

**USE OF FORCE**

In Effect: 11/04/2008

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**120.2 USE OF FORCE**

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IACP, RSA 627:5,

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**I. PURPOSE:**

The purpose of this policy is to provide police officers with guidelines on the use of lethal, less-lethal and non-lethal force. This directive is for departmental use only and does not apply in any criminal or civil proceeding. The department policy should not be construed as a creation of higher legal standard of safety or care with respect to third party claims. Violations of this directive will only form the basis for departmental administrative sanctions.

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**II. DEFINITIONS**

Serious Bodily Injury - Any harm to the body which causes severe, permanent or protracted loss or impairment to the health or of the function of any part of the body.

Reasonable Belief - Is when the actor believes that a given fact or combination of facts exists, and the circumstances which s/he knows, or should know, are such as to cause a reasonable person so to believe.

Physical Force - For reporting purposes, is any force used by a Berlin Police Officer, with or without a weapon, to a person with the exception of using your hands to guide or control a person.

Imminent Use of Force - When the actor reasonably believes that the danger from such use of force is immediate.

Deadly Force - Any assault or confinement which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury.

Non-deadly Force - Any assault or confinement which does not constitute deadly force.

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**III. POLICY:**

The Berlin Police Department recognizes and respects the value and special integrity of each human life. In vesting police officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required.

Law enforcement personnel generally associate "use of force" with the discharge of their firearm. However, use of force has been construed to include a wide range of non consensual compliance techniques. These uses of force may range from verbal persuasion or coercion to hand control procedures such as an escort or pain/pressure compliance holds, or to the use of other more aggressive measures involving baton, Oleoresin Capsicum, tear gas, or other less-lethal equipment.

The variety of coercive options available to police officers in a confrontational setting is often referred to as the "force continuum." From options on this continuum, officers are expected to employ only the level of force necessary to control the situation. Therefore, it is the policy of this department that police officers shall use the minimum force necessary to effectively bring an incident under control, while protecting the lives of the officer or another.

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**IV. JUSTIFICATION:**

A law enforcement officer is justified in using non-lethal force upon another person when, and to the extent that, s/he reasonably believes it necessary to arrest, detain or effect custody, or to defend him/herself or a third person from what s/he reasonably believes to be the imminent use of non-deadly force.

An officer may use lethal force to protect him/herself or a third party from what s/he reasonably believes to be the immediate threat of deadly force.

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**V. LEVELS OF FORCE:**

When the use of force is necessary and appropriate, officers shall, to the extent possible, utilize an escalating scale of options and will not employ a more forceful measure unless it is determined that a lower level of force would not be adequate, or such a lower level of force is attempted and actually found to be inadequate. The levels of force appearing below are that which an officer has to choose from in order to bring a situation under control.

**A. OFFICER PRESENCE:**

Often the presence of one or more officers will be enough to bring a potential or actual disturbance under control. When confronted with a situation that would deteriorate without police presence, it is often best to have an officer in the area, visible to all, to act as a deterrent.

**B. VERBAL DIRECTION:**

Verbal and non-verbal commands must be given to direct and to let the subject know what you expect of them. The subject must know what authority you have to detain/arrest and what the subject must do to comply.

The practice of courtesy in all encounters encourages understanding and cooperation. Attempts at controlling a situation through advice, persuasion, and warnings should be made; when appropriate, prior to the application of physical force. This should NOT be construed to suggest that officers should relax and lose control of a situation, thus endangering the safety of the officer and others.

**C. PASSIVE CONTROL/PHYSICAL STRENGTH:**

This is when the subject is a passive resistor and needs prompting to comply by physical means. The use of pain compliance holds, escort position, pressure point control tactics or Oleoresin Capsicum aerosol (QC) could be used depending on the level of resistance encountered. Frequently subjects are reluctant to be taken into police custody, and offer some degree of physical resistance. Normally, all that is required to overcome the resistance is physical strength and skill in the use of both soft and hard empty hand control techniques.

