



Police Commissioner's Special Order

Number: SO 21- 23

Date: May 19, 2021

Post/Mention: Indefinite

SUBJECT: RULE 304 – Use of Non-Lethal Force

Rule 304, Use of Non-Lethal Force, is hereby amended superseding all previous rules, special orders, memos and directives on this subject and is effective immediately.

Changes have been made to:

Statement on Use of Force

Section 2

New Section 3

Sections 4-8 renumbered

Commanding Officers shall ensure that this order and the attached Rule are posted on Department bulletin boards.

USE OF NON-LETHAL FORCE

Statement on Use of Force:

The Boston Police Department is committed to de-escalating incidents to negate the need for the use of force. When force is necessary the Boston Police Department is committed to using only the amount of force that is reasonably necessary to overcome the resistance offered. The Boston Police Department is equally committed to preventing unnecessary force, ensuring accountability and transparency, and building trust with our community. The Boston Police Department respects the inherent life, liberty, dignity, and worth of all individuals by preserving human life, and minimizing physical harm and the reliance on use of force.

Pursuant to *An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth (Chapter 253 of the Acts of 2020) Section 30 (14) (a,b,c):*

- a. “A law enforcement officer shall not use physical force upon another person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to:
- Effect the lawful arrest or detention of a person;
 - Prevent the escape from custody of a person; or
 - Prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm:
 - Provided, however, that a law enforcement officer may use necessary, proportionate and non-deadly force in accordance with the regulations promulgated jointly by the POST Commission and the municipal police training committee (*and taught at the Boston Police Academy*).
- b. A law enforcement officer shall not use deadly force upon a person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to prevent imminent harm to a person and the amount of force used is proportionate to the threat of imminent harm.
- c. A law enforcement officer shall not use a chokehold. A law enforcement officer shall not be trained to use a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of law enforcement officer’s body on or around a person’s neck in a manner that limits the person’s breathing or blood flow.”

The Boston Police Department is committed to de-escalation tactics pursuant to MGL Chapter 6E Section 1:

“De-escalation tactics”, proactive actions and approaches used by an officer to stabilize a law enforcement situation so that more time, options and resources are available to gain a person’s voluntary compliance and to reduce or eliminate the need to use force

including, but not limited to, verbal persuasion, warnings, slowing down the pace of an incident, waiting out a person, creating distance between the officer and a threat and requesting additional resources to resolve the incident, including, but not limited to, calling in medical or licensed mental health professionals, as defined in subsection (a) of section 51½ of chapter 111, to address a potential medical or mental health crisis.

When tactically safe and feasible, officers should give verbal warnings or commands when force is going to be used. In some cases there may not be an opportunity to give verbal warnings or commands.

If the situation is not an arrestable offense, and the manner cannot be resolved safely, the officer may disengage.

Duty to Intervene:

1. Police officers are reminded of Rule 113 Public Integrity Policy, Sec. 5 Canon of Ethics, Number Nine; and
2. **An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth (Chapter 253 of the Acts of 2020) Section 30 (15) (a,b)**
 - a. “An officer present and observing another officer using physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of circumstances, shall intervene to prevent the use of unreasonable force unless intervening would result in imminent harm to the officer or another identifiable individual.
 - b. An officer who observes another officer using physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances shall report the incident to an appropriate supervisor as soon as reasonably possible but not later than the end of the officer’s shift. The officer shall prepare a detailed written statement describing the incident consistent with uniform protocols. The officer’s written statement shall be included in the supervisor’s report.”

This rule is issued to establish guidelines for the use of non-lethal force by members of this Department in the performance of their duties, and to establish appropriate training, reporting, and record keeping procedures for such use of force. Effective immediately, it supersedes all other rules, regulations, procedures, orders, bulletins, and directives issued previously regarding the use of non-lethal force by Boston police officers.

Because there are an unlimited number of possibilities, allowing for a wide variety of circumstances, no rule can offer definitive answers to every situation in which the use of non-lethal force might be appropriate. Rather, this rule will set certain specific guidelines and provide officers with a concrete basis on which to utilize sound judgment in making reasonable and prudent decisions, attending to the spirit over the letter of the rule.

The “Reasonableness” of a particular use of force must be judged from perspective of reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers

are often forced to make split-second decisions about the amount of force necessary in a particular situation. (Graham v. Connor 490 U.S. 386)

Sec. 1 DEFINITIONS: For the purpose of this Rule the following definitions will apply:

1. Reasonable Force A balanced response suitable to the confrontation that is necessary to overcome unlawful resistance and regain control of the situation.
2. Non-Lethal Force is that amount of force that will generally not result in serious bodily injury or death.
3. Prudence is cautious, discreet, or shrewd action having due regard for the rights of citizens while maintaining an awareness of the responsibilities of a police officer.
4. Reasonableness means within reason, moderate and/or fair action suitable to the confrontation. The final decision as to the prudence and reasonableness of a police action will be determined on a case by case basis by those members of the Department called upon to judge the propriety of a fellow officer's action. Such judgments may not conflict with the expressed provisions of this or any other rule or order.
5. Totality of the Circumstances: the sum of all elements in a situation used to determine the presence or absence of excessive force (nature of subject offense, actions of third parties, officer's physical odds, feasibility or availability of force alternatives).
6. Serious Bodily Injury: Serious bodily injury is defined as any bodily injury which creates a substantial risk of death; causes serious, permanent disfigurement; or results in extended loss or impairment of the function of any bodily member or organ.
7. Controlled Substance is a drug or substance in any schedule or class referred to in M.G.L. c. 94C, including Class A, B, C, D and E.

