prevent being taken into custody.

**Necessary:** Officers will use physical force only when no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.

**Neck Hold:** A hold around the neck that may restrict the flow of oxygen or blood through the neck.

**Reportable Force:** Refers to force that officers must document and report in the manner outlined by the Use of Force Reporting Policy, GPO 2.01.05. Cleveland Division of Police uses of force are divided into three levels of response. The three levels for reporting, subsequent inquiry, and review of uses of force correspond to the level of force used and/or the outcome of the force.

**Proportional:** To be proportional, the level of force applied must reflect the totality of circumstances surrounding the immediate situation, including the presence of imminent danger to officers or others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Proportional force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater level of force that may be proportional, objectively reasonable, and necessary to counter it.

**Serious Physical Harm:** Any physical harm that carries a substantial risk of death; any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity; any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement; any physical harm that involves acute pain of such duration as to result in substantial suffering or involves any degree of prolonged or intractable pain. (ORC 2901.01)

CDW/ras  
Compliance Team

# EXHIBIT B



# CLEVELAND DIVISION OF POLICE

**GENEDAI**



EFFECTIVE DATE: 04-05-2019 Draft	CHAPTER: 2 – Legal	PAGE: 1 of 7	NUMBER: 2.01.03
SUBJECT:	USE OF FORCE – GENERAL		
CHIEF:			

**PURPOSE:** To establish guidelines for officers of the Cleveland Division of Police relative to the use of force, and to provide direction and clarity, in those instances when a subject's actions require an appropriate use of force response.

**POLICY:** Consistent with the Division's mission, including the commitment to carry out its duties with a reverence for the sanctity of human life, it is the policy of the Division to use only that force which is necessary, proportional to the level of resistance, and objectively reasonable based on the totality of circumstances confronting an officer. Officers shall also take all reasonable measures to de-escalate an incident and reduce the likelihood or level of force. Any use of force that is not necessary, proportional, and objectively reasonable and does not reflect reasonable de-escalation efforts, when safe and feasible to do so, is prohibited and inconsistent with Divisional policy.

## PRINCIPLES:

### I. General

- A. The use of force is regulated by state and federal law and is not left to the unregulated discretion of the officer. Use of force decisions are dictated by the actions of the resistant or combative subject, the law, Division policy, proper tactics, and training.
- B. Officers will be held accountable to Division use of force policies on-duty and off-duty.
- C. These principles apply to all uses of force, not only the use of deadly force.

### II. Necessity

- A. **OFFICERS SHALL USE ONLY THE AMOUNT OF FORCE NECESSARY TO ACHIEVE A LAWFUL OBJECTIVE.**
- B. Officers shall use force only as necessary, meaning only when no reasonably effective alternative to the use of force appears to exist, and then only to the degree which is reasonable to effect the intended lawful objective.
- C. Force has a lawful objective when it is used for any of the following:
  1. To effect a lawful arrest or detention of a subject;
  2. To gain control of a combative subject;
  3. To prevent or terminate the commission of a crime;

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- 4. To intervene in a suicide or self-inflicted injury; and
- 5. To defend or protect an officer or an individual from the violent or resistant physical acts of another.

### **III. Proportionality**

- A. **ALL FORCE SHALL BE PROPORTIONAL TO THE LEVEL OF THE SUBJECT'S RESISTANCE.**
- B. To be proportional, the level of force applied must reflect the totality of the circumstances known to the officer at the time force was applied. Generally, only the amount of force required to control the subject shall be used by the officer.

### **IV. Objective Reasonableness**

- A. **ALL FORCE SHALL BE OBJECTIVELY REASONABLE.**
- B. Objectively Reasonable Force is a level of force that is appropriate when analyzed from the perspective of a reasonable officer on scene, rather than with 20/20 hindsight. Objective reasonableness takes into account, where appropriate, the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations. All uses of force are analyzed under the Fourth Amendment as guided by the United States Supreme Court. Graham v. Connor, 490 U.S. 386 (1989).
- C. Officers shall assess each incident and determine based on law, policy, training, and experience, which level of force should be used to control the situation in the safest manner for all individuals involved. Reasonable and sound judgment will dictate the force option to be deployed.
- D. The reasonableness inquiry with respect to force is an objective one, whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting and reasonably known to the officer at the time of the incident. These factors include, but are not limited to the following:
  - 1. The severity of the crime(s) at issue;
  - 2. Whether the subject is actively resisting arrest or attempting to evade arrest by flight;
  - 3. Whether the subject poses an immediate threat to the safety of the officer(s) or others.
- E. Officers shall consider the following officer/subject factors and circumstances when choosing a force response, including for example, how the presence of one or more of these factors could impair a subject's ability to comply with officer commands or affect the nature or degree of the threat presented:
  - 1. The influence of drugs and/or alcohol;

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- 2. Known or reasonably apparent mental illness, developmental disability or crisis incident;
  - 3. Known or reasonably apparent physical disability or other medical or physical condition, including visual or hearing impairment;
  - 4. Limited English proficiency or other language barrier;
  - 5. The time available to an officer to make decisions;
  - 6. The availability of officers/resources to de-escalate the situation;
  - 7. The proximity or access to weapons by the subject;
  - 8. Differences between the following officer and subject characteristics:
    - a. Age
    - b. Gender
    - c. Body size
    - d. Skill level
    - e. Relative strength
    - f. Injury or exhaustion
  - 10. Officer's and subject's position (e.g., being on the ground);
  - 11. The officer's distance from the subject(s);
  - 12. The officer's special knowledge or training; and
  - 13. The degree to which the subject is already restrained (handcuffed, physically controlled by others, or whose mobility has been otherwise severely compromised).
- F. The unreasonable use of force shall subject officers to the disciplinary process, possible criminal prosecution, and/or possible civil liability.