Officers will be trained in the proper use of these techniques and must ensure that they are capable of utilizing them. Training will dictate which techniques to use and how much force to apply.

**CONDUCTED ELECTRONIC WEAPON (CEW) TASER:**

- D.** This is a device that uses pulses of electricity to incapacitate an attacker. It may be used when force is legally justified against subjects who are actively resisting arrest, non-compliant, or are exhibiting active aggression through words or actions towards an officer or a third party actually present and to incapacitate a subject who poses a threat of physical injury to himself/herself. Only those officers trained in the use of CEW's by a certified instructor will be allowed to carry this weapon.

**E. OLEORESIN CAPSICUM AEROSOL (OC):**

This is an organically based less than lethal aerosol weapon designed to incapacitate an attacker with no medical side effects. Its formulation is based on a powerful inflammatory agent that occurs naturally in cayenne peppers. OC acts on the mucous membranes of the eyes, nose, mouth and throat and its effects last 15 to 45 minutes. If OC is used to subdue a person, that person should be exposed to fresh air as soon as possible. The suspect's eyes and other exposed areas should be rinsed with cold water as soon as possible. Eye rinse is available in the detention facility. If a person takes longer than 45 minutes to recover, they should be evaluated by medical personnel. Like any use of force injury, if the subject requests medical treatment, they should be immediately taken to a medical facility for examination.

1. Officers, AT ALL TIMES, must be aware that when the subject stops resisting and is under control, then they must de-escalate. Although OC is listed as the fifth level in the force continuum, it may be used at any level to incapacitate an attacker.
2. Officers shall carry their issued OC dispensers while on duty. Department issued OC may be carried off duty should officers have to act in their official capacity as a police officer. This weapon shall be used under the same guidelines that apply for duty use.
3. OC shall be utilized in compliance with OC training and proper decontamination procedures shall be followed. Officers using OC on a subject must ensure they will have control of the subject when s/he becomes incapacitated. For instance, if the subject is encountered near traffic, s/he must not be allowed to run into traffic while incapacitated and blinded.
4. Only those officers trained in the use of QC by a certified instructor will be allowed to carry this weapon. Biennial refresher training will be conducted. Anyone not certified as competent in the use of this weapon will not be authorized to use it and will receive remedial training in the use of this weapon. Note: OC is effective on animals as well as people and may be used to incapacitate an attacking animal.

**F. INTERMEDIATE FORCE:**

This is used when a subject becomes the aggressor and attacks you without a weapon and there is fear for your safety or the safety of others. The ASP baton shall be the sole intermediate weapon authorized for use by the officers of the Berlin Police Department. In the hands of the trained officer it is a very formidable tool which can help bring the reluctant offender into custody. All officers must adhere to the philosophy that this weapon is to be used for defensive and control purposes only.

1. ASP Baton:
  - Only those techniques that are taught by the Berlin Police Department's ASP Instructor shall be used by officers. These techniques include but are not limited to:
    - a. Retention techniques.
    - b. Opening techniques.
    - c. Striking techniques.
2. The ASP Baton is capable of delivering lethal or permanently disabling blows. Intentional strikes to the head, throat and groin are prohibited, except in situations where lethal force would be authorized.
3. Officers shall carry the ASP Baton while on duty. Uniformed officers will carry the ASP Baton in scabbards provided. Plain-clothes officers will have their ASP readily available while on duty.
4. The ASP may be carried by off duty personnel should they have to act in their official capacity as a police officer. This weapon will be used under the same guidelines that apply for on duty use.
5. Only those officers trained in the use of the ASP by a certified instructor will be allowed to carry this weapon. Bi-ennial refresher training will be conducted. Anyone not certified as competent in the use of this weapon will not be authorized to use it and will receive remedial training in the use of this weapon.