Sec. 2 GENERAL CONSIDERATIONS: The policy of the Boston Police Department is to use only that amount of force that is reasonably necessary to overcome resistance in making an arrest or subduing an attacker.

The right to use non-lethal force is extended to police officers as an alternative in those situations where the potential for serious injury to an officer or civilian exists, but where the application of lethal force would be extreme.

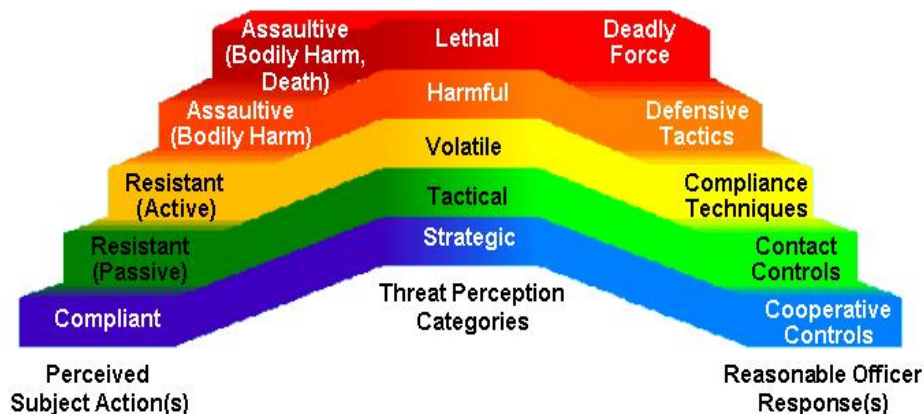
The availability of a variety of non-lethal weapons is necessary to provide the police officer with a sufficient number of alternatives when presented with a physical confrontation. However, since such force will not likely result in serious injury and the close public scrutiny that accompanies the use of deadly force, this availability may also increase the possibility for overzealous and inappropriate use of force. Therefore, application of non-lethal force will generally be limited to defensive situations where (1) an officer or other person is attacked, or (2) an officer is met with physical resistance during an encounter.

An officer may also use non-lethal force if, in the process of making an arrest, the officer is met with passive resistance, i.e., an individual who refuses to get out of an automobile, or a protester who is illegally occupying a particular place. Such force should be a reasonable amount required to move the subject based on the totality of the circumstances. An officer who encounters resistance should be assisted by any other officers present. Two or more officers may effect an arrest, without the use of force which one officer cannot complete without resorting to the use of force.

Section 3: Municipal Police Training Committee (MPTC) Use of Force Model

The Boston Police Department trains officers based on the approved Massachusetts Municipal Police Training Committee (MPTC) Use of Force Model. This model consists of five levels with each tier representing an escalation in force from the preceding level. Officers are able to move between each tier either up or down as circumstances dictate. The model stresses the importance of approaching each situation on the lowest level possible to achieve the desired results.

The Use of Force Model is as follows:



The Boston Police Department will continue to be guided by Massachusetts standards for use of force.

Sec. 4 TRAINING AND QUALIFICATION: Police officers in the Department will be held accountable for proficiency, as well as compliance with Department policy in the use of non-lethal force. Specifically, sworn members shall qualify by successfully completing the course of instruction on non-lethal force approved by the Training and Education Division. This course will be conducted as part of in-service training and will include a practical application segment and a written test component. Whenever the Department adopts new non-lethal force implements, officers will qualify in their use prior to carrying or using them on duty. In the event that an officer fails to complete the required certification, the officer will be temporarily reassigned to the Academy. The Academy will then provide a remedial training program in order to ensure such certification. Officers who still fail to qualify will be subject to reevaluation as to their fitness to continue to perform the duties of a police officer.

Sec. 5 INCAPACITATING AGENT: Officers will carry only the type of incapacitating agent issued by the Department.

In electing to use an incapacitating agent against an armed subject, officers should understand that its effects are not uniformly predictable and certain individuals may remain undeterred by its application. Any such use should be accompanied by a realization that officers may need to take further action to ensure their safety. Conversely, all officers should be aware of the potential, however limited, for serious injury arising from the use of an incapacitating agent.

For this reason, officers should generally confine the use of incapacitating agents against armed or unarmed persons to the following situations:

1. In self defense or to defend another person.
2. When an officer, during an encounter is met with active resistance.

Officers should be aware of the increased potential for serious injury to the suspect when incapacitating agents are used under the following circumstances:

1. When the subject is less than two feet away.
2. When the subject is in an enclosed area without ventilation.
3. When the subject lacks normal reflexes, such as the ability to blink, or is otherwise incapacitated.

