

	Operational General Order	5.01 Use of Force	PAGE 1 OF 8
	SUBJECT		EFFECTIVE DATE
	Virginia Beach Police Department General Order Chapter 5 – Use of Force		07/09/2018
			ORIGINATOR/REVIEW
DISTRIBUTION		Chief's Staff	
ALL		CALEA: 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5, 4.2.1, 4.2.2, 4.2.3, 4.3.3, 4.3.4, 82.3.5	
BY THE AUTHORITY OF THE CHIEF OF POLICE:			<i>James A. Coonan</i>

Purpose

To ensure that all department members understand and comply with the department’s philosophy and provisions regarding force and the use of force in accomplishing their law enforcement mission.

Policy

Definitions

Force - Any physical effort that is used to seize, control, or repel another individual.

Reasonable Belief - A belief, based on specific and articulable facts which taken together with the rational inferences from those facts, reasonably warrant an officer’s actions.

Objectively Reasonable Force - The legal standard used to determine the lawfulness of a use of force is the Fourth Amendment to the United States Constitution. See *Graham v. Connor*, 490 U.S. 386 (1989). *Graham* states in part, “The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The force must be reasonable under the circumstances known to the officer at the time the force was used.

Serious Bodily Injury - Maiming, disfiguring, or disabling.

Deadly Force - Any use of force that is reasonably likely to cause death.

De-escalation - Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

Use of Force (CALEA 4.1.1)

It is the policy of the Virginia Beach Police Department to treat all members of the public with dignity, respect, and in adherence with the rights and liberties afforded by the United States Constitution and the Constitution and laws of the Commonwealth of Virginia. The department respects and values all human life and it recognizes that the application of deadly force will only be used consistent with this policy.

In the course of their duties, officers of the Department may find it necessary to use force to defend themselves, defend others, affect an arrest or detention, prevent escape or overcome resistance, and to protect property. In any encounter where the use of force becomes necessary, only objectively reasonable

force will be used. Under no circumstances will the force used be greater than necessary to achieve lawful objectives and to conduct lawful public safety activities.

At times, policing requires that an officer must exercise control of a violent or resisting subject in order to make an arrest, or to protect the officer, other officers or the public from the risk of imminent harm. Clearly, not every potential violent confrontation can be de-escalated, but officers have the ability to impact the direction and the outcome of many situations they encounter, based on their decision-making and the tactics that they choose to employ. When reasonable and considering the totality of circumstances, an officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever possible and appropriate before resorting to force and to reduce the need for force. Whenever possible and when such delay will not compromise the **safety of the officer or another** and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.

In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:

- The severity of the crime at issue
- The level of threat or resistance presented by the subject
- Whether the subject was posing an immediate threat to officers or danger to the community
- The potential for injury to citizens, officers, or subjects
- The risk or apparent attempt by the subject to escape
- The conduct of the subject being confronted
- The time available to an officer to make a decision
- The availability of other resources
- The training and experience of the officer
- The proximity or access of weapons to the subject
- Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number officers versus subjects
- The environmental factors and/or other exigent circumstances

Deadly Force (CALEA 4.1.2, 4.1.3)

An officer may employ deadly force when the officer has a reasonable belief that his/her life or that of another is in imminent danger of death or serious bodily injury based on the totality of the circumstances known to the officer at the time he/she employs the deadly force. When feasible, a verbal warning such as "Police, stop or I'll shoot," should be utilized.

The use of deadly force cannot be used solely to prevent the escape of an unarmed felon or suspected felon. Deadly force may be used to prevent escape when the officer has a reasonable belief that the suspect poses a significant threat of death or serious physical injury to the officer or others.

Chokeholds or neck restraints are not authorized unless the use of deadly force is appropriate.

Firing warning shots from a weapon is prohibited.

Officers may aim or point their firearm when there is a reasonable belief of a threat to the safety of the officer or other person(s). In all cases the officer must be prepared to provide an explanation of the

incident. The officer shall submit a Use of Force report via the chain of command to the Commanding Officer of the Office of Internal Affairs.

Firing Weapons at a Moving Vehicle

Shooting at a moving vehicle is generally dangerous to both officers and others. Additionally, shooting at a moving vehicle is generally ineffective. The substantial risks generated by the use of gunfire against moving vehicles, in combination with the likelihood that such gunfire will fail to achieve its goal, demand that officers resort to firing only in the most extreme and exceptional circumstances.

Firing a weapon at a moving vehicle is prohibited, except when the officer reasonably believes that:

1. An occupant of a vehicle is using or threatening to use deadly force by means other than the vehicle; or
2. A vehicle is operated in a manner deliberately intended to strike an officer and/or citizen and all other reasonable and available means of defense have been exhausted (including moving out of the path of the vehicle) and the safety of innocent persons would not be unduly jeopardized by the officer's actions. Officers shall not intentionally stand and/or step into the path of a vehicle, creating circumstances where the use of deadly force becomes necessary.
 - A. Officers shall take into account the potential risks to vehicular and pedestrian traffic, and to any other bystanders, before making the decision whether to fire at or from a moving vehicle.

The reasonableness of an officer's actions when firing a weapon at a moving vehicle will be examined from all the objective facts surrounding the incident. The sole fact that a vehicle's driver is attempting to avoid apprehension will not justify use of a firearm to attempt to stop the vehicle.

Less Lethal Force (CALEA 4.1.4)

Consistent with the Virginia Beach Police Department's philosophy of using reasonable force, the department authorizes and/or issues a variety of weapons to sworn officers for use in those situations where a firearm would not be considered a reasonable use of force.

Weapons authorized for use and categorized as less lethal are delineated in General Order 5.02, Weapons.

The policy of the Virginia Beach Police Department is to consider the use of a Conducted Electrical Weapon (CEW) a serious use of force and in addition to the other provisions of this General Order will be guided by the following protocols:

- The CEW will not be used when confronting a non-violent resistance that does not represent a threat to police officers or others.
- The CEW shall not be deployed against a fleeing suspect except when the individual poses an immediate threat to officers or citizens.
- Prior to use of the CEW, officers will first attempt to use negotiation, command or physical skills unless the danger presented requires immediate action.
- Officers will avoid using a CEW against an obviously: pregnant female, the very young, the very old, mentally ill or the physically disabled, unless all other less intrusive means to control the situation have proven ineffective or are impractical.

- The use of the Drive Stun is strongly discouraged unless it involves exigent circumstances where a standard deployment is impractical.
- A supervisor will be required to respond to every CEW discharge to manage the post incident after action review. The supervisor's responsibilities at the scene will include, locating, interviewing, documenting and collecting all relevant data to help enable a full and proper UOF analysis.

Medical Assistance (CALEA 4.1.5)

Medical assistance shall be obtained as soon as is practical for persons who have sustained injury, express any complaint of injury, been rendered unconscious, or that the officer has reason to believe has been injured as the result of any use of force incident. In the event that a suspect is injured, officers have a duty and obligation to provide medical treatment while the suspect is in custody. Any injured person shall be treated with dignity and respect and shall be properly cared for while awaiting the arrival of emergency services personnel. Officers should consider the medical condition and/or any resistance being used by the injured person before using restraining devices such as handcuffs.

Administrative Assignments/Counseling (CALEA 4.2.3)

All department personnel directly involved in a use of force incident, accident, or any other actions taken in an official capacity which results in serious injury or death shall be placed on administrative assignment for a period of time designated by the Chief of Police or his designee pending an administrative review. This assignment will not result in loss of pay or benefits pending the results of an investigation and will not be in a position or role that will expose the employee to contact with the public. The assignment shall not be interpreted to imply or indicate that the department member acted improperly.

All department personnel directly involved in a use of force incident which results in serious injury or death may receive counseling as soon as practical after the incident and at no cost to the officer(s). Follow-up counseling will be at the discretion of the officer(s) involved. The officer's immediate supervisor shall be responsible for ensuring that such counseling is provided. Prior to returning to active duty, the officer will be screened by a mental health professional. The Officer's supervisor will arrange for the screening, which will be coordinated by the City of Virginia Beach Occupational Health Services.

Training (CALEA 4.3.3, 4.3.4)

Sworn members will receive basic training on the use of force by law enforcement personnel in the Virginia Beach Police Academy as part of basic police training. Additionally, officers will receive annual refresher training on the use of force as part of the annual firearms qualification.

Recruits and newly hired state certified officers will receive copies of the Use of Force Policy and Weapons Policy prior to firearms qualifications. Recruits and state certified officers will receive specific instructions on the policies and will be tested on the contents of the policies.

During scheduled firearms re-qualifications, officers will receive a briefing by the firearms instructors concerning the department's policies on use of force, firearms, and authorized ammunition.

Use of Force Reporting (CALEA 4.2.1, 4.2.2, 4.2.4, 82.3.5)

Officers will make immediate verbal notification to their supervisor whenever force is used in the performance of an official police duty, or when exercising their law enforcement authority. This applies to all force, weapons, less than lethal or weaponless physical force. Such notification is required whether the

officer is on or off duty. In situations where an officer takes action that involves the use of force in another jurisdiction, the officer will immediately notify the appropriate law enforcement agency in that jurisdiction and contact an on-duty supervisor in this department as soon as practical.

When an officer discharges his/her firearm not in the line of duty, including negligent discharges, he or she will immediately advise the E911 Emergency Communications & Citizen Services (ECCS) of the incident and request that an on duty supervisor be notified. IA shall be contacted as soon as possible and the scene secured until the assigned supervisor responds to conduct a preliminary investigation. The officer should secure the area of the shooting, if possible, and await the arrival of the supervisor. For many cases, after consultation with IA and provided the shift commander or CDO is available to respond, IA can designate an on-duty supervisor to conduct the preliminary investigation which can be captured via BlueTeam. IA will generally respond and conduct the preliminary investigation for cases that involve injury or 3rd party property damage: additionally, IA will respond to cases to conduct the preliminary investigation when there is no shift commander or CDO available to respond. The supervisor will conduct an investigation as if a weapon was discharged within the officer's official capacity. If the supervisor determines that the discharge was negligent, resulting in no injury or property damage belonging to anyone other than that officer involved, the officer will provide a memorandum containing the facts of the incident to the investigating supervisor. In those cases where the on duty supervisor determines that the incident was a negligent discharge, that supervisor shall complete an investigation, document the event on a memorandum and forward the results and all attachments (to include the officer's memorandum) to the Commanding Officer of the Office of Internal Affairs. The Commanding Officer of the Office of Internal Affairs will ensure that a copy is forwarded to Professional Development and Training as soon as practical (See Administrative Field Guide for guidelines on the proper method for completing the investigative memo). All negligent discharge events will also result in the Office of Internal Affairs completing a firearms discharge investigation. The investigative memorandum generated by the on scene supervisor will be the primary source for the IA Investigator's firearms discharge investigation. The investigation conducted by the on scene supervisor is separate from the IA firearms discharge investigation. In those cases involving injury or damage to property that does not belong to the officer involved, the supervisor will handle the scene as if a discharge occurred within the officer's official capacity and make the appropriate notifications to ensure that the appropriate criminal and administrative investigations are initiated.

An investigation will **not** be required for a negligent discharge if it occurred during authorized Virginia Beach Police Department firearms training, and when the negligent discharge occurs on the firing line where the round is fired safely downrange. When such discharge occurs, the range officer will appropriately address the matter as a training issue. If, however, the negligent discharge occurs off the firing line or if the round is fired in a direction that places others in danger, the range supervisor will ensure that an investigation is completed (See Administrative Field Guide for guidelines on the proper method for completing the investigative memo).

Officers will submit a Use of Force report to their supervisor to be forwarded through the appropriate chain of command to Internal Affairs. The Use of Force report will be completed by all sworn personnel under the following circumstances:

1. Uses hands-on or greater physical force to seize, control, or repel any individual that demonstrates non-compliant behavior or is perceived by the officer to otherwise pose a threat or harm to himself or others;
2. Applies force through the use of a less lethal weapon;
3. Any action, other than the use of a firearm, that results in, or is alleged to have resulted in an injury.
4. When an officer(s) point their weapon at others. In situations such as a hostage situation, a drug raid, or when more than one officer would have his weapon pointed at an individual,

the on-scene supervisor will complete a single Use of Force report documenting the incident.

5. Animal Euthanasia

UOF Reporting Exemption

- Officer involved shootings or the Use of Force that results in significant injury or death, will not require a written UOF report to be completed by the involved officer. The information for the report will be obtained during the subsequent administrative investigation. The commanding officer of the Office of Internal Affairs will determine if the injury rises to the level to be considered under this exemption.
- A purposeful discharge of a firearm during training or recreational purposes will not require a UOF report.

Unless the Use of Force falls under any of the stated exemptions, Use of Force reports will be completed by the involved officer or supervisor (such as articulated in bullet 4 above) utilizing the “BlueTeam” software program prior to the officer’s end of shift. Supervisors will review reports and ensure the report is clear and contains all required data and attachments. After the review, the supervisor shall either return the report for corrections or forward the report through their chain of command to the Office of Internal Affairs. When forwarding reports, supervisors at each level will make a recommendation as to whether the force used was permissible under department policy. Additionally, supervisors will ensure that any injuries to either the officer or citizen are properly documented and reported. Any photographs, TASER video or other relevant documents shall be attached to the “BlueTeam” report electronically; where the file size is too large to attach, a disc shall be created and forwarded to the Office of Internal Affairs along with a hard copy of the “BlueTeam” generated report. Use of Force reports shall be submitted by commands to the Office of Internal Affairs no later than thirty (30) days after the incident occurred.

Officer Involved Shooting

When an intentional discharge of a firearm occurs the involved officer will be asked a series of questions by a responding supervisor. These questions are often referred to as “Public Safety Statements.” The public safety statement is intended to establish the level of danger that may still exist, aid the initial operational response to locate suspects, and focus the initial stage of the investigation. Because of the need for officer and citizen safety, a Public Safety Statement may be immediately compelled by responding supervisors without waiting for the involved officer’s attorney. The statements and responses by the involved officer(s) will be included in a memorandum to Internal Affairs. The memorandum will be completed by an on-scene supervisor and submitted by the end of the shift. Questions asked for purposes of public safety statements are:

- The type of force used by the officer and threat presented by other involved parties
- The direction and number of shots fired by involved parties
- The location of any unsecured weapons
- The location of injured persons
- A description of at-large suspects and their mode and direction of travel, time elapsed since they fled, and weapons that were available to them
- A description and location of known victims or witnesses
- Any information that would help ensure officer and public safety and assist in the apprehension of suspects.

Internal Affairs will generate a Firearms Discharge Review action and ensure the Blue Team use of Force Report is completed. When appropriate, the Public Safety Statement should be completed by and on-scene supervisor and submitted by the end of the shift.

The Office of Internal Affairs will review each report received from commands for content, clarity and compliance to this General Order. Commands will be responsible for the adjudication of all UOF cases but must consider recommendations made by the UOF Board as outlined below. Once the case is adjudicated by the proper authority, the Office of Internal Affairs will finalize the report and capture the data in the IAPro Data Base.

Use of Force Board

A Use of Force Board will be convened to make recommendations for any Use of Force that meets the below criteria:

- Any UOF that results in serious injury or death of a citizen. Serious injury will be defined as any injury inflicted by an officer requiring the citizen to be admitted (overnight) to a hospital for care.
- Any UOF that has an administrative investigation generated by a citizen complaint involving an allegation of excessive, unnecessary or improper force.
- Any UOF specifically requested for review by a command, Internal Affairs, Deputy Chief or the Chief.

The Use of Force board will not adjudicate Firearms Discharge cases; these will remain the purview of the Firearms Discharge Review Board.

The UOF Board will be comprised of Virginia Beach Police Department members and the Public Safety Attorney. Department Members will be appointed by the Chief of Police or his designee. Members will receive training on UOF law and VBPD policy. This training will be reviewed and approved by the Deputy Chief of Professional Standards and the City of Virginia Beach Attorney's Office.

Board Composition – randomly selected for each hearing date from the appointed pool of trained candidates.

Composition: 7 voting members

Chair –Commanding Officer of PD&T – non-voting member
 Lieutenant of Professional Development and Training – voting member
 Lieutenant – Any – voting member – 3 year appointment
 Lieutenant – Any – voting member – 3 year appointment
 Sergeant – Any – voting member – 2 year appointment
 Sergeant – Any – voting member – 2 year appointment
 Master Police Officer or Officer – Any – voting member – 2 year appointment
 Master Police Officer or Officer – Any – voting member – 2 year appointment
 Lieutenant - Accreditation – non-voting member
 Public Safety Attorney – non-voting member
 Master Police Officer – Lead Use of Force Instructor – non-voting member
 Sergeant –Internal Affairs –non-voting member

Due to the sensitive nature of the material being reviewed, members will be required to sign a confidentiality agreement.

The UOF Board will be a documentation review only and will not have the authority to invite/order witnesses to provide testimony. The UOF Board will be provided all documentation relevant to the UOF being reviewed, to include the UOF report and if applicable the administrative investigation. The Office of Internal Affairs will be responsible for providing the Chair with all necessary information for presentation to the board. The board will make the following recommendations based on a simple majority for each case reviewed:

- Does or Does Not Comport with Training
 - Recommendations for additional training
- In or Out of Policy

The UOF Board may refer a case back to IA for additional investigation for any other potential UOF actions uncovered during the Board's discussion of the initial incident/complaint. The Board Chairman shall complete a cover letter of the Board's concern of initial rule violations and if appropriate, a recommendation will be noted concerning UOF matters that relate to undisclosed UOF incident(s) occurring that may not be part of the original complaint but housed in the investigative material available to the Board. Once the investigation is completed, the cases will be returned to the UOF Board for adjudication.

All cases reviewed by the UOF Board will be documented by Internal Affairs as an Inquiry. Once a case is adjudicated by the UOF Board, the Inquiry will be returned to the parent command.

(CALEA 4.2.4)

At the conclusion of each calendar year, the Commanding Officer of the PD&T or his designee shall prepare an analysis for the Chief of Police on the use of force by personnel, and recommend any necessary training, equipment, or policy modifications.

Intervention

Departmental supervisors, and departmental members in the absence of a supervisor, shall immediately intervene if they reasonably believe another department member or members are using force that is not objectively reasonable or is inconsistent with this policy. In addition, all members witnessing such an incident shall immediately notify his/her supervisor and follow up with a memorandum. An internal investigation by Internal Affairs after such a reported incident will ensue.