

Berkeley Police Department General Order Revision Form

SUMMARY OF CHANGES

2/06/2025

G.O. 9

Use of Force

Page 4- Escalation and De-escalation, CALEA definition update: **“Officers are encouraged to use purposeful action, verbal communication, and body language to restore order or calm a potentially dangerous situation. De-escalation techniques should be used when a situation is starting to escalate, showing signs of potential aggression or conflict, and before the situation becomes violent”** and **“Employees, officers, or civilians are required to intervene within their scope of authority and training and notify the appropriate supervisory authority if they observe another agency employee or public safety associate engage in unreasonable use of force or if they become aware of any violation of department policy, state or federal law, or local ordinance.”**

Page 4- Medical Consideration CALEA update to read as Officers using any degree of force on an individual shall make medical treatment available **as quickly as possible, when safe to do so, when safe to do so**, to that individual when:

Page 6- #13 Investigation and Review of Use of Force Incidents #3 updated the analysis will **“be conducted within the second quarter of the”** calendar year by a designee of the Chief of Police.

	BERKELEY POLICE DEPARTMENT GENERAL ORDER	GENERAL ORDER: 9
USE OF FORCE		
ISSUE DATE:	EFFECTIVE DATE:	DISTRIBUTION: ALL PERSONNEL
AMENDED:		RESCINDS: ALL PREVIOUS VERSIONS
ACCREDITATION STANDARDS: 1.2.10, 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5, 4.1.6, 4.1.7, 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.3.3, 11.3.3		NUMBER OF PAGES: 7

Purpose:

The purpose of this General Order is to establish procedures and guidelines for the use of lethal and non-lethal force by the City of Berkeley Police Officers.

Policy:

It is the policy of the Berkeley Police Department to accomplish its mission as efficiently as possible regarding the use of lethal or non-lethal force. The use of lethal or non-lethal force shall be restricted to circumstances authorized by law. Providing police officers with the lawful authority to use force to protect the public welfare as deemed necessary.

Definitions:

- A. Control: the method(s) an officer uses to neutralize the actions of an individual or to prevent the individual from injuring himself or others.
- B. Resistance: the individual's effort to evade an officer's attempt to establish control.
- C. Force: the attempt to establish control through physical restraint or other means in the act of resistance. All force is a means of control; however, control can be, at times, achieved without physical force.
- D. Lethal Force: the amount of force that could result in death or serious physical injury, which may only be used when an officer reasonably believes the act is in self-defense. (4.1.2)
- E. Less-Lethal Force: the amount of force that is not likely to result in death or serious physical injury.
- F. Minimum Amount of Force: the amount of force that is reasonable and shall be based upon the totality of the circumstances known or perceived by the officer to overcome the resistance offered and to affect the lawful performance of duty.
- G. Reasonable Belief: the facts or circumstances wherein the officer knows or should know are such that they would cause a prudent person to react in a similar way under similar circumstances.
- H. Reasonably Necessary: the amount of force used only to accomplish lawful objectives and to the extent needed in light of the circumstances confronting the officer. Reasonable force is necessary only if a lesser force would not likely lead to the safe control of persons and/or situations, and apply de-escalation techniques when possible. (4.1.1)
- I. Serious Physical Injury: a bodily injury that creates a substantial risk of death; causes serious, permanent disfigurement; or results in long-term loss or impairment of the functioning of any bodily member or organ. (4.1.2)
- J. Last Resort Situations: those situations wherein immediate and drastic measures must be undertaken by an officer in order to protect human life. Force used in these situations may involve the use of techniques or weapons not covered by this order or department policy; however, they remain subject to reasonable and necessary use of force standards. (4.1.2)
- K. Duty to Intervene: an officer or civilian employee has a duty to prevent or stop the use of excessive force by another officer when it is safe and reasonable to do so. (1.2.10)

- L. **Choke Holds:** any technique restricting the intake of oxygen for the purpose of gaining control. (4.1.7) (4.1.2)
- M. **Vascular Neck Restrictions:** any use of force application intended to gain control of a subject by restricting blood flow to the brain for the purpose of incapacitation. (4.1.6) (4.1.2)
- N. **LESS LETHAL SHOTGUN:** Orange Stocked 12-gauge shotgun