When an incapacitating agent has been applied to a subject, officers should, upon securing the suspect, provide for the thorough dousing of the exposed areas with water as soon as is practicable. This should be done as soon as possible since the seriousness of any injury or burn is directly related to the length of time the exposed area remains untreated.

Sec. 6 SERVICE BATON: The Department currently authorizes several baton-type implements for use as non-lethal weapons against assailants. Upon issuance to and qualification by an officer, the only baton-type implements authorized for that officer's use shall be their Department issued baton.

The primary purpose of these weapons is to provide officers with an advantage when fending off and subduing an UNARMED assailant. Officers should not rely on these weapons to overcome an ARMED attack, since they are not intended for such use.

All officers should bear in mind the essentially defensive nature of the use of non-lethal force, as outlined above in General Considerations, Section 2, when using these weapons. Except in extreme situations, where the officer is in imminent danger of serious injury, no blows should be struck above the thigh, other than to the arms. Additionally, officers should be aware of the

potential for permanent disability arising from a blow to the groin, and should limit such blows to extreme situations.

Sec. 7 EVALUATION OF SUSPECT BY EMERGENCY MEDICAL TECHNICIANS: The process of booking and jailing a suspect is often time consuming and confusing, allowing for the possibility of overlooking an injury that might have been brought about by police use of force. Indeed, many injuries may not be obvious even to the injured party. Such injuries, if left untreated, could result in serious problems for both the victim and the Department.

Therefore, this Department will have Emergency Medical Technicians examine all suspects who fall under either of these categories:

1. The suspect has an obvious injury, which in the opinion of the Duty Supervisor, requires treatment.
2. The suspect requests medical treatment for any injury, whether obvious or not.
3. The suspect ingests or swallows any controlled substance.

Sec. 8 INVESTIGATION OF USE OF FORCE: This Department will thoroughly investigate every incident in which an officer strikes someone with any object or an incapacitating agent is used on a subject, or when a visible injury occurs with officer(s) on scene.

All such applications of force or visible injury as described above shall be immediately reported verbally to the involved member's patrol supervisor. By the end of the tour of duty, an officer who has used non-lethal force shall make out a written report describing the incident including the names of the officer and other persons concerned, the circumstances under which such force was used, the nature of any injury inflicted and the care given afterwards to the injured party.

Upon receipt of verbal notification, the Patrol Supervisor shall respond to the scene and make an initial assessment of the incident. During this assessment if the officer(s) involved are assigned to and working in a capacity for a Division/Unit out of the chain of command of the Patrol Supervisor, the Patrol Supervisor shall make contact with a supervisor from that Division/Unit if available and request he/she respond to the scene. The investigation of the incident shall then be the responsibility of that Division/Unit supervisor. Prior to the end of the tour of duty the Patrol/Unit Supervisor shall conduct a complete investigation on the use of such non-lethal force and submit a report to the Commanding Officer of the District or Unit where the officer(s) is assigned. Such report shall include the Supervisor's findings and recommendations based upon the assessment of facts known, as to the justification for the use of force. A complete Supervisor's investigation shall consist of the following, where applicable:

1. Supervisor's investigative report;
2. A copy of the incident report, BPD Form 1.1;
3. Reports from the officer(s) alleged to have utilized non-lethal force;
4. Reports from all Department personnel that were present;
5. Reports on all interviews of civilian witnesses to the incident.
6. Use of Force Tracking Form (0027-BFS-1106), with above information attached.

At the discretion of the involved member's Commanding Officer, further investigation of the incident may be undertaken. Once all the facts have been compiled and substantiated, the Commanding Officer shall submit a report of the incident through channels to the Police Commissioner within seven (7) days.

Once the Police Commissioner indicates that the report and the associated investigation is satisfactory, copies of every such report shall be forwarded to the Bureau of Professional Standards, the Human Resources Division and the Training and Education Division.

The Bureau of Professional Standards shall maintain a comprehensive file of all use of force reports. Further, the Bureau of Professional Standards, acting on its own authority may, or at the request of the Police Commissioner shall, investigate all incidents involving the use of non-lethal force that, based on the information at hand, indicate non-compliance with Department policy.

The Bureau of Professional Standards shall forward the results of all investigations undertaken to the Police Commissioner, who may accept it and act upon its recommendations, in total or in part, or return the report with a request for further information or clarification. In every case, the authority and responsibility for final departmental disposition of a Use of Non-Lethal Force incident rests solely with the Police Commissioner.

Note: Rule 304, issued by Special Order 94-37 on October 11, 1994, was amended by the issuance of Special Order 95-16, which made clear what constitutes a proper Patrol Supervisor's report (see section 7, para 3).

Notes:

Amended by SO 07-016, issued April 2, 2007, update the organization names to reflect the new BPD organizational structures. Section 7.

Gregory P. Long
Superintendent In Chief