**G. LESS LETHAL FORCE:**

Less Lethal Force is a concept of planning and force application, which meets operational objectives, with less potential for causing death or serious physical injury than conventional police tactics.

1. When a subject is armed with a weapon and is capable of causing serious bodily injury or death to himself or others it may be appropriate to use a less lethal weapon. The circumstances would be carefully evaluated and in the case of an armed subject the lethal force option should also be available should it be required.
2. The less lethal weapons authorized by the Berlin Police Department is the 12 gauge 2581 supersock bean bag projectile, fired from a 12 gauge shotgun. The other authorized less lethal weapon is the 40 millimeter multi and single launcher. These weapons will be used in accordance with the department's policy on Less-Lethal Weapons.
3. Only those officers trained in the use of less-lethal weapons by a certified instructor will be allowed to carry this weapon. Biennial refresher training will be conducted. Anyone not certified as competent in the use of these weapons will not be authorized to use it and will receive remedial training in the use of these weapons.

**H. LETHAL-FORCE:**

When a subject attacks with a weapon or with the intent to do great bodily harm, it may be necessary to use lethal force. Lethal force is force likely to cause serious physical injury or death and is the last option within the force continuum.

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**VI. PARAMETERS FOR USE OF LETHAL FORCE:**

- A. Police officers are authorized to fire their weapons in order to protect themselves or others from what is reasonably believed to be an immediate threat of death or serious bodily harm.
- B. Before using a firearm, police officers shall identify themselves and demand that the subject stop, and shall state their intent to shoot, where feasible.
- C. Where the use of lethal force is justified, the officer should fire his/her weapon to stop a subject from completing a potentially deadly act. For maximum stopping effectiveness and minimal danger to innocent bystanders, the officer should shoot at center body, mass.
- D. When using lethal force the officer must always take into consideration the potential risk to innocent bystanders. It is unacceptable to risk injury or death to bystanders in order to apprehend a suspect.
- E. A police officer may also discharge a weapon under the following circumstances:
  1. During range practice or competitive sporting events.
  2. To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured.
- F. Police officers shall adhere to the following restrictions when their weapon is exhibited:
  1. Except for maintenance or during training, police officers shall not draw or exhibit their firearm unless circumstances create reasonable cause to believe that it may be necessary to use the weapon in conformance with this policy. This standard preserves the officer's discretion to draw the weapon while searching a dark building for a suspect. A drawn weapon represents a potential accidental misfire and injury, and may also place officers in a situation where their weapon may be wrestled away from them.
  2. Warning shots are prohibited. In large measure, this is because of the unnecessary hazard that may be created by errant shots that may strike innocent bystanders, particularly in crowded urban

environments. In addition, warning shots can and have been mistaken for a shooting exchange that precipitates the use of gunfire by other officers or the suspect(s). Once the first shot is fired in a hostile confrontation, it is often difficult to control other shooting reactions.

3. Firing at a moving vehicle is prohibited unless absolutely necessary in self-defense or in the defense of others.
4. While line officers are prohibited from firing at or from a moving vehicle, there are circumstances in which trained officers may take such actions if deemed appropriate by administrative personnel.

#### G. Medical Aid and Treatment:

Whenever any use of force results in injury or if the suspect claims s/he is injured, immediate medical attention shall be provided. Once the scene of the incident is secure medical personnel should be summoned to the scene (Berlin Emergency Medical Services) to evaluate the medical needs of the injured party and to provide transport as needed. Prior to their arrival, police personnel will render emergency first aid to the injured party.

All police personnel will be trained in emergency life saving techniques and basic first aid.

In cases involving exposure to QC officers shall follow the medical aid guidelines listed in section V-E of this general order.

All patrol vehicles will be equipped with a first aid kit containing the required materials to enable police personnel to render emergency first aid.

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#### VII. UNAUTHORIZED LETHAL WEAPONS:

While on and off duty police officers shall carry only weapons and ammunition authorized by the Chief of Police. Authorized weapons are those with which the police officer has qualified and received departmental training on proper and safe usage, and that comply with departmental specifications.