General

Missouri statutes and case law combine to define the legal levels of force that law enforcement officers may use in the normal performance of their duties. Both state statutes and case law should be reviewed in conjunction to fully determine the appropriate application of force. It should be emphasized that when consent or an emergency is not present, and there is no probable cause to make an arrest, the non-consensual touching by a police officer may constitute a crime, as well as result in civil liability. When probable cause exists, criminal and civil liability may still occur if the limits of the law are exceeded.

During an officer's performance of duty, it may be necessary to use some level of control to affect an arrest or to protect others. In many situations, control may be achieved without the use of physical force. In other instances, based on the resistance offered, the officer may find it necessary to use varying levels of physical force to control the individual's actions. That amount of force may be as low as placing a hand on an individual's shoulder or arm and directing that individual to place their hands in an appropriate position in order to apply handcuffs. This amount of force would be considered mere physical contact. However, depending on the level of resistance offered, the officer may use techniques that may rise to a level of physical force that is intended to influence behavior through pain compliance in order to establish control. These techniques would consist of touch pressure, leg/hand strikes, impact weapons, or even the use of firearms if justified by the resistance offered.

An officer's use of force shall be the amount of force that is reasonable and shall be based upon the totality of the circumstances known or perceived by the officer at the time force was used. Any visual force scales, graphical illustrations, continuums, etc., used by this department are solely demonstrative training aids utilized to encourage interactive force discussions. These aids have substantial limitations and are narrow in their focus. These aids are not the policy of this department and do not create or enlarge any standards of care. These aids specifically do not create, enhance, elevate, reduce, compare to, replace, circumvent, or supersede the applicable legal standards of force provided by federal and state law which provide clear administrative, civil, and criminal accountability guides for officers' force applications. (4.1.1)

Every employee of the department has the responsibility to immediately contact an on-duty supervisor or the patrol commander and report any act which they believe involves the use of excessive force as outlined in this General Order. The supervisor/commander shall be responsible for promptly notifying the chief of police. Any employee who fails to report physical or verbal abuse against any citizen by another member of this department is subject to disciplinary action. (4.1.1)

Officers are authorized to use department-approved control techniques and authorized equipment for the resolution of incidents as follows: to stop potentially dangerous and unlawful behavior, to protect the officer or another from injury or death, to protect individuals from injuring themselves, and to affect a lawful arrest when an individual offers resistance. (4.1.1)

The use of force will be examined from two (2) perspectives; resistance and control. Both resistance and control can be in the form of verbal responses (subject) or directives (officer) or physical actions. Resistance will vary based on a variety of factors. For purposes of this policy, the department recognizes the following levels of individual resistance: psychological intimidation, verbal non-compliance, (resistive dialogue) passive resistance, defensive resistance, active assault, and aggravated active assault. Control will vary based on a variety of factors. For purposes of this policy, the department recognizes the following levels of control: officer presence, verbal direction, soft empty hand control, pepper spray, conducted energy weapon (TASER), hard empty hand control, intermediate weapon control (ASP), and lethal force. (4.1.1)

Procedures:

1. Weaponless/ Non-Lethal Weapon Physical Force

Officers should assess the incident in order to determine which non-deadly technique or non-lethal weapon will best de-escalate the incident and bring it under control in a safe manner. Only the appropriate amount of physical force necessary to bring incident under control is authorized. In making an arrest, no more force shall be used than is absolutely necessary for the safe custody of the prisoner or for overcoming any resistance that may be offered and for ensuring the delivery of the prisoner into safekeeping.

- a) **Choke holds are prohibited unless deadly force would be considered reasonable. (4.1.2) (4.1.7)**
- b) **Vascular Neck Restrictions are prohibited. (4.1.2) (4.1.6)**

2. Non-Lethal/Less Lethal Weapons

Police officers may utilize these non-lethal weapons as an appropriate level of response.