## V. De-escalation

- A. **OFFICERS SHALL USE DE-ESCALATION TECHNIQUES WHEN IT IS SAFE AND FEASIBLE TO DO SO UNDER THE TOTALITY OF THE CIRCUMSTANCES.** (Reference De-escalation GPO 2.01.02).
- B. Officers shall continue to assess/evaluate whether the force response being deployed remains proportional to the changing nature of the threat or circumstances being

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encountered, while still achieving the lawful objective. Officers shall reduce the level of force applied as the nature of the threat diminishes.

## **PROCEDURES:**

### **I. General Procedures**

- A. When feasible, officers shall attempt to identify themselves as police officers and make an attempt to advise subject(s) of their intent to detain, arrest, or search a subject before using force.
- B. Where feasible, and to do so would not increase the danger to officers or others, officers shall issue a verbal warning to submit to their authority prior to the use of force.
- C. Officers shall take all reasonable steps under the circumstances, before and during any use of force, to avoid unnecessary risk to bystanders, victims, hostages, and other involved civilians, as well as other officers and emergency personnel.
- D. Officers shall consider their surroundings when un-holstering or before discharging their firearms and shall avoid unnecessary risk to bystanders, victims, and other officers.
- E. *With the exception of pointing a firearm at an individual,* officers shall notify a supervisor to respond to the scene of any reportable use of force incident. When officers point their firearm at an individual they shall notify a supervisor and the officer shall complete the proper use of force entry.
- F. Officers shall promptly, accurately, and thoroughly document the reasons for and types of force used.

### **II. Deadly Force: When Authorized - Tennessee v. Garner, 471 U.S. 1 (1985).**

- A. All of the provisions of this policy, including the Division's commitment to recognizing the sanctity of human life and requirements that officers use only the degree of force necessary under the circumstances governing force, also govern deadly force. (See "Principles")
- B. Deadly force may be used only if a subject, through their own actions, poses an imminent threat of death or serious physical harm to an officer or another.
- C. Deadly force may be used to prevent the escape of a fleeing subject only when an officer would reasonably believe under the circumstances that it is necessary, and where feasible, some warning has been given, and there is probable cause to believe that:
  - 1. The subject is in the process of committing or has committed a violent felony involving the infliction or threatened infliction of serious physical harm or death, and the subject would pose a continuing imminent threat of serious physical harm, either to the officer or others; OR

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2. The escape of the subject would pose an imminent danger of death or serious physical harm to the officer or to another if the subject is not apprehended without delay.

### **III. Use of Force: When Prohibited**

- A. Consistent with the principles of necessity, proportionality, objective reasonableness, and de-escalation, **Officers shall not:**
1. Use force to subdue a subject(s) who is not suspected of any criminal conduct, other than to protect an officer's or another person's safety.
  2. Use retaliatory force (which includes, but is not limited to, force in excess of what is objectively reasonable to prevent an escape, force to punish individuals for fleeing or otherwise resisting arrest, force used to punish an individual for disrespecting officers, and other such circumstances).
  3. Use force against subject(s) who only verbally confront officers and are not involved in criminal conduct.
  4. Use force against subject(s) who are handcuffed or otherwise restrained, unless it is objectively reasonable and necessary under the circumstances to stop an assault, escape, or as necessary to fulfill other law enforcement objectives.
  5. Un-holster and display or un-holster and point a firearm unless the circumstances surrounding the incident create an objectively reasonable belief that the situation may escalate to the point at which deadly force would be authorized.
  6. Use force to overcome passive resistance, except where it is necessary, proportional, and objectively reasonable to achieve a legitimate law enforcement objective.
  7. Use force against those who are only exercising their First Amendment rights. Physically moving a subject is permitted when it is necessary and objectively reasonable for the safety of that individual or the public. It shall be done with sufficient personnel so as not to endanger the subject or the officers and will not be considered a reportable use of force unless it meets the criteria of a Level 1, Level 2, or Level 3 use of force.
  8. Carry weapons that are not authorized or approved by the Division.
  9. Use a firearm as an impact weapon.
  10. Fire warning shots.
  11. Use deadly force solely to protect property or solely to effect an arrest.
  12. Use neck holds.

