



ERIE POLICE DEPARTMENT
CITY OF ERIE, PENNSYLVANIA



Policies and Procedures

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Subject: Use of Force	Policy Number: 4.1
Effective Date: April 01, 2002	Revision Date: January 1, 2021
Approval Authority Title and Signature:	<i>Daniel P. Spizarny Sr.</i> Chief Daniel Spizarny

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POLICY:

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This policy recognizes that the use of force by law enforcement officers requires constant evaluation. These are dynamic events. Even at its lowest level, the use of force by police is a serious responsibility. The purpose of this policy is to provide officers of this department with guidelines and accountability on the reasonable use of force.

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This policy consists of principles and values guiding the performance of The City of Erie Police Department activity. It is not a statement of what must be done in a particular situation; it is a statement of the guiding principles to be followed in activities directed toward attainment of the department's objectives of serving our community and the importance of treating all persons with dignity and respect.

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DISCUSSION:

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The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved in numerous and varied human encounters on a daily basis, effective communication is sometimes enough to resolve many situations and, where warranted, Officers may be required use force in carrying out the duties assigned to them.

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Officers must have an understanding of and a true appreciation for the limitations of their authority, particularly with respect to overcoming resistance from those with whom they come in official contact. Unnecessary and/or unreasonable use of force is a violation of the 4th Amendment; it is unconstitutional and extremely dangerous to officers and citizens. This department has the ability and responsibility to detect and take steps to prevent the use of unreasonable force by their officers.

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3 This Department recognizes and respects the value and dignity of all human life without
4 prejudice to anyone. It is also understood that vesting officers with the authority to use
5 reasonable force and protect the public welfare requires a careful balancing of all human
6 interests.

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8 The force used must be “objectively reasonable” under the Graham v. Connor [(1989)
9 490 U.S. 386, 109 S.Ct. 1865] standard. Under this critical standard, the force used by
10 the officer is evaluated in light of the totality of the facts and circumstances known to the
11 officer at the time the force is used. Factors considered are minimally the severity of the
12 crime at issue, whether the suspect poses an immediate threat to the safety of law
13 enforcement officers or others, and whether the suspect is actively resisting arrest or
14 attempting to evade arrest by flight. The evaluation of force is also made without regard
15 to the officer’s underlying motive or intent, and is evaluated using the “reasonable officer
16 standard.”

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18 Under this policy, all uses of force are reportable except for de minimis force, which is
19 described as physical interaction meant to separate, guide, and/or control that does not
20 cause pain or injury. For example, using hands or equipment to stop, push back, separate
21 or escort and handcuffing without resistance or enduring pain.

22
23 It is recognized that officers have no duty to retreat from resistance or threatened
24 resistance, and are not considered the aggressors when lawfully attempting to overcoming
25 resistance in effecting an arrest. [Reed v. Hoy 909 F.2d 324 (9th Cir. 1989)]

26
27 De-escalation tactics, active listening, proper and effective communication, building
28 empathy/rapport are actions that should be used by officers, when safe and without
29 compromising law enforcement priorities. De-escalation may increase the likelihood of
30 voluntary compliance. De-escalation more broadly refers to the strategic slowing down of
31 an incident in a manner that allows officers more time, distance, space and tactical
32 flexibility during dynamic situations on the street. A warning before any force is used
33 should be given if practicable and when safe.

34
35 ‘In judging whether [an officer’s] actions were reasonable, we must consider the risk of
36 bodily harm that [an officer’s] actions posed to [a suspect] in light of the threat to the
37 public that [the officer] was trying to eliminate” [Scott v. Harris 550 U.S. 372, 383
38 (2007)]

39
40 Force by officers can be said to have one of two purposes: The first is defense, the second
41 is control. Officers may use force in self-defense or in the defense of others. They may
42 also use force to control the subject’s actions; to affect an arrest, overcome resistance,
43 and/or prevent escape.

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3 Police officers are vested by the authority they are given by statute to use force when
4 necessary to protect the public welfare, maintain the peace and dignity of the
5 Commonwealth of Pennsylvania, and the jurisdiction of the Erie Police Department.
6 Therefore, the following policy is enacted under the authority of the Chief of Police:

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8 **Deprivation of rights under color of law**

9 Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully
10 subjects any person in any State to the deprivation of any rights, privileges, or immunities
11 secured or protected by the Constitution or laws of the United States, or to different
12 punishments, pains, or penalties, will be held accountable.

13
14 There is no racial element in a 'civil rights' violation, the "civil rights" designation comes
15 from the fact that these cases involve the abuse of official governmental power.

16 Officers are required by their position as peace officers to intervene in any situation they
17 perceive as unconstitutional. This intervention may take the form of one or more of the
18 following three actions: Strongly caution the officer, and/or physically restrain the
19 officer, and immediately report the incident without delay.

