

Department of the Interior Departmental Manual

Effective Date:

Series: Law Enforcement and Security

Part 446: Law Enforcement

Chapter 20: Use of Force

Originating Office: Office of Law Enforcement and Security

446 DM 20

20.1 Purpose. This Chapter establishes policy governing the use of force by law enforcement officers (LEOs).

20.2 Scope. This policy applies to all LEOs of the Department of the Interior (Department/DOI).

20.3 Authority. This policy is issued pursuant to 5 U.S.C. § 301; 43 U.S.C. § 1454; Reorganization Plan No. 3 of 1950, (64 Stat. 1262), as amended; 54 U.S.C. § 102701 et seq., for the National Park Service; D.C. Code § 5-206 and related authorities for the U.S. Park Police; 43 U.S.C. §§ 1733(c)(1)-(2), for the Bureau of Land Management; law enforcement authorities specific to the Fish and Wildlife Service, including but not limited to 16 U.S.C. § 3375(b) and 16 U.S.C. § 460k-3; 25 U.S.C. § 2803, for the Bureau of Indian Affairs; and 43 U.S.C. § 373b, for the Bureau of Reclamation.

20.4 Policy. Sworn LEOs shall only engage in the use of force in compliance with standards established in the United States Constitution, laws, and use of force guidelines set forth herein. Bureaus/Offices must create policy and procedures for the use of force that enables LEOs to understand and abide by the Department's use of force policy in the performance of their lawful duties.

20.5 Responsibilities.

A. Assistant Secretary – Policy Management and Budget (AS-PMB) is responsible for providing management direction and support for all DOI law enforcement (LE) programs and activities through Department-wide policies, standards, and guidelines.

B. Deputy Assistant Secretary – Public Safety, Resource Protection and Emergency Services (DAS-PRE) is the Department's primary law enforcement policy officer and the principal advisor to the Secretary, Deputy Secretary, and Assistant Secretary - Policy, Management and Budget on law enforcement policy and operations, including the Department's use of force policy.

C. Director, Office of Law Enforcement and Security (OLES) has the responsibility, as delegated by the DAS-PRE and pursuant to 112 DM 17 and 212 DM 17, for law enforcement policy development and for oversight of the Department's law enforcement programs and is responsible for ensuring the proper implementation of this policy across the Department.

D. Bureau Directors are responsible for ensuring that Bureau law enforcement programs are managed in accordance with law, regulation, and Departmental guidelines.

E. Bureau Directors of Law Enforcement are responsible for establishing and enforcing use of force policies and procedures that comply with law, regulation, and Departmental policy.

F. Bureau/Office LEOs are responsible for complying with established law, policy, and standards governing the use of force.

20.6 Definitions. For the purpose of this Chapter, the terms below are defined as follows:

A. Choke Holds. A physical maneuver or technique that restricts an individual's ability to breathe for the purpose of incapacitation.

B. Deadly Force. Any use of force that carries a substantial risk of causing death or serious bodily injury. Deadly force does not include force that is not likely to cause death or serious bodily injury but unexpectedly results in such death or injury.

C. De-escalation. The use of communication or other techniques during an encounter to stabilize, slow, or reduce the intensity of a potentially violent situation without using physical force, or with a reduction in force.

D. Law Enforcement Officer. A DOI employee sworn and commissioned to enforce criminal statutes and authorized to carry firearms, execute and serve warrants, search, seize, make arrests, and perform such duties as authorized by law.

E. Less-Lethal Device. An instrument, device or weapon designed or intended to be used in a manner not likely to cause death or serious bodily injury. Examples include, but are not limited to, conducted electrical weapon or electronic control device, impact weapons, and certain chemical agents. These are also commonly referred to as "intermediate force" or "less-than-lethal" weapons or devices.

F. Less-Lethal Force. Any use of force that is neither likely nor intended to cause death or serious bodily injury. Also known as "non-deadly," "intermediate," or "less-than-lethal" force.

G. Serious Bodily Injury. Any bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

H. Use of Force. The intentional application by law enforcement of any weapon, instrument, device, or physical power in order to control, restrain, or overcome the resistance, or gain compliance or custody, of another.