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- 13. Discharge a firearm from or at a moving vehicle, unless the use of deadly force is justified by something other than the threat of the moving vehicle. (Reference GPO 3.2.02 Vehicle Pursuits).
  - 14. Reach into or place themselves in the path of a vehicle. Officers shall move out of the path of a moving vehicle. (Reference GPO 3.2.02 Vehicle Pursuits).
  - 15. Discharge a firearm at a threat that is not verified and visible.
  - 16. Use head strikes with hard objects.
- B. In rare and exceptional situations where, under the facts and circumstances confronting the officer, a reasonable officer would believe that (a) the use of deadly force would be objectively reasonable, necessary, and proportional according to this policy, and (b) the subject's actions constitute an immediate danger and grave threat to the officer or others, and (c) no other force options, techniques, tactics, or choices consistent with the Division's policy are available, it may be necessary for an officer to take extraordinary or unanticipated actions in order to overcome the threat.

In these rare and exceptional situations, officers must specifically articulate and justify with particularity the specific tactic(s) or action(s) employed and the reasons why their actions met each of the criteria (a), (b), and (c) set forth above. The officer's actions, including all actions preceding the use of deadly force, shall be subject to strict review.

#### IV. Duty to Intervene

- A. Officers who are present at the scene of a police use of force are obligated to ensure that the use of force complies with the requirements of the law, Division rules, policy, and training.
- B. Each officer at the scene of a use of force incident has a duty to intervene by taking all reasonable actions to stop any use of force that is perceived to be unauthorized by this policy.
- C. Officers witnessing suspected unreasonable force shall factor into their response their ability to de-escalate the use of force. The officer's response may range from physical intervention, to voice commands, to appropriate after-action notification. If reasonably able to do so, the officer shall:
  - 1. Physically intervene to stop the objectively unreasonable force;
  - 2. Take protective custody of the subject being subjected to the apparent unreasonable force;
  - 3. Ensure that medical care is provided as needed; and
  - 4. Report the suspected unreasonable use of force to the next non-involved supervisor in their chain of command, document the same in their duty report, and complete a

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Form-1 detailing the use of force and surrounding circumstances as soon as safe and practical, before the end of the tour of duty.

#### V. Duty to Provide Medical Attention

- A. Immediately following any use of force and when the scene is secure, officers, and upon their arrival, supervisors, shall inspect and observe subject(s) for injury or complaints of pain resulting directly or indirectly from the use of force.
- B. If needed, officers and supervisors shall immediately obtain any necessary medical care while providing emergency first aid until professional medical care providers arrive.
- C. Officers shall immediately request Emergency Medical Services (EMS) to respond for the following Use of Force applications regardless of visible injury or complaint of injury:
  - 1. Discharges of a firearm that strikes a subject;
  - 2. Impact of subject's head against *any* hard, fixed object;
  - 3. *With the exception of pointing a firearm at an individual, any reportable* use of force on subjects who are reasonably believed or known to be pregnant, children, elderly, physically or medically frail, or disabled;
  - 4. Refer to GPO 2.01.04 Use of Force-Intermediate Weapons for additional situations requiring a request for EMS.
- D. Whenever EMS is requested, officers shall be sure the scene is tactically safe, or, when tactically unsafe for EMS response, as soon as practical, but without unnecessary delay, the subject shall be transported to a safe location for treatment.
- E. Officers shall closely monitor subjects who are taken into custody if the subject is injured, exhibits physical distress, complains of pain, or has been rendered unconscious.

#### VI. Training - Officers shall be trained and tested at least yearly on the laws and Division policies regarding the use of force..

# EXHIBIT C



# CLEVELAND DIVISION OF POLICE

**GENEDAI**



EFFECTIVE DATE: 04-05-2019 Draft	CHAPTER: 2 - Legal	PAGE: 1 of 10	NUMBER: 2.01.04
SUBJECT:	USE OF FORCE – INTERMEDIATE WEAPONS		
CHIEF:			

**PURPOSE:** To establish guidelines for officers of the Cleveland Division of Police relative to the use of force when deploying intermediate weapons, while providing direction and clarity, in those instances when a subject's actions require a use of force response.

**POLICY:** Intermediate weapons are used to interrupt a subject's threatening behavior so that officers may take control of the subject with less risk of injury to the subject or officer than posed by greater force applications. Intermediate weapons may be used when objectively reasonable, necessary, proportional, and permitted under this policy.

## PROCEDURES:

### I. General

#### A. Intermediate Weapons: Requirements to Carry and Qualify

1. Officers shall carry only weapons that are issued by the Division.
2. Officers are required to successfully complete annual mandatory training which includes scenario-based training, meet the Division's proficiency standards, and requalify, as set forth by the Training Section, in order to be issued and carry intermediate weapons on duty and while engaged in secondary employment. (Refer to GPO 1.1.35 Police Officer Training Standards)
3. Uniformed officers shall carry the Conducted Electrical Weapon (CEW) if qualified, and a second intermediate weapon: ASP baton or Oleoresin Capsicum (OC) Spray. If not CEW qualified, officers shall carry both approved intermediate weapons: ASP baton and OC Spray. Officers may elect to carry all three intermediate weapons.
4. All intermediate weapons shall be worn only on the officer's duty belt.
5. Officers and supervisors assigned to specialized units may carry intermediate weapons as dictated by their responsibilities. The Officer-in-Charge of each Unit will provide guidance and direction in this area to Unit members according to the Unit's manual.