- A. Aerosol Spray-department issued only.
- B. ASP Collapsible Baton- department issue. All officers including officers assigned to the division of criminal investigation or other plain clothes assignments may carry the ASP collapsible baton.
- C. TASER X2 Conducted Energy Weapon- department issue. Officers assigned to patrol and the division of criminal investigation, school resource officer, or other plain clothes assignments may carry the TASER X2.
- D. LESS LETHAL SHOTGUN: Orange Stocked 12-gauge shotgun

3. Lethal Force Procedures

A. Discharge of Firearms

- 1. When a police officer has discharged a firearm causing a gunshot wound to be inflicted on any person, or when a police officer has been shot, the Chief of Police shall be immediately notified. The Chief of Police may request the St. Louis County Police Department's Crimes Against Persons Unit or the Missouri State Highway Patrol to investigate the circumstances of the shooting incident. (11.3.3)
- 2. If a police officer has inflicted a gunshot wound on an individual, the on-duty supervisor shall secure the scene and weapon and assist the investigating agency to evaluate the use of deadly force and determine if it was justified and in accordance with this General Order.
- 3. When a police officer has been shot or a police officer inflicts a gunshot wound upon another person, communications shall be notified immediately either by the police officer involved in the incident or the first police officer on the scene.
- 4. The on-duty Supervisor shall respond to the scene and be responsible for the command and protection of the scene. Whenever a firearm is discharged by a police officer or their firearm is discharged by another person, the police officer shall:
 - a. Immediately notify the on-duty supervisor.
 - b. Notify communications as soon as time and circumstances permit.
 - c. Prepare a police report detailing all circumstances surrounding the discharge.
 - d. A copy of the police report shall be forwarded through the chain of command to the chief of police.
- 5. Limited to the following situations:
 - a. To protect the officer or another from what is reasonably believed to be an imminent threat of death or serious physical injury.
 - b. To affect the arrest or prevent the escape of an individual who is fleeing from an inherently violent crime and there is a substantial risk that the fleeing individual poses a significant threat of death or serious physical injury if apprehension is delayed.
 - c. Police officers may also discharge their firearms to destroy a vicious animal that presents a substantial risk of harm or serious physical injury to the officer or others.

4. Use of Lethal Force Prohibited

A. Lethal force **may not** be used in the following situations:

- 1. When it appears likely that an innocent person may be injured.

2. To shoot at or from a moving vehicle unless the occupant (s) represent a direct and immediate threat to the life or safety of the officer or another individual, and then, only as a last resort.
 3. Solely because a subject fails to obey a command to stop.
 4. To fire warning shots. (4.1.3)
5. Discharge of a Firearm Other than in the application of force. (4.1.2)
- A. An officer may discharge a firearm under the following conditions
 1. To destroy an animal that presents a substantial risk of harm to the officer or another, or when an animal is so badly injured that it should be destroyed to prevent additional suffering.
 2. At an organized shooting match or target practice where the discharging of a firearm is not in violation of any law or ordinance, and all safety procedures can be followed.

6. Escalation and De-Escalation

Officers are encouraged to use purposeful action, verbal communication, and body language to restore order or calm a potentially dangerous situation. De-escalation techniques should be used when a situation is starting to escalate, showing signs of potential aggression or conflict, and before the situation becomes violent.

Employees, officers, or civilians are required to intervene within their scope of authority and training and notify the appropriate supervisory authority if they observe another agency employee or public safety associate engage in unreasonable use of force or if they become aware of any violation of department policy, state or federal law, or local ordinance. (1.2.10)

- A. Escalation of force may be justified when the officer reasonably believes that the level of force being used is insufficient to stop or control the resistance.
- B. Officers may escalate to the level of force that is reasonable and necessary to control the situation, based on the level of resistance encountered. As the individual begins to de-escalate or lessen the resistance offered, the officer must apply de-escalation techniques when possible. (4.1.1)
- C. Officers shall allow the individual a reasonable time period to comply with all verbal commands, directions, or applications of force. This is not meant to imply the officer must cease all control. Control must be maintained, but the level of force used to maintain control must de-escalate to a level commensurate to the level of resistance currently offered by the individual.
- D. There are variables that affect the officer's decision to escalate and de-escalate the level of control. These variables include, but are not limited to:
 1. Officer/suspect size and physical abilities
 2. Environmental conditions
 3. Nature of contact between officers and suspects
 4. Availability of assistance