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#### VIII. UNAUTHORIZED LESS-LETHAL WEAPONS:

The carrying of any instrument as an offensive or defensive weapon not specifically authorized by the Chief of Police is strictly prohibited. A police officer is not permitted to use a less-lethal weapon unless qualified in its proficient use as determined by training procedures. Flashlights are not authorized as an offensive or defensive weapon except in extreme cases where no other adequate weapon is available. The flashlight is capable of inflicting serious bodily injury or death if used as a weapon. Intentional strikes to the head, throat and groin are prohibited in all situations except those where the use of lethal force would be authorized.

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#### IX. TRAINING:

- A. All training involving any type of Use of Force will be conducted by instructors who are certified as such by New Hampshire Police Standards and Training Council or another such agency recognized by them.
- B. Use of Force training will be conducted on an annual basis.

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#### X. REPORTING USE OF FORCE:

- A. A written USE OF FORCE/ TASER REPORT (Addendum #1 attached) shall be completed and forwarded to the Deputy Chief through the chain of command in the following situations. This report is separate from

the required incident report and shall be completed prior to the end of the officer's tour of duty.

1. When a firearm is discharged outside of the firing range other than for recreational purposes, such as hunting or competitive shooting or when an officer puts down an injured animal.
  2. When a use of force results in death or injury.
  3. When a less than lethal weapon is used on a person, with the exception of handcuffing under normal arrest circumstances.
  4. When a less lethal weapon is used on a person.
  5. When an officer applies physical force (as defined in II. Definitions) to a person.
  6. When a lethal weapon is used on a person.
- B. A supervisor will be immediately summoned to the scene and will comply with investigative procedures as required by the department in the following situations:
1. When a firearm is discharged outside of the firing range, with the exception of the use of a firearm to put down an injured animal, or when a firearm is used for recreational purposes such as hunting or competitive shooting.
  2. When a use of force results in death or serious injury.
  3. When a subject complains that an injury has been inflicted.
    - a. Photos will be taken of the injury.
    - b. The injury should be cleansed as reasonably as possible before photographing it for a clearer photo.
    - c. The photos will be filed with the officer's use of force report.
- C. The investigative procedure will be as follows:
1. The supervisor shall be summoned to the scene:
  2. The incident location shall be secured for the purpose of investigation.
  3. If the officer's weapon was used it shall be taken into custody by the supervisor until such time as it is logged in as evidence.
  4. The supervisor shall ensure the following notifications are made:
    - a. Chief of Police.
    - b. Deputy Chief of Police.
    - c. Lieutenant in Charge of the Detective Division.
  5. The department shall notify the following outside agencies regarding any officer involved shooting:
    - a. New Hampshire Attorney General's Office (follow guideline distributed annually from NH AG's Office).
    - b. Additional notifications shall be made by the New Hampshire State Police Dispatch.
- D. When a police officer's use of force causes death or serious physical injury, the officer will be placed on administrative leave after completing all internal investigative requirements, pending administrative review.
- E. In all cases where any person has been seriously injured or killed as a result of a police officers use of force, the involved officer will be required to undergo an emotional debriefing with the department furnished psychologist within five (5) days of the incident. The purpose of this debriefing will be to allow the officer to express his/her feelings and to deal with the moral, ethical and/or psychological after effects of the incident. The debriefing shall not be related to any department investigation of the incident and nothing discussed in the debriefing will be reported to the department. The debriefing session will remain protected by the privileged Professional Psychologist Code of Ethics.

In the above described type of incident the involved officer and his/her family will have available to them the services of the department psychologist. The purpose of this offer is to provide the officer and/or his/her family with a source of professional consultation to aid them in dealing with the potential moral and

ethical after effects of the incident. These services shall not be related to any department investigation of the incident and nothing discussed will be divulged to the department. The consultation sessions will be protected by the privileged relationship.