20.7 Use of Force Guidelines.

A. Legal Standard. While the courts recognize that LEOs may be authorized to use force as a proper exercise of the government's police powers, an LEO's use of force in a specific circumstance must be balanced with an individual's constitutional right under the Fourth Amendment to be secure in their "persons, houses, papers, and effects, from unreasonable searches and seizures." U. S. CONST. amend. IV. The Supreme Court, in the governing case *Graham v. Connor*, 490 U.S. 386 (1989), has determined that the Fourth Amendment requires that an LEO's use of force—deadly or not—during the course of an arrest, investigatory stop, or other seizure must be "objectively reasonable." Failure to meet this standard in the use of force results in a violation of the subject's constitutional rights.

Under *Graham v. Connor*, "objective reasonableness" is a standard that is "not capable of precise definition or mechanical application," but nonetheless requires courts to apply the same general principles during the evaluation of the facts and circumstances of each case. For example, at a minimum, a reviewing court must consider what is "objectively reasonable" in light of the facts confronting the LEO at the time force is used, and thus the officer's "underlying intent or motivation" is irrelevant. *Id.* These facts may include the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. *Id.* A court will likewise consider whether an individual is forcibly assaulting, resisting, impeding, or intimidating an LEO while the LEO is engaged in official duties. *Id.* Additionally, courts will consider that LEOs are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving. *Id.* Finally, reasonableness is judged "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.*

In sum, every use-of-force case is fact-specific and involves a totality-of-the-circumstances inquiry based on the facts at the time of the incident at issue. *See also Cty. of Los Angeles, Calif. v. Mendez*, 137 S. Ct. 1539, 1547 (2017) (affirming that *Graham*, and a totality of the circumstances inquiry, remains "the framework for analyzing excessive force claims.").

B. General Use of Force Principles.

(1) The Department recognizes the value of all human life and is committed to respecting the rights and dignity of every individual.

(2) LEOs are permitted to use force that is reasonable in light of the totality of the circumstances. This standard neither requires LEOs to meet force only with equal or lesser force nor limits the objects or techniques that may be employed, except that the degree and manner of force must not be unreasonable under the circumstances.

(3) The Fourth Amendment does not require LEOs to retreat to avoid the reasonable use of force, nor are they required to wait for an attack before using reasonable force to stop a threat.

(4) The reasonableness of a particular level of force an LEO uses may vary based on evolving circumstances within a singular incident. Where appropriate, an LEO's physical force must be discontinued when resistance ceases and when the incident is under control.

C. De-escalation. De-escalation is a desired outcome. When reasonable, LEOs shall seek to employ tactics and techniques that effectively bring an incident under control while promoting the safety of LEOs and the public and that minimizes the risk of unintended injury or serious property damage. To ensure that LEOs are proficient in a variety of techniques that could aid them in appropriately resolving an encounter, Bureaus/Offices shall provide use of force training that includes de-escalation tactics and techniques.

D. Deadly Force. Deadly force is evaluated under the "objective reasonableness" standard and thus must be reasonable in light of the facts and circumstances confronting the LEO at the time such force is used. *See Tennessee v. Garner*, 471 U.S. 1 (1985). LEOs may use deadly force only when necessary, that is, when the LEO has a reasonable belief that the subject of such force poses an imminent or significant threat of death or serious bodily injury to the LEO or to another person. The following additional standards apply:

(1) Fleeing Subject. Deadly force is authorized to prevent the escape of a fleeing subject where the LEO has a reasonable belief that the subject poses a significant threat of death or serious physical harm to the LEO or others and such force is necessary to prevent escape. *Tennessee v. Garner*, 471 U.S. at 12-13.

(2) Discharge of Firearms. Discharging a firearm against a person constitutes the use of deadly force and shall be done only with the intent of preventing or stopping the threatening behavior that justifies the use of deadly force. The act of establishing a grip, unholstering, or pointing a firearm does not constitute a use of deadly force.

(a) LEOs are prohibited from discharging firearms at a person in a moving vehicle, vessel, aircraft, or other conveyance unless the use of force against the person is justified under the standards articulated elsewhere in the policy.

(b) Firearms shall not be discharged solely as a warning or signal, or solely to disable moving vehicles or other conveyances.

E. Less-Lethal Force and Less-Lethal Device. When de-escalation techniques are not effective or appropriate, an LEO may consider the use of less-lethal force including, but not limited to, protecting the officer or others from immediate physical harm; to restrain or subdue an individual who is actively resisting or evading arrest; or, to bring an unlawful situation safely under control.

(1) Bureaus/Offices shall develop appropriate policies regarding the use of authorized control tactics or techniques, authorized less-lethal devices, and necessary training and certifications.

