

## Use of Force Policy Fact Sheet

In 2015, the Cleveland Division of Police (CDP) entered into a settlement, also known as the Consent Decree, with the Department of Justice, and agreed to make several changes to department policies and procedures, including its policy on the use of force by police officers.

This fact sheet highlights some of the key changes to the CPD's proposed, new use of force policy, including the rules for: when officers are or are not permitted to use force; the new policy on de-escalation; and the new requirements for reporting use of force incidents.

### WHAT IS THE USE OF FORCE?

**Use of force includes:** actions such as punches, kicks, physical restriction of movement, or contact with a firearm, Taser, chemical spray or a police dog.

**Use of force does not include:** verbal commands, or placing handcuffs on someone who is not resisting.

### WHEN ARE OFFICERS ALLOWED TO USE FORCE?

**Old Policy:** Under the old policy, any use of force had to be **objectively reasonable**.

Force is **objectively reasonable** if an average officer in that same situation would have considered it appropriate.

**Proposed New Policy:** Under the new policy, any use of force must now *also* be **necessary** and **proportional**.

Force is **necessary** when there is no other practical way to avoid using force.

Force is **proportional** when the amount of force is justified by the seriousness of the situation facing the officer.

In deciding how much force to use, officers must consider, among other things:

- the person's age, gender, and body size;
- the relative strength of the person and officer;
- any apparent medical conditions or drug or alcohol usage;
- and any other circumstances that may affect the reasonableness of force.

### WHEN ARE OFFICERS PROHIBITED FROM USING FORCE?

**Old policy:** Officers were prohibited from using "excessive" force—but that term was not defined.

Officers were also prohibited from: (1) firing warning shots; or (2) firing at or from a moving vehicle unless defending against the use of deadly force against the officer.

**Proposed New Policy:** The new policy adds a number of additional restrictions on the use of force.

Under the new policy, officers may not use force:

- As retaliation (e.g. to punish someone for resisting arrest).
- Against someone who is already handcuffed or restrained, unless necessary to prevent an assault or escape.
- To overcome passive resistance (e.g. at a protest). Officers are permitted to physically move a person when it is reasonable and necessary to do so.
- To subdue someone who is not suspected of criminal activity, unless necessary to protect the officer or another person.
- Against someone who is only verbally confronting the officer and not preventing the officer from doing his or her job.

Officers also are not allowed to:

- Draw a firearm unless the situation seems reasonably likely to escalate to one where **deadly force** is allowed.
- Hit someone with a firearm or shoot at an unseen or unverified threat.
- Place someone in a neck hold (e.g. choke hold).
- Hit someone in the head with a hard object (e.g. baton) unless **deadly force** is justified.

### **WHEN ARE OFFICERS ALLOWED TO USE DEADLY FORCE?**

**Deadly force** is any action that is likely to cause death or serious physical harm. It includes the use of firearms as well as vehicles, knives, or other objects that could cause serious injury.

**Old Policy:** Under the old policy, officers were only allowed to use deadly force protect the officer or bystanders from an imminent threat of death or serious physical harm.

Officers were prohibited from using deadly force: (1) to protect property; or (2) to make an arrest or to prevent a person's escape, unless that person posed an imminent threat of deadly or serious physical harm to the officer or others.

**Proposed New Policy:** Among other things, the new policy clarifies that deadly force may only be used to prevent an escape a felon if that force necessary to prevent an imminent threat of deadly or serious harm to officers or others.

The policy also prohibits officers from reaching into or putting themselves in the path of a vehicle. The purpose of this rule is to prevent officers from putting themselves in harm's way—and then having to use deadly force to resolve the situation.

## WHEN ARE OFFICERS ALLOWED TO USE “INTERMEDIATE” WEAPONS?

**Intermediate weapons** include Tasers, OC Spray (i.e. pepper spray), beanbag shotguns, batons, and any other hard object or impact weapon.

**Old Policy:** The old policy had different rules for each of the **intermediate weapons** that officers were permitted to carry. The only rule that applied to *all* intermediate weapons was that officers were not permitted to use an intermediate weapon against someone who was passively resisting.

**Proposed New Policy:** The new policy sets out clear guidelines that apply to *all* intermediate weapons, and prohibits officers from using an intermediate weapon:

- To prevent the destruction of evidence.
- Against a child, an elderly person, someone who is visibly frail, or a pregnant woman—unless the officer would be permitted to use deadly force under the circumstances
- Against someone who is handcuffed, unless the person is aggressively resisting the officer and the officer does not have other options available.
- Against someone who is already following orders.

## WHEN MUST OFFICERS ATTEMPT TO DE-ESCALATE?

**Old Policy:** Under the old policy, officers were encouraged to use **de-escalation** tactics before using force.

**What is de-escalation?** Rather than using force, officers use non-force tactics such as verbal persuasion to gain a person’s voluntary cooperation. De-escalation tactics slow down the pace of an incident so that officers get more time, options, and resources to resolve the incident without force.

**Proposed New Policy:** Officers are now required to use de-escalation tactics before resorting to force whenever it is safe and practical to do so. The new policy lists a number of specific tactics that officers should use, such as:

- **Verbal persuasion**, including: calmly listing the options available to end a crisis; asking questions rather than issuing orders; giving people time to comply with orders
- **Creating distance** between the officer and the threat
- **Requesting assistance** from negotiators or supervisors
- **Waiting** the subject out

## WHAT MUST AN OFFICER DO AFTER USING FORCE?

**Old Policy:** After a use of force, officers were required to: (1) request a supervisor to the scene, and (2) obtain medical assistance for anyone who appeared injured or complained of injury.

**Proposed New Policy:** Under the new policy, officers now have a duty to provide medical aid to anyone injured after a use of force. Officers must: (1) provide emergency first aid; (2) ensure the person

receives prompt treatment; and (3) monitor anyone taken into custody for pain or injury that could require medical assistance.

Officers also must immediately request medical care in certain circumstances, e.g. gunshot wounds, strikes to the head, uses of pepper spray or a Taser, or any force against small children or the elderly. Officers must do this even if there are no visible injuries or complaints of injury.

### HOW DOES THE CDP REPORT USE OF FORCE INCIDENTS?

**Old Policy:** Uses of force were split into two levels—less lethal force and deadly force—with different reporting requirements for each.

**Proposed New Policy:** There now are three clear levels for reporting, which will help to ensure that serious but non-lethal uses of force are clearly documented and more thoroughly investigated.

**Level 1:** Force that is not likely to cause injury **and** does not lead to actual injury or complaints of injury.

**Level 2:** Force that is likely to cause injury **or** actually leads to injury or complaints of injury.

**Level 3:** Force that results in hospital admission or loss of consciousness, as well as all:

- Neck holds, canine bites, and certain applications of a Taser.
- Level 2 uses of force against someone already handcuffed.
- All uses of deadly force.

The new policy also makes clear that officers who omit or misrepresent key facts in their reports will be subject to discipline. Officers who use force or witness a use of force and fail to report it may also be removed from the CPD.

**The Consent Decree process values your input!**

Give feedback on the CPD’s use of force policy at

<http://www.clevelandpolicemonitor.com/use-of-force-feedback>.

Please visit <http://www.clevelandpolicemonitor.com/use-of-force-policies> to view the full version of the policy.