#### B. Intermediate Weapons: When Authorized

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1. Intermediate weapons shall be used in accordance with the Division's policies including those related to GPO 2.01.03 Use of Force: General, De-escalation training.
2. Prior to the use of any approved intermediate weapon, when feasible and appropriate, the officer shall communicate to the subject, other officers, and bystanders that the use of the weapon is imminent and allow the subject an opportunity to comply. An opportunity to comply typically means a reasonable amount of time to comply.
3. Officers shall be mindful that in some instances a subject's disability or condition may limit or restrict their ability to comply with an officer's direction (Refer to GPO 2.01.03, Use of Force: General).
4. Before using intermediate weapons on children and juveniles, officers must consider the following factors: body mass, physical build, perceived age, and emotional condition. Officers shall use appropriate responses for children and juveniles at all times.

**C. Intermediate Weapons: When Prohibited**

1. Officers shall not use intermediate weapons on subjects who are passively resisting.
2. Officers shall not use intermediate weapons to prevent the destruction of evidence.
3. Officers shall not use intermediate weapons against small children, the elderly, individuals who are visibly frail, or women visibly or known to be pregnant, except where deadly force is authorized.
4. Officers shall not use intermediate weapons on subjects who are handcuffed or otherwise restrained unless the subject is displaying aggressive physical resistance AND lesser means would be ineffective or have been tried and failed.
5. Officers shall not use intermediate weapons or objects to prod individuals.
6. Officers shall not use intermediate weapons on subjects who are under control or complying with police direction.

**D. Intermediate Weapons: Reporting - Officers shall report the use of intermediate weapons in accordance with GPO 2.01.05, Use of Force-Reporting.**

**II. ASP Baton/Riot Baton/Impact Weapons**

**A. ASP Baton/Riot Baton/Impact Weapons: Guidelines**

1. Officers are authorized to deploy the ASP baton:

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- a. *Where grounds for an arrest or detention are present and the subject is actively or aggressively resisting and lesser means would be ineffective; or*
  - b. *Where such force is objectively reasonable, necessary, and proportional to protect the officer, the subject, or another party from immediate physical harm, and lesser means would be ineffective.*
2. Officers shall consider each separate ASP baton strike as a separate use of force that officers must individually justify and report as objectively reasonable, necessary, and proportional.
3. The use of riot batons is authorized only during field force deployments.
- B. ASP Baton/Riot Baton/Impact Weapons: When Prohibited
- 1. Officers shall not intentionally target ASP baton strikes to sensitive tissue areas, such as the head, neck, spine or genitalia. Baton strikes to the head and neck constitute deadly force. Preferred target areas are the arms, legs, and torso.
  - 2. Impact weapons other than the ASP Baton, or in field force deployments the riot baton, are prohibited by the Division unless extreme circumstances require their use to gain compliance from aggressively resistant subjects.
  - 3. Officers shall not use head strikes with hard objects, except where deadly force is justified. Officers shall be trained that a strike to the head with any hard object could result in death.
  - 4. Officers shall not use their firearm as an impact weapon, due to the possibility of unintentional discharge and/or the possibility that it could result in the death of the officer, the subject, or others.
- C. Medical Attention after the Use of the ASP Baton/Riot Baton/Impact Weapons - Officers shall request Emergency Medical Services (EMS) after striking a subject to the head, neck, spine or genitalia with an ASP baton or any other impact weapon for an examination. Refer also to GPO 2.01.03, Use of Force General, Section V. C. (Duty to Provide Medical Attention) for additional requirements to provide medical attention.

### III. Oleoresin Capsicum (OC) Spray

- A. OC Spray: Guidelines
1. Officers are authorized to deploy OC Spray only:
- a. *Where grounds for an arrest or detention are present and the subject is actively or aggressively resisting and lesser means would be ineffective; or*

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- b. *Where such force is objectively reasonable, necessary, and proportional to protect the officer, the subject, or another party from immediate physical harm, and lesser means would be ineffective.*
  - c. For crowd dispersal or protection and other means would be more intrusive or less effective.
2. Officers shall be aware of the risks of positional asphyxia and shall use restraint techniques that do not impair the subject's respiration following an OC Spray application.
3. Officers shall be aware of the risks of using OC spray in confined or enclosed environments.
4. Officers shall direct OC Spray at the specific subject(s) who are posing a threat, attempting to minimize exposure to non-targeted subjects or parties.
5. Officers shall consider each one-second application as a separate use of force that the officer shall individually justify and report as objectively reasonable, necessary, and proportional.
6. Officers shall discontinue use if a subject does not comply after two one-second bursts of OC Spray that successfully contacts the target.
7. The use of OC Spray on a dangerous animal is permissible to deter an attack or to prevent injury to persons present. Documentation shall be provided in the related incident report.
- B. OC Spray: When Prohibited - Officers shall not use OC Spray on subjects with a known respiratory condition unless it is an extreme and articulable situation.
- C. Medical Attention After the Use of OC Spray
- 1. As soon as practicable, but no later than 20 minutes after establishing control of the scene, the officer shall make a reasonable effort to relieve the subject's OC Spray discomfort by washing OC Spray from the subject's eyes with cool water. If the subject was exposed in a confined space, officers will remove the subject as soon as possible from the contaminated area and expose the individual to fresh air.
  - 2. Officers shall monitor exposed subjects for changes in their condition while in police custody and request medical attention as needed.
  - 3. Officers shall immediately request that EMS respond for any of the following circumstances:
    - a. The subject is experiencing symptoms (other than mild) which last beyond 45 minutes.

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- b. The subject has or indicates that they have difficulty breathing or loses consciousness.
- c. The subject indicates they have a pre-existing condition (such as asthma, emphysema, bronchitis, or heart ailment) that may be aggravated by chemical spray.
- d. The officer believes that the subject needs medical attention whether the subject requests it or not.
- e. The officer is made aware that the OC Spray was used on a child or elderly, pregnant, physically disabled or mentally ill subject.

#### IV. Conducted Electrical Weapon (CEW)

##### A. CEW Guidelines

- 1. The CEW **shall** only be used in either of the following situations:
  - a. *Where grounds for arrest or detention are present and the subject is actively or aggressively resisting, and lesser means would be ineffective; or*
  - b. *Where such force is objectively reasonable, necessary, and proportional to protect the officer, the subject, or another party from immediate physical harm, and lesser means would be ineffective or have been tried and failed.*
- 2. Officers **shall**:
  - a. Carry the CEW in a Division issued holster, on the opposite side of the firearm, to reduce the chances of accidentally drawing and/or firing a firearm.
  - b. Deploy the CEW at the preferred target zones which include the lower center mass of the body on the front of the body and below the neckline of the back upper body. When encountering subjects wearing heavy or loose clothing on the upper body, officers may consider the legs as targets.
  - c. Determine the reasonableness of the CEW use and probe placement based on all the relevant circumstances, including the subject's apparent age, size, physical, and mental condition and the feasibility of lesser force options.
  - d. Limit each CEW cycle to 5 seconds.
  - e. Use the minimum number of 5-second CEW cycles necessary to gain control of the subject.
  - f. Consider each CEW application (i.e., 5-second cycle) as a separate use of force that officers shall individually justify and report as objectively reasonable, necessary, and proportional.

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- g. Consider that exposure to the CEW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury.
  - h. Immediately after a CEW application, attempt to handcuff or restrain the subject if compliance has been gained and it is tactically safe to do so.
  - i. Reevaluate the situation after each CEW application to determine if subsequent cycles are reasonable, considering a subject may not be able to respond to commands during or immediately following a CEW application. Alternatives to a CEW include force techniques of the same or lesser level and are not, therefore, limited to the application of higher-level force.
  - j. If after three CEW applications the subject has not become compliant, even temporarily, the officer shall assume that the CEW is ineffective and shall reassess and seek to transition to alternative control measures.
  - k. Use caution when dealing with exhausted subjects exhibiting symptoms of physical or mental distress and be aware that certain subjects may be at a heightened risk for serious physical injury or death when subjected to CEW applications.
  - l. Avoid using restraint techniques that impair a subject's respiration following a CEW application.
  - m. Consider a CEW in the hands of a subject a deadly weapon when no other officer is present to provide deadly force cover. If multiple officers are present, the CEW in the hands of a subject is not a deadly weapon unless it can be clearly articulated that an officer or innocent party was in imminent danger of serious physical injury or death due to the subject's possession of a CEW.
- 3. If an initial CEW shot does not make contact or is ineffective, the same or another officer may attempt additional shots as needed or practical in order to make successful contact on a subject.
  - 4. The use of the CEW on a dangerous animal is permissible to deter an attack or to prevent injury to persons present. Documentation shall be provided in the related incident report.

## B. CEW: When Prohibited

### 1. Officers **shall not** use the CEW:

- a. In drive-stun mode solely for pain compliance. The CEW is only to be used in drive stun mode to supplement the probe mode in order to complete the incapacitation circuit or as a countermeasure to gain separation between officers and the subject so that officers can consider another force option.

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- b. On fleeing subjects who do not pose a threat of physical harm to the officer, bystanders, or themselves.
- c. If the subject represents a lethal threat unless a second officer is present and prepared to deploy deadly force.
- 2. Officers shall not intentionally target the CEW at a subject in sensitive tissue areas, such as the head, neck, or genitalia.
- 3. Except where deadly force is authorized, officers shall not use the CEW in situations where:
  - a. A deployment may cause serious physical injury or death from situational hazards, including but not limited to: falling, losing control of a moving vehicle, or becoming ignited from the presence of potentially explosive or flammable materials or substances, including OC Spray.
  - b. The subject has obviously low body mass or is in apparent medical crisis.
- 4. Officers shall not intentionally activate more than one CEW at a time against a subject.
- 5. An officer shall not hold both a CEW and a firearm at the same time.

#### C. CEW Exceptional Circumstances

- 1. Absent rare and exceptional circumstances, officers shall not exceed three 5-second CEW cycles in total on any one subject during a single incident unless the following apply:
  - a. The officer reasonably believes that the initial CEW applications have been effective in gaining the subject's temporary compliance, but the subject continues to actively or aggressively resist;
  - b. The subject's continuing non-compliance presents a threat of imminent physical harm to the officer or others;
  - c. No other force technique, tactic or choice consistent with Division policy would be effective; and
  - d. The use of the CEW beyond a third cycle will prevent resorting to deadly force options.
- 2. Each CEW application shall be independently justifiable and shall be weighed against other force options.
- 3. More than three applications of a CEW on an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the

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applications are by the same or different officers, or a CEW application for longer than 15 seconds, whether continuous or consecutive, shall be reported and investigated as a Level 3 use of force.

#### D. Medical Attention After the Use of the CEW

1. After deployment of the CEW, officers **shall**:
  - a. Call EMS to the scene without unnecessary delay to evaluate a subject who has been exposed to a CEW shock. EMS personnel or medical personnel at a medical facility shall remove probes penetrating sensitive areas (e.g., head, face, neck, groin, or breast areas). While it is preferred that medical personnel remove penetrating probes, a CEW-qualified officer may remove probes penetrating non-sensitive areas (e.g., buttocks, thighs) if it is reasonable to do so.
  - b. Inform medical personnel of all subjects who have been subjected to multiple CEW applications, including prolonged applications (more than 15 seconds); or who appear to be under the influence of drugs or exhibiting symptoms associated with physical or mental distress; or who were kept in prone restraints after CEW use.
  - c. Request that EMS transport the subjects to the hospital in any of the following circumstances:
    1. The officer is made aware that the CEW was deployed on a child or elderly, pregnant, physically disabled or mentally ill subject.
    2. The subject experiences or complains of difficulty breathing, chest pains, or loss of consciousness.
    3. The officer believes the subject requires medical attention (whether or not the subject requests attention).
    4. The officer becomes aware afterward of a medical condition (e.g., epilepsy or heart ailment) that a CEW may aggravate.
  - d. Monitor the subject for signs of medical distress for as long as the subject is in Division custody, paying particular attention to indicators of positional asphyxia.
  - e. Notify the Corrections Officer when booking a prisoner who was exposed to a CEW shock. The same notification shall be made when transporting or transferring the prisoner to any entity outside of the Division.
2. In extreme circumstances when EMS is unable to transport or is delayed, and if the officer reasonably believes medical attention is necessary without delay, the officer may transport the subject to the hospital using the zone car.

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## V. Beanbag Shotgun

### A. Beanbag Shotgun: Guidelines

1. The beanbag shotgun shall only be deployed by qualified officers (Supervisors/SWAT officers). Beanbag shotgun inspections will be conducted on an annual basis to ensure that all are operable and any necessary maintenance or repairs are performed.
2. The beanbag shotgun may be deployed when a subject presents an imminent risk of serious physical harm to an officer or others, de-escalation and other force options have proven ineffective, and the subject is within a safe range of the beanbag shotgun.
3. The optimal range for effective deployment while minimizing risk is 21 to 50 feet.
  - a. Deployment at less than 21 feet increases the risk of serious injury or death.
  - b. At over 50 feet, the effect and accuracy of the beanbag shotgun are diminished to the point that this option will not achieve its purpose.
4. If the subject represents a lethal threat, a second officer prepared to deploy deadly force shall be present when deploying a beanbag shotgun.
5. All bean bag shotguns *are* clearly marked *with a yellow stock and fore-end*, so as to make them instantly distinguishable from a weapon firing live rounds.
6. Officers **shall** request via Communication Control Section (CCS) a beanbag shotgun equipped supervisor respond to the scene when circumstances exist that meet the guidelines for deployment.
7. Supervisors **shall**:
  - a. Use equivalent standard precautions as used with all firearms per GPO 2.01.03 Use of Force: General, in order to protect others from the harm of a misdirected beanbag round.
  - b. *Avoid the body's chest, head, neck, and groin.*
  - c. Consider each discharged beanbag round as a separate use of force that officers shall individually justify and report as objectively reasonable, necessary, and proportional.

### B. Beanbag Shotgun: When Prohibited

3. Officers **shall not**:

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- a. Subject themselves or others to undue risk while waiting for the arrival of a supervisor with a beanbag shotgun. The situation must be continually assessed, and other appropriate action must be taken if the risk to self or others demands immediate attention.

4. Supervisors **shall not**:

- a. Use the beanbag shotgun as a substitute for notifying the SWAT Unit when circumstances warrant that unit's deployment.
- b. Fire more than two beanbag shotguns simultaneously. In the event that four rounds have proven to be ineffective, officers shall consider the beanbag shotgun ineffective and exercise other options.

- C. Medical Attention After the Use of a Beanbag Shotgun

3. Officers **shall**:

- a. Notify EMS via CCS to respond and convey subject(s) struck by a beanbag round, to the hospital for medical treatment/evaluation.
  - b. When booking a prisoner who was struck by a beanbag round notify the Corrections Officer that the prisoner was struck with a beanbag round. The same notification shall be made when transporting or transferring the prisoner to any entity outside of the Division.

- VI. **Intermediate Weapons Approved for Use by the SWAT Unit** - Intermediate weapons approved for usage by the SWAT Unit shall be used in accordance with the Division Use of Force policies and the SWAT Unit manual.

# EXHIBIT D



# CLEVELAND DIVISION OF POLICE GENERAL



EFFECTIVE DATE: 04-05-2019	CHAPTER: 2 – Legal	PAGE: 1 of 6	NUMBER: 2.01.05
SUBJECT:	USE OF FORCE – REPORTING		
CHIEF:			

**PURPOSE:** To establish guidelines for the reporting of all use of force responses and for documenting objective reasonableness, necessity, and proportionality after a use of force response.

**POLICY:** Officers shall notify their supervisor when they have used force, except for *de minimis* force. Officers shall clearly, thoroughly and properly report use of force incidents. The necessity for each application of force shall be documented, identifying the uniqueness of each situation and justifying every force response.

## PROCEDURES:

### I. Use of Force Notification Guidelines

- A. Officers who use or witness force shall contact the Communication Control Section (CCS) and request that their supervisor respond to the scene as soon as practical following any use of force, except for *de minimis* force. (Refer to GPO 2.01.01, Use of Force: Definitions).
- B. An officer who becomes aware of an allegation of unreported, unreasonable, unnecessary or disproportionate force by another officer shall immediately notify his or her supervisor of that force or allegation. (Refer to GPO ?, Internal Complaints of Misconduct and GPO ? Retaliation).

### II. Use of Force Reporting General Guidelines

- A. Officers shall report all uses of force except for *de minimis* force.
- B. All use of force reports shall be completed with sufficient detail for supervisors and the Division to understand the totality of the circumstances, events, and actions of the officer, subject, and other involved individuals during a use of force incident. The use of force report must also permit the Division to conduct a thorough and appropriate investigation and review of the force incident. The Division shall provide regular training (including roll call, in-service, or electronic-based instruction) on reporting writing.
- C. Officers shall not use conclusory statements, “boilerplate” or “canned” language (e.g., furtive movement, fighting stance), without supporting details that are well articulated in the required reports. When possible, and to ensure clarity, officers will minimize the use of unnecessary acronyms or jargons.
- D. Every application of force by an officer is classified according to the following levels:

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1. **Level 1 Use of Force:** Force that is reasonably likely to cause only transient pain and/or disorientation during its application as a means of gaining compliance, including pressure point compliance and joint manipulation techniques, but that is not reasonably expected to cause injury, does not result in an actual injury and does not result in a complaint of injury. It does not include escorting, touching, or handcuffing a subject with no or minimal resistance. Un-holstering a firearm and pointing it at a subject is reportable as a Level 1 use of force.
  2. **Level 2 Use of Force:** Force that causes an injury, could reasonably be expected to cause an injury, or results in a complaint of an injury, but does not rise to the level of a Level 3 use of force. Level 2 includes the use of a CEW, including where a CEW is fired at a subject but misses; OC Spray application; weaponless defense techniques (e.g., elbow or closed-fist strikes, kicks, leg sweeps, and takedowns); use of an impact weapon *or beanbag shotgun*, except for a strike to the head, neck or face with an impact weapon *or beanbag shotgun*; and any canine apprehension that involves contact.
  3. **Level 3 Use of Force:** Force that includes uses of deadly force; uses of force resulting in death or serious physical harm; uses of force resulting in hospital *confinement* due to a use of force injury; all neck holds; uses of force resulting in a loss of consciousness; canine bite; more than three applications of a CEW on an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different officers, a CEW application for longer than 15 seconds, whether continuous or consecutive; and any Level 2 use of force against a handcuffed subject.
- E. Officers shall report uses of force in accordance with the reporting requirements of the highest level of force used during the incident. (For example, if an officer uses both Level 1 and Level 2 force during an incident, the incident is classified as a Level 2 force for reporting and review purposes).
- F. All officer use of force reports will be evaluated by the *reviewing/investigating* supervisor, chain of command, and/or department's Force Review Board. (See GPO#, forthcoming, regarding Supervisor responsibilities and response to use of force incidents).

### III. Involved Officer Reporting Requirements

- A. Officers Using Level 1 and Level 2 Force shall:
1. By the end of their tour of duty, complete *and forward to the reviewing/investigating supervisor*, an individual use of force entry in the use of force tracking software, providing a detailed account of the incident from the officer's perspective and including all of the following information:
    - a. The reason for the initial police presence

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- b. A specific description of the acts that preceded the use of force, to include attempts to de-escalate
- c. The level of resistance encountered
- d. A complete and accurate description of every type of force used or observed

B. Officer Using Level 3 Force shall:

- 1. By the end of their tour of duty, an individual use of force entry shall be completed as directed by the Officer-in-Charge of FIT. (Refer to GPO 2.01.07 Force Investigation Team)
- 2. Comply with all additional directives from the Officer-in-Charge of FIT. (Refer to GPO 2.01.07 Force Investigation Team)

#### **IV. Witness Reporting**

A. Officers Witnessing or Present During a Use of Force shall:

- 1. By the end of their tour of duty, complete *and forward to the reviewing/investigating supervisor*, a *Witness Statement Form* (Attachment A) providing a detailed account of the incident from the officer's perspective and including all of the following information:
  - a. The reason for the witnessing officer's police presence.
  - b. A specific description of the observed acts that preceded the use of force, to include any observed attempts to de-escalate.
  - c. Level of resistance observed; and
  - d. A complete and accurate description of every type of force observed.
- 2. Submit the *Witness Statement Form* to the *reviewing/investigating supervisor* or Officer-in-Charge of FIT for review/signature *and attach the statement to the use of force entry*.

B. Officers Witnessing Level 3 Force - In addition to completing a *Witness Statement Form* as described in IV, A, 1 (a – d), officers shall comply with all directives from the officer-in-charge of FIT. (Refer to GPO 2.01.07 Force Investigation Team)

C. Citizens and Non-Division Law Enforcement Officers

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1. Citizens and non-division law enforcement officers who witness force and are unable or unwilling to give a video recorded statement may make a written statement on a Witness Statement Form (Attachment A)
2. The Witness Statement Form will then be submitted to the reviewing supervisor.

## V. Additional Reporting Requirements

- A. Officers deploying their CEW shall clearly articulate in their use of force entry justification for the following:
  1. Each CEW cycle of any length used on a subject or attempted on a subject.
  2. Use of the CEW in drive stun mode.
  3. Each CEW cycle in excess of three 5-second CEW cycles in total on any one subject during a single incident.
  4. Continuous cycling of the CEW beyond 5 seconds.
  5. Use of the CEW on a fleeing subject.
  6. CEW application by more than one officer.
- B. Deployment of a Canine (Refer to GPO 2.01.01 Use of Force: Definitions, GPO ??, Supervisory Review and Investigations, and the CDP Canine Unit Manual)
  1. Other than during training, if a canine deployment does not involve contact, the canine officer shall document the incident using the canine management software program;
  2. Deployment of a canine that involves physical contact shall be reported as a Level 2 use of force; and
  3. A canine bite shall be reported as a Level 3 use of force.
- C. Pointing of a Firearm
  1. Un-holstering a firearm or un-holstering and keeping the firearm at the low ready position, high ready position, or “SUL” position, without pointing it at an individual, is not a use of force. *Un-holstering a firearm is subject to the data collection process and shall be included in the officer’s disposition when clearing an assignment using the Mobile Computer Aided Dispatch System or by notifying CCS.*

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2. Un-holstering and pointing a firearm at a subject is considered a Level 1 reportable use of force. The following are exceptions to this reporting requirement:
  - a. SWAT Unit officers are not required to report the pointing of a firearm at a subject as a use of force during the execution of SWAT Unit duties;
  - b. Officers who are deputized and assigned to a Federal Task Force are not required to report the pointing of a firearm at a subject as a use of force when conducting task force operations during which a supervisor is present. The task force supervisor shall forward any reports or forms regarding any such incidents to the commander in their chain of command.
  - c. Officers assigned to the Gang Impact, Narcotics, Homicide, Sex Crimes, Domestic Violence, and Financial Crimes Units shall not be required to report the pointing of a firearm at a subject as a use of force if done solely while entering and securing a building in connection with the execution of an arrest or search warrant and a supervisor prepares a report detailing the incident provided to the commander in their chain of command.
  - d. These exceptions shall apply to uniformed officers assigned to duties with all of the above listed exempt units while performing duties assigned by the supervisor during the execution of the warrant(s).

D. Off-Duty Police Action Involving a Use of Force Outside the City of Cleveland

1. When safely able to do so, the officer shall immediately notify CCS of the incident and when the member is scheduled or expected to return to duty. CCS shall inform the member's commander.
2. Upon return to duty, the officer shall:
  - a. Notify their immediate supervisor of the incident.
  - b. Complete a use of force database entry. The use of force entry shall contain the following information about the incident: date, time, location, and jurisdiction. No details of the incident are to be included in the use of force entry; the entries are for tracking and documentation only.
  - c. Obtain a copy of the incident report from the reporting agency.
3. Provide all the materials described here to their immediate supervisor to be routed via the tracking software, to the Internal Affairs Unit. (Refer to GPO 2.01.06 Supervisory Review & Investigation).

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## VI. Failure to Report Use of Force

- A. Officers shall be subject to the disciplinary process, up to and including termination, for material (significant) omissions or misrepresentations in their Use of Force Reports, regardless of whether the force was objectively reasonable, necessary and proportional.
- B. Officers who use or observe force and fail to report it shall be subject to the disciplinary process, up to and including termination, regardless of whether the force was objectively reasonable, necessary and proportional.

## VII. Heightened Responsibilities for Reporting Exceptional Uses of Force

- A. In the rare and exceptional circumstances that officers use force that would otherwise be prohibited by Division policy, they must justify the use of force by articulating the specific facts that led to such a use of force. Officers must describe, in detail, the objective reasonableness, necessity, and proportionality of the force that was used, the actions of the subject that constituted immediate danger and grave threat to the officers or others, the officer's efforts to de-escalate the encounter, why the officer believed that no other force options, techniques, tactics or choices consistent with Division policy were available, and how rapidly the officer was able to return to compliance with Division policies.
- B. Failure to adequately document and explain the facts underlying any use of force that conflicts with Division policies may subject the officer to the disciplinary process, possible criminal prosecution, and /or possible civil liability.