7. Medical Considerations (4.1.5)

- A. **Officers using any degree of force on an individual shall make medical treatment available as quickly as possible, when safe to do so, to that individual when:**
 1. Any law enforcement action that occurs in which injuries have been sustained.
 2. The individual requests medical treatment, or the individual was involved in an incident where any level of physical force was used.
 3. The individual complains of injury or pain, shows signs of unusual distress, or the individual is unconscious.

4. Any employee observes or suspects injury to the individual.
 5. Directed by a supervisor or other appropriate authority.
- B. Officers who obtain medical treatment for an individual shall document this information, along with the nature of the injury or complaint of injury, in a police report.
 - C. Treatment shall be obtained from a licensed medical care provider whose name or names shall be documented in the police report.
 - D. Once an individual is placed under the care/treatment of a medical care provider, the individual shall not be removed from this care without approval from the medical care provider or unless the individual refuses treatment.
 - E. A fit-for-confinement authorization document shall be obtained from the medical care provider if the provider determines the individual is fit for confinement.
 - F. When an officer determines that an individual needs medical treatment, the officer, in addition to making treatment available as described above, shall:
 1. Notify their supervisor at the earliest available opportunity.
 2. Promptly notify their supervisor of the individual's condition after the individual has been examined by the appropriate medical care provider.

8. On-Duty Use of Force Notifications

- B. Officers involved in a use of force incident while on duty shall notify the on-duty supervisor immediately, or as soon as reasonably possible.
- C. For incidents involving serious injury, the discharge of a firearm, or any type of lethal force, the scene supervisor **shall immediately** notify the patrol commander. The patrol commander shall promptly notify the chief of police and any other personnel as may be appropriate.
- D. When a juvenile is involved in any type of use of force incident, the parent(s) or guardian of the juvenile shall be contacted and notified of the incident by the patrol commander, the scene supervisor, or their designee.

9. Off-Duty Use of Force Notifications

- A. Incidents occurring within or outside the Berkeley city limits.
 1. Any officer who is off-duty and involved in a use of force incident shall notify the on-duty Berkeley Police Supervisor as soon as possible.
 2. If the incident occurs outside the city limits, the on-duty supervisor will evaluate the incident to determine if a supervisor's immediate response to the scene is warranted. If such a determination is made, the on-duty supervisor will make the appropriate arrangements to have a supervisor respond.
 3. The on-duty supervisor shall immediately notify the patrol commander. If the Patrol Commander is unavailable, the Detective Commander will be notified.
 4. The Patrol/Detective Commander will promptly notify the Chief of Police and any other personnel as may be appropriate.

10. On-Duty Supervisor Responsibilities (4.2.2)

- A. Ensure that a "Use of Force Report- BPD Form" and an approved police report are complete and forwarded to the patrol commander prior to the end of the on-duty supervisor's tour of duty.
- B. Reporting procedures will be followed in accordance with department guidelines for writing incident reports.
- C. If the incident occurred outside the Berkeley city limits, a copy of the report from the jurisdiction where the incident occurred will be attached to the officer's memorandum.

11. Use of Force Report Writing

- A. Police reports **shall** be written on **ALL** use of force incidents whenever an officer:
 - 1. Discharges a firearm, for other than training or recreational purposes; (4.2.1.a)
 - 2. Takes an action that results in, or is alleged to have resulted in, injury or death of another person; (4.2.1.b)
 - 3. Applies force through the use of lethal or less lethal weapons; (4.2.1.c)
 - 4. Applies weaponless physical force at a level as defined by this agency; (4.2.1.d)
 - 5. Points duty weapon directly at suspect/individual.
- B. In the event an officer un-holsters his/her duty weapon and keeps their weapon held at a low ready position. (Never pointing it directly at a suspect/individual, and this is the only response to a subject's resistance), then a use-of-force report is not required.
- C. If multiple officers are involved in the same use of force incident, the officer making the initial contact will prepare the original police report, and the assisting officer(s) will complete a supplemental report depicting their role and actions if they used force against the arrestee. Reporting procedures will be followed in accordance with department guidelines for writing incident reports.