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## **XI. ADMINISTRATIVE REVIEW OF CRITICAL INCIDENTS:**

- A. All reported uses of force will be forwarded to the shift supervisor by the end of the shift where the use of force occurred. Upon the shift supervisor's initial approval, s/he shall sign off on the report and forward it to the Deputy Chief at the end of the shift.
- B. All reported uses of force will be reviewed by the Deputy Chief upon receiving the report to determine whether:
  - 1. Department rules, policy or procedures were followed.
  - 2. The relevant policy was clearly understandable and effective to cover the situation.
  - 3. Department training is currently adequate.
- C. All findings of policy violations or training inadequacies shall be reported to the Chief of Police for resolution and/or discipline.
- D. All use of force incident reports shall be retained as required by state law.
- E. There will be an annual analysis of use of force incidents by the Deputy Chief to ascertain training and policy needs.
- F. The Deputy Chief will file a report of finding to the Chief of Police along with the officer's initial report of the incident. All unauthorized non-justified actions shall be the basis for corrective action.

Addendum #1

### **USE OF FORCE/TASER REPORT BERLIN POLICE DEPARTMENT**

**Note:** If use of force DOES NOT include use of TASER, only complete sections 1 and 3. If use of force DOES include use of TASER, complete sections 1,2 and 3.

#### **SECTION 1 - USE OF FORCE**

Officer's Name: \_\_\_\_\_

Case #: \_\_\_\_\_

Date: Time: \_\_\_\_\_

Shift Supervisor: \_\_\_\_\_

Location of Incident: ( ) Indoors ( ) Outdoors ( ) Booking Room

Address of Incident: \_\_\_\_\_

Charges: \_\_\_\_\_

Type of Force Used: ( ) Physical ( ) OC ( ) ASP ( ) Impact Munitions  
( ) Taser-complete section 2 ( ) Firearm ( ) Other: \_\_\_\_\_

Amount of Force Used: ( ) Weapon Display Only ( ) Weapon Use

Reason for Use of Force:

- ( ) Necessary to effect arrest
- ( ) Necessary to retrain for suspect's own safety
- ( ) Necessary to defend self
- ( ) Necessary to prevent violent forcible felony
- ( ) Necessary to defend other
- ( ) Other: \_\_\_\_\_

Contributing Factors: ( ) None ( ) Alcohol ( ) Drugs ( ) Mental Illness  
( ) Violent History ( ) Other: \_\_\_\_\_

Was suspect, officer or any other injured? YES / NO

If YES, describe injury and location of medical treatment: \_\_\_\_\_

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**SECTION 2- USE OF TASER**

Taser Serial #: \_\_\_\_\_

Usage: ( ) Arc Display Only ( ) Taser Display Only ( ) Taser Application

Air Cartridge Type: \_\_\_\_\_



Number of Cartridges Fired: \_\_\_\_ \_ Number of Cycles Applied: \_\_\_\_ \_

Type of Contact: {  } Dry Stun (  ) Dart Probe

Taser Use (circle one): **SUCCESSFUL** / FAILURE

If the Taser deployment was unsuccessful, was a Drive Stun follow up used? YES / NO

Distance between the two probes: \_\_\_\_ \_ inches

Need for an additional shot? YES / NO

Did dart contacts penetrate skin? YES / NO

Probes removed on scene? YES / NO

By who? \_\_\_\_\_

Did Taser application cause injury? YES / NO

Was subject treated for injury? YES / NO

**SECTION 3 - NARRATIVE:**

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*Upon completion of this report, the officer will submit it to the shift supervisor for review and forwarding to the Deputy Chief.*

Report Submitted By: \_\_\_\_\_ Report Reviewed By: \_\_\_\_\_

Officer's Signature:

Shift Supervisor's Signature: \_\_\_\_\_

Deputy Chiefs Signature: \_\_\_\_\_