(2) Bureaus/Offices shall ensure that LEOs demonstrate proficiency, in accordance with Bureau/Office standards, for each less-lethal device that they are authorized and certified to carry. If a certification or valid waiver expires, the LEO is prohibited from carrying that device until the LEO meets the requirements for recertification on that device.

(3) Bureaus/Offices shall conduct less-lethal use of force training and incorporate decision-making and scenario-based situations in these training programs.

(4) LEOs are prohibited from carrying any unauthorized less-lethal device for duty use.

(5) Choke holds are prohibited unless the legal standard for the use of deadly force is met.

F. Warnings. When feasible, prior to the use of force, LEOs shall attempt to identify themselves and issue a verbal warning to comply with the LEO's instructions. In determining whether a warning is feasible under the circumstances, an LEO may consider any reasonable factor including, but not limited to, whether the resulting delay is likely to:

(1) Increase the danger to the LEO or others, including any victims and/or bystanders;

(2) Result in the destruction of evidence;

(3) Allow for a subject's escape; or

(4) Result in the commission of a crime.

G. Duty to Intervene and Report Improper Use of Force. The Department is committed to carrying out its mission with honor and integrity, and to fostering a culture of accountability. Under this principle, the following applies to all Bureaus/Offices:

(1) LEOs have a duty to intervene to prevent or stop a perceived use of excessive force by another LEO—except when doing so would place the intervening LEO in articulable, reasonable fear of death or serious bodily injury.

(2) DOI employees with actual knowledge of a DOI LEO's improper use of force shall, without unreasonable delay, report the incident to their chain of command, internal affairs, and/or the DOI Office of Inspector General or other reporting mechanism identified by the Bureau/Office policy or procedure.

(3) Failure to intervene in and/or report such violations is, itself, misconduct that may result in disciplinary action, with potential consequences including removal from federal service, civil liability, and/or criminal prosecution. Bureaus/Offices shall ensure all personnel are aware of these obligations and the appropriate mechanisms by which such reports should be made.

20.8 Animals. Force may be directed against animals, up to and including the discharge of a firearm, when the animal poses an imminent danger to the LEO or others. The dispatching of animals as part of an authorized wildlife resource management plan, or to humanely dispatch an injured animal, is not considered use of force.

20.9 Medical Aid. As soon as practicable following a use of force and the end of any perceived public safety threat, LEOs shall obtain appropriate medical assistance for any subject who has visible or apparent injuries, complains of being injured, or requests medical attention. This may include rendering first aid if properly trained and equipped to do so, requesting emergency medical services, and/or arranging transportation to an appropriate medical facility.

20.10 Training. Bureaus/Offices must ensure all LEOs receive initial use of force training using standards established by or equivalent to those of the Federal Law Enforcement Training Center, as well as in-service training, de-escalation training, and applicable legal updates. Bureaus/Offices will ensure LEOs meet all applicable firearms, less-lethal weapons, and physical techniques training and proficiency requirements established under policy prior to deploying such weapons and techniques. For additional requirements, see 446 DM 15 - Training Standards.

20.11 Reporting Requirements. It is a Department priority to ensure more consistent Department-wide reporting and tracking of use of force incidents. Comprehensive data will enable both the Department and Bureaus/Offices to more effectively assess use of force activities, conduct meaningful trend analysis, revise policies, and take appropriate corrective actions. For Department-wide consistency, Bureaus/Offices shall meet the following requirements for reporting and tracking use of force incidents:

A. Uses of force must be documented and investigated pursuant to Bureau/Office policies and procedures.

B. Bureaus/Offices must establish internal processes to collect and report accurate data on the uses of force. At a minimum, Bureaus/Offices must report the following as a “use of force incident” when:

- (1) A less-lethal device is utilized against a person (except when the device is only displayed);
- (2) Serious bodily injury occurs during or resulting from a use of force;
- (3) Deadly force is used against a person, to include when a firearm is discharged at a person; or

(4) Death occurs during or resulting from a use of force.

C. Verbal commands, including verbal threats to use force if an individual does not comply, or even displaying an electronic control device, baton, or chemical agent do not require a use of force incident report.

D. Bureaus/Offices must ensure use of force incidents are reported within the Department's approved Records Management System (RMS) and follow the requirements of 446 DM 17 - Serious Incident Reporting and 446 DM 25 - Boards of Review and Serious Incident Review Groups.

20.12 Rights of Third Parties. This policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.