12. Lethal Force or Serious Injury – Post-Incident Procedures:

- A. When lethal force or serious injury incident occurs in an official capacity, the department must act in the best interests of all parties involved. In that regard, the following procedures will be instituted:
 - 1. The involved officer will be removed from the incident scene as soon as practical.
 - 2. A reasonable recovery period may be allowed before any questioning of the involved employee(s) is conducted.
 - 3. The involved officer(s) will be removed from their current duty assignment and placed on paid Administrative leave/assignment pending further review/investigation of the incident.

Administrative assignment may be in the form of an on-duty or off-duty assignment as determined by the Chief of Police. The officer(s) will remain on administrative assignment until otherwise determined by the Chief of Police. The assignment to administrative leave shall not be interpreted to imply or indicate that the officer has acted improperly. (4.2.3)

- 4. The officer will be referred to the City of Berkeley Employee Assistance Program for counseling session with a specialist in post-critical incident counseling. This referral will be for support purposes, allowing the officer to discuss any problems resulting from the incident. The contents of this session will remain confidential and will not be available to the department or used by the department in subsequent proceedings. The employee **must be** referred to a mental health professional in addition to the Employee Assistance Program.
- 5. Following the counseling, the Chief of Police will schedule the employee for an interview with a Psychologist hired by the department. This interview with the psychologist will be used to determine if the officer is psychologically fit to return to duty. Information discussed during this interview and the Psychologist's recommendation, while treated in a confidential manner, will be provided to the department in a written report.
- 6. Participation in this program is **mandatory** for a commissioned officer (s) who uses a weapon which results in the death of a person. The Chief of Police may authorize participation in this program for employees involved in other critical incidents.

13. Investigation and Review of Use of Force Incidents.

- A. The police Department Commanders serve as the department's primary Internal Affairs investigators.
 - 1. Unless otherwise directed by the Chief of Police, the Commander shall review the response to resistance and the relevant police report will be forwarded to the Chief of Police.
 - 2. The Chief of Police will review all use of force incidents and will take that action deemed necessary.

3. Each year, an analysis of all use-of-force incidents for the preceding year will be conducted within the second quarter of the calendar year by a designee of the Chief of Police and reported to the Chief of Police. The review intends to determine whether there are policy, training, weapon/equipment, or discipline issues that should be addressed. The analysis shall identify (4.1.2):
 - a. date and time of incidents; (4.2.4.a)
 - b. types of encounters resulting in the use of force; (4.2.4.b)
 - c. trends or patterns related to race, age, and gender of subjects involved; (4.2.4.c)
 - d. trends or patterns resulting in injury to any person, including employees; and (4.2.4.d)
 - e. impact of findings on policies, practices, equipment, and training. (4.2.4.e)
4. Violations of this policy, or portions thereof, may result in disciplinary action. Officers of this department assigned to or assisting other law enforcement agencies will be guided by this policy. This policy will be reviewed annually with all sworn personnel. (4.1.2, 4.3.3 b)

Reporting

Pursuant to RSMo 590.1265, "Police Use of Force Transparency Act of 2021, a designee of the Chief of Police will report Uses of Force monthly to the Missouri State Highway Patrol, the report will include:

1. Zero uses of force
2. Serious bodily injury occurs that is connected to a use of force by an officer
3. A fatality occurs that is connected to a use of force by an officer
4. Officer discharges a firearm at, or in the direction of a person

DEVELOPED BY: Capt. Evelio Valdespino	DATE:
REVIEWED BY: Chief Art Jackson	DATE:
APPROVED BY: Berkeley City Council	DATE: