

Asheville Police Department Policy Manual	
Policy Number: 1030	Effective Date: 9/1/1993
Subject: Use of Force	Last Revision Date: 9/3/2015

I. Introduction

North Carolina General Statutes authorize law enforcement officers to use force against other persons when necessary. Officers may only use reasonable force when force is used to accomplish lawful objectives. Officers may use deadly force only when the officer reasonably believes that the action is in defense of human life, including the officer's own life, or in defense of any person in imminent danger of serious physical injury. 1.3.1, 1.3.2

It is the intent of the Asheville Police Department that all members recognize the importance of human life, respect for basic human rights and have an intolerant attitude toward abusive treatment of all persons. Bearing this in mind, officers' use of force will be based on what an objectively reasonable officer would conclude based on the totality of circumstances so as to minimize the chance of injury to themselves and others.

The United States Supreme Court has imposed an objectively reasonable standard to the determination of and use of force taken by an officer carrying out a lawful objective. What this means is that in determining the necessity for force and the appropriate level of force, officers shall evaluate each situation in light of the known circumstances including but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject and the danger to the community.

Nothing in this policy shall be construed as approving the unwarranted, reckless or excessive use of force.

It is the duty of each officer to attempt to prevent any other officer from using unwarranted or excessive force and that the use of any officer of excessive force shall be reported to a supervisor or the Office of Professional Standards as soon as possible.

II. Definitions: 1.3.2

- A. **Reasonable Belief:** Facts or circumstances the officer knows or should know are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.
- B. **Serious Physical Injury:** An injury that creates a substantial risk of death, causes serious permanent disfigurement, results in long term loss or impairment of the functioning of any bodily member or organ.
- C. **Physical Force:** Physical contact or action beyond mere restraint.

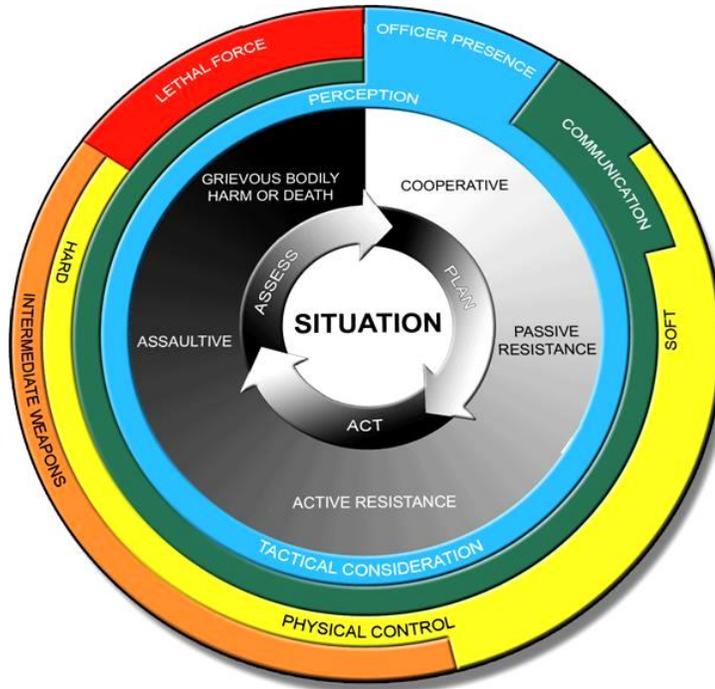
- D. **Less Lethal Force:** Any physical exertion or device that is used to restrain or control another which is not reasonably likely to cause death or serious injury.
- E. **Lethal Force:** Any force that is reasonably likely to cause death or serious injury. Force that is not reasonably likely to cause death or serious injury, but unexpectedly results in death or serious injury is not considered deadly force. An officer may use deadly force only when the officer reasonably believes that the action is in defense of human life, including the officer's own life, or in defense of any person in imminent danger of serious physical injury.
- F. **Deadly Weapons:** Weapons with normal and intended use are likely to cause death or serious bodily injury.
- G. **Non-Deadly Weapons:** Weapons with normal and intended use are not likely to cause death or serious bodily injury.
 - 1. **ASP Baton:** Name brand of the issued expandable baton that the Asheville Police Department issues to all sworn members of the department.
 - 2. **OC Spray** - An aerosol spray weapon system containing the active ingredient Oleoresin Capsicum (OC). The active ingredient is a powerful inflammation agent that occurs naturally in cayenne peppers.
 - 3. **TASER:** Electric Impulse Device (EID) commonly known as a "stun gun" or TASER, deploys controlled electronic currents (low wattage, high voltage) into a suspect's body. It affects the central nervous muscular skeletal system.
 - 4. **Impact Projectiles:** Department authorized specialty munitions, including "bean bag" rounds that can be fired, launched or otherwise discharged at a person by a unique launching device. Use of a Pepper Ball projectile is considered to be the use of non-lethal force. Pepper Balls can be used in situations where the goal is dispersal of a crowd or group, not to arrest anyone. A supervisor will authorize the use of Pepper Balls for dispersal.

III. Procedures:

- A. North Carolina General Statute 15A-401 grants law enforcement officers the right to use force in achieving lawful objectives. The U. S. Supreme Court has imposed a "reasonableness" standard to determine the propriety of an officer's force, which takes into consideration all surrounding circumstances. All Asheville Police officers should clearly understand that the policy of the Asheville Police Department is more restrictive than NCGS 15A-401. Officers will use only the reasonable amount of force necessary to achieve lawful objectives. Any use of unreasonable or excessive force may subject the officer to disciplinary action, civil damages, and criminal prosecution. **1.2.2, 1.3.1, 1.3.2**

Officers shall use the Use of Force Continuum as a training guide for use of force situations. Officers should think of the Use of Force Continuum as a circle with all of the options available to the officer, with presence being the least amount of force and lethal/deadly force being the

greatest amount of force. Simply stated, officers do not have to exhaust other levels of force options before moving to another, so long as it is objectively reasonable based on the totality of circumstances.



- B. Officers may use less lethal force when and to the extent they reasonably believe it necessary to effect a lawful objective, arrest or prevent the escape of an individual in custody, or defend themselves or other persons from the use or imminent use of physical force.
- C. Officers may use lethal force upon another person only when necessary to defend themselves or a third person from what they reasonably believe to be the use or imminent use of deadly physical force. **1.3.2**
- D. Officers may not use lethal force against fleeing felons except to defend themselves or a third person from what they reasonably believe to be the use of or imminent use of deadly physical force. **1.3.2**
- E. Employees will receive a copy of this policy and instructions in its content prior to taking the oath of office as a police officer. Instruction on the use of force will be given to all officers at each firearms training session. **1.3.11, 1.3.12**
- F. Officers will not use force in instances where the consequences will be likely to outweigh the police purpose. Therefore, the following practices are specifically prohibited:
 1. Firing warning shots in any situation; **1.3.3**
 2. Firing into a building when the person fired upon is not visible;

3. Intentionally causing a vehicular accident in order to apprehend a suspect who is not an immediate threat to life; and
 4. Striking a person with an object or instrument other than hands or fists above the shoulders, unless the use of deadly force is justified.
- G. Although other weapons can be employed in a lethal manner, firearms are the only equipment issued to department personnel that are intended as deadly weapons. Only officers demonstrating proficiency in the use of agency authorized firearms and less lethal weapons shall have access to such weapons. Asheville Police Department Policy #1080 (Firearms) covers firearms' proficiency requirements. Officers shall qualify at least annually with all firearms the officer is authorized to use. **1.3.10, 1.3.11**
- H. Officers may kill animals with a firearm in self defense; the defense of other persons; or when the animal is so badly injured that compassion requires its relief from further suffering. In the last instance, officers should notify a supervisor, when possible, prior to any firearm use.
- I. Discharging a firearm at a moving vehicle involves a possible risk of death or serious injury. There may be a risk of harm to occupants of the suspect vehicle who may not be involved, or involved to a lesser extent, with the actions of the suspect creating the threat.
1. Officers shall not fire at unarmed violators in a moving vehicle unless the officer reasonably believes that the on-coming vehicle presents an imminent threat of death or serious physical harm to the officer or to a third person and no other means are available at that time to avoid or eliminate the danger.
 2. No officer shall intentionally position himself into the path of a vehicle that is attempting to flee. Whenever possible, officers shall make a reasonable effort to get out of harm's way if a vehicle is moving toward him.
- J. Any less lethal weapons that officers may use or carry such as ASP baton, O/C spray, Pepperball, munitions and projectiles will only be carried by those officers who have satisfactorily completed training in their use. These weapons will only be used in the manner prescribed according to the certified instructors and relative lesson plans. Certification training will occur biennially. **1.3.4, 1.3.9a**
- K. Whenever an officer encounters resistance and uses physical force at or above the level of hard empty hand control, all details concerning the type and extent of the resistance and level of force used or attempted to overcome that resistance shall be documented in a Use of Force Report. The report is not required if only displaying an immediate weapon or firearm. However, officers may be required to complete a Use of Force Report at the direction of the supervisor after any use of force. Officers shall complete a Use of Force Report in the following instances: **1.3.6**
1. Whenever (on duty, off duty, or engaged in secondary employment) they discharge a firearm, including accidental discharges whether or not there is any injury. The only exceptions are discharges for authorized training or recreational purposes;

2. Whenever they take an action that results in or is alleged to have resulted in the injury or death of another person;
 3. Whenever they apply force through the use of lethal or less than lethal weapons; or
 4. Whenever they apply physical force as defined in this policy.
- L. Use of Force Reports will be submitted through the employee's chain of command.
- M. Officers shall render appropriate medical aid after the use of any lethal or less than lethal weapon on another person. **1.3.5**

1. After the use of a lethal weapon, officers shall immediately contact communications and request EMS. Officers shall render all possible first aid within their level of training until the arrival of EMS.
2. After the use of a less lethal weapon, if the person is unconscious, incoherent, or does not appear to be in full possession of their faculties, officers shall immediately contact communications and request EMS. Officers shall render all possible first aid within their level of training until the arrival of EMS.
3. After the use of a less lethal weapon, if the person is conscious, coherent, and appears to be in full possession of his faculties, officers shall inquire if the person needs any type of medical assistance or has sustained any injuries. If the person complains of injury, officers shall immediately contact communications and request EMS. Officers shall render first aid within the level of their training until the arrival of EMS.

N. Use of O/C Spray

1. The policy of the Asheville Police Department is to use a reasonable amount of force necessary and reasonable to safely and humanely control hostile and physically aggressive subjects. The Asheville Police Department has chosen O/C spray as a use of force option for officers to employ in appropriate circumstances that may effectively control combative subjects without causing any permanent physical injury or long lasting after effects.
 - a. Officers using O/C spray shall file a Use of Force Report prior to the end of tour of duty.
2. Procedures
 - a. After an O/C exposure, officers shall immediately advise the subject, by reading from a pocket card, that they were sprayed with O/C and provide the subject with clear directions to follow. Officers should reassure the subject that he/she will be okay and that the officer will negate the effects of the spray as soon as possible. If the subject complies and is controllable, officers should immediately take the subject into custody and secure him with the appropriate restraining device. After

properly securing the subject, the officer must advise the subject of the following information:

- i. "You have been sprayed with O/C Pepper. I am going to treat you to reduce the discomfort you are feeling as long as you continue to cooperate."
- ii. "This is non-toxic and the effects will not last long. The effects of the spray can mask other conditions, including overdoses, or toxic levels of drugs like cocaine, amphetamines, barbiturates, PCP, heroin, opiates and alcohol."
- iii. "I am going to ask you five (5) questions for your own safety. If you don't answer my questions or if you give false or misleading answers you could delay any medical treatment and may seriously jeopardize your health and safety. Do you understand?"
 - 1) "Are you under the influence of any drugs or alcohol now? If yes, which?"
 - 2) Have you taken any drugs or alcohol in the last 8 hours? If yes, which?"
 - 3) "Do you normally take any illegal or prescription drugs? If yes, which?"
 - 4) "Do you have heart problems, lung problems, or any other serious medical problems? If yes, which?"
 - 5) "Do you have any allergies? If yes, which?"
- b. If the person answers "yes" to any of the above questions, officers shall immediately contact Communications and request EMS. Negative answers do not preclude officers from summoning medical assistance. Officers should exercise good judgment and err on the side of caution. If there is any doubt about the subject's condition, immediately call for medical assistance.
- c. If the area is not secure and the subject has requested medical attention or officers see a need for medical attention, transport subject to the nearest secure area, initiate decontamination efforts and await arrival of EMS for examination. **1.3.5**
- d. If the subject is wearing contact lenses, advise the subject they should be removed as soon as possible. Officers shall advise medical personnel of contact lens use and advise the subject that the lenses should be cleaned and disinfected prior to reuse. Officers shall advise the subject to remove contaminated clothing as soon as practicable.
- e. All Asheville Police employees will receive a pocket card with above instructions and questions, a copy of this policy and instructions in its content prior to being sworn in as officers of the department.

- f. Officers shall use the O/C spray authorized by the agency in the performance of duty. If off duty officers elect to carry O/C spray, they shall carry O/C spray issued or authorized by the department. Supervisors shall inspect O/C canisters during regular inspections and as needed. Supervisors shall issue new canisters if the officer's canister is damaged in any way or prior to the expiration date printed on the cans.
- g. No officer shall utilize O/C on any individual who the officer knows, or has reason to believe, suffers from any medical condition to include, but not limited to; asthma, heart condition, bronchial diseases, etc., that would be aggravated by the exposure to O/C.

O. Electronic Impulse Device

- 1. Electronic Impulse Device is a conducted energy weapon that utilizes compressed nitrogen to shoot two small probes up to 15-35 feet. These probes are connected to the weapon by a high voltage insulated wire. When the probes make contact with the target, the Taser transmits the powerful electronic pulses along the wires and into the body of the target through up to two inches of clothing.
- 2. Officers are only authorized to carry and use those Electronic Impulse Device's approved and issued by the department.
- 3. Officers will be allowed to carry and deploy the Taser after successfully completing an authorized training class. The qualifying officer will complete a written and practical exam and will be exposed to the Electronic Impulse Device during the original class. Re-certification training will occur annually.
- 4. Taser Deployment
 - a. The Taser will only be deployed and used in a manner that is taught during training.
 - b. The officer will not use the Taser under the following conditions:
 - i. Flammable materials are present;
 - ii. Innocent bystanders can be injured; or,
 - iii. The subjects could fall onto an obstacle and injure or kill themselves. (Example: fall off the edge of a roof or fall into a pool.)
 - c. The officer will given the subject voice commands prior to deployment and warn the subject that an Electronic Impulse Device is going to be used against the subject, unless doing so would endanger officers or others unnecessarily or allow the intended subject an opportunity to defeat the Taser. The officer will not aim at the eyes or face.

- d. The officer will give voice commands after the subject has been exposed to the Electronic Impulse Device. Directions should be given to the suspect that allows officers to place the subject in custody.
- e. When feasible, the officer will maintain control with the Taser until backup officers arrive and the subject is taken into custody.

5. After Action

- a. The officer will remove the probes from the subject.
- b. The officer will place the probes into the cartridge and turn them into Property and Evidence.
- c. The subject will be transported to a medical facility for examination/treatment by qualified medical personnel whenever the person:
 - i. has probe strikes or impacts to the head;
 - ii. the probes are bent into the body from the suspect rolling on top of them and can not be safely removed;
 - iii. the probes are embedded into soft tissue areas such as the neck, face, groin or breasts;
 - iv. subjects are energized more than three times;
 - v. more than one Taser is used effectively against a subject in any given incident;
 - vi. subject does not appear to be recovering from the exposure;
 - vii. subject has exhibited signs of extreme uncontrolled agitation or hyperactivity prior to exposure; or, subject is known to have taken a controlled substance.

P. Impact Weapon

- 1. The expandable police baton is a less lethal force option. The baton utilized by the Asheville Police Department is the "ASP" name brand expandable baton. All sworn personnel attend ASP Baton certification course prior to being allowed to carry the ASP Baton. All members certified to carry the ASP Baton will attend training semi-annually.
- 2. Officers will not deliver strikes to the head, neck, spine, sternum, or groin unless deadly force is justified.

Q. Pepper Ball Projectiles

- 1. Pepper Ball Projectiles are plastic spheres filled with Oleoresin Capsicum (O/C) powder or liquid. A high pressure air launcher delivers the projectiles with enough force to burst

the projectile on impact releasing the O/C powder or liquid. Pepper Ball Projectiles subdue subjects with a combination of kinetic impact and O/C powder or liquid. The sting of the impact of the Pepper Ball Projectiles causes a psychological impression of being shot, which is combined with the strong irritation of the O/C powder or liquid to the subject's nose and lungs. When inhaled, the O/C powder or liquid within the Pepper Ball Projectiles leads to coughing, shortness of breath; and, in some incidents, vomiting. Some individuals experience eye irritation as well

2. The Pepper Ball is a less lethal device. The potential exists for the projectiles to inflict injury when they strike the face, eyes, neck and groin. Therefore, personnel deploying the Pepper Ball System should avoid striking those areas unless a life-threatening situation exists.
 3. Only officers who have successfully completed an approved Pepper Ball training class will use the device.
 4. Officers encountering a situation that may require the use of the Pepper Ball System, when feasible, shall immediately notify a supervisor.
 5. Persons struck with the Pepper Ball should be closely monitored and follow guidelines established in Section XIII above.
- R. Officers involved in use of force situations must complete a Use of Force Report before the end of their tour of duty and submit it to a supervisor. The supervisor shall review the report, sign and forward it along with any additional statements or documentation through the chain of command to the Chief of Police. Each level in the chain of command will review and sign the report. If the officer is unable to complete the report, the supervisor will note the reason the report could not be completed. **1.3.7**
- S. Whenever any officer/employee uses any force in an official capacity that results in death or serious physical injury to another person, the Chief, or his designee, will place the officer on Administrative Leave or assign him to duties that do not require carrying a firearm until completion of the investigation. A supervisor will relieve the officer of his weapon as soon as feasible in a secure location away from the scene. The officer's weapon will be submitted to Property Control. A Logistics Officer will be called to come and issue the officer another weapon unless extenuating circumstances exist as determined by the Chief of Police or his designee. At the request of the Chief of Police or his designee, the SBI shall investigate any incident involving the use of deadly force by an employee of the Asheville Police Department. **1.3.8**
- T. Any officer involved in an incident that results in death or serious physical injury to another person, shall, as determined by the Chief of Police or requested by the employee himself, attend a preliminary counseling session with the Employee Assistance Network (EAN). The officer shall attend all subsequent counseling sessions recommended by EAN. The officer may not return to any duty that requires the carrying of a firearm until EAN provides a written statement certifying fitness for duty. **22.2.6**

- U. The Use of Force, Pursuit and Accident Policy Review Board will convene as determined necessary by the Chief of Police. The purpose of the board will be to review use of force incidents for compliance with department policy. The board is not authorized to recommend disciplinary actions, but may provide recommendations for adjustments to department training practices or policy.
1. Board members will consist of the following:
 - a. Professional Standards Lieutenant (non-voting, liaison only for policy issues);
 - b. Recruitment and Career Development Lieutenant (non-voting, liaison only for training issues);
 - c. A Division Commander (Chairperson)
 - d. A District Commander;
 - e. A Sergeant;
 - f. Two patrol officers;
 - g. A detective; and
 - h. APD Legal Advisor (non-voting).
 2. The Professional Standards Lieutenant will be responsible for presenting all cases and maintaining a written report.
 3. Professional Services shall conduct an analysis of all Use of Force Reports on an annual basis. The purpose of this analysis is to reveal patterns or trends that may indicate training needs or policy modifications. A report shall be submitted on this analysis to the Chief of Police by January 31st of each year. **1.3.13**