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21 **LEGALITY:** reference

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23 [a] Title 18, Pennsylvania Consolidated Statutes, sections 501, 503, 508

24 [b] Graham v. Connor [(1989) 490 U.S. 386, 109 S. Ct. 1865]

25 [c] Tennessee v. Garner 105 S. Ct. 1694 (1985)

26 [d] Scott v. Harris 550 U.S. 372, 383 (2007)

27 [e] Reed v. Hoy 909 F.2d 324 (9th Cir. 1989)

28 [f] Title 53, Municipal Police Education and Training (MPOETC)

29 [g] 18 U.S.C 242 Deprivation of rights

30
31 **PROCEDURES:**

32
33 1) A peace officer, or any person, whom he has summoned or directed to assist him,
34 need not retreat or desist from efforts to make a lawful arrest because of resistance
35 or threatened resistance to the arrest. He is justified in the use of any force, which
36 he reasonably believes to be necessary to affect the arrest and of any force which
37 he reasonably believes to be necessary to defend himself or another from bodily
38 harm while making the arrest. However, he is justified in using deadly force only
39 when he believes that such force is necessary to prevent death or serious bodily
40 injury to himself or such other person, or when he believes only that:

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42 (i) Such force is necessary to prevent the arrest from being defeated by
43 resistance or escape; **and**

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3 (ii) The person to be arrested has committed or attempted a forcible felony or
4 is attempting to escape and possesses a deadly weapon, or otherwise
5 indicates that he will endanger human life or inflict serious bodily injury
6 unless arrested without delay.
7
- 8 2) A peace officer making an arrest pursuant to an invalid warrant is justified in the
9 use of any force which he would be justified in using if the warrant were valid,
10 unless he knows the warrant is invalid.
11
- 12 3) Use of force to prevent escape-
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- 14 (i) A peace officer or other person who has an arrested person in his custody
15 is justified in the use of such force to prevent the escape of the arrested
16 person from custody as he would be justified in using if he were arresting
17 such person.
18
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- 20 4) Use of force to prevent suicide or the commission of crime.
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- 22 (i) The use of force upon or toward the person of another is justifiable when
23 the actor believes that such force is immediately necessary to prevent such
24 other person from committing suicide, inflicting serious bodily injury
25 upon their self.
26
- 27 Officers should be prepared to exercise considerable discretion when
28 dealing with persons with impaired faculties or diminished mental state
29 and to wait (develop a plan/utilize addition resources) as long as
30 reasonable so that the situation may be resolved peacefully.
31
- 32 (ii) The use of force upon or toward the person of another is justifiable when
33 the Officer believes that such force is immediately necessary to prevent
34 such other person from committing or consummating the commission of a
35 crime involving or threatening bodily injury, damage to or loss of property
36 or a breach of the peace, except that:
- 37
- 38 (a) Any limitations imposed by other provisions of this policy on the
39 justifiable use of force in self- protection, for the protection of
40 others, the protection of property, the effectuation of an arrest or
41 the prevention of escape from custody shall apply in spite of the
42 criminality of the conduct against which such force is used.
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- 44 (ii) The use of deadly force is not in any event justifiable under this
45 subsection unless: The Officer believes that there is a substantial

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3 risk that the person whom he seeks to prevent from committing a
4 crime will cause death or serious bodily injury to another unless
5 the commission or the consummation of the crime is prevented and
6 that the use of such force presents no substantial risk of injury to
7 innocent persons; or

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9 (iii) The justification afforded by this subsection extends to the use of
10 confinement as preventative force only if the Officer takes all
11 reasonable measures to terminate the confinement as soon as he
12 knows that he safely can, unless the person confined has been
13 arrested on a charge of crime.

14
15 **DEPARTMENTAL CONSIDERATION:**

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17 It is the policy of this department that Officers shall use only that amount and duration of
18 force which is reasonable and necessary given the facts and circumstances perceived by
19 the officer at the time of the event to effectively bring an incident under control.

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21 Retaliatory force or force that appears to have been applied as punishment for the
22 person's earlier verbal or physical resistance to an officer's command, and is not based
23 on a current threat posed by the person is unreasonable and not legally justifiable.

24
25 Members of the department shall only carry those specific weapons issued or authorized
26 by the Erie Police Department. Members shall carry only the weapons for which they are
27 qualified either through the department, or with the authorization of the Chief of Police.
28 Members carrying weapons not authorized shall be subject to disciplinary action.

29
30 Members shall be cognizant and not limited to the use of any implement, to include an
31 automobile, on another, is a use of force.

32
33 Supervisors should immediately respond to any scene:

- 34
- 35 • Where a weapon is reported use or threatened
 - 36 • Where persons with mental health problems are 'acting out'
 - 37 • Where a dispatcher or other member of the department believes there is
38 potential for use of force.

39 Given that no policy can realistically predict every possible situation an officer might
40 encounter in the field, it is recognized that each officer must be entrusted with well-
41 reasoned discretion in determining the appropriate use of force in each incident. While it
42 is the ultimate objective of every law enforcement encounter to minimize injury to
43 everyone involved, nothing in this policy requires an officer to actually sustain physical
44 injury before applying reasonable force.

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3 As noted, any application of force by a member of this department must be judged by a
4 standard of “objective reasonableness” at the moment force is used. When determining
5 whether or not to apply any level of force and evaluating whether an officer has used
6 objectively reasonable force, a number of factors should be taken into consideration.

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8 Those factors may include, but are not limited to:

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- 10 1. The reasonable perception of the officer of the conduct of the individual being
11 confronted.
 - 12 2. Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion,
13 number of officers vs. subjects, etc.).
 - 14 3. Influence of drugs/alcohol (mental capacity and physical capabilities).
 - 15 4. Proximity of weapons to the subject.
 - 16 5. Availability of other options (what resources are reasonably available to the
17 officer under the circumstances presented).
 - 18 6. Seriousness of the suspected offense(s) leading the officer to use force.
 - 19 7. Training and experience level of the officer.
 - 20 8. Potential for injury to citizens, officers, and the suspect(s).
 - 21 9. Risk of escape.
 - 22 10. Other exigent circumstances.
- 23

24 Officers are expected to make split-second decisions in tense, uncertain, and rapidly
25 evolving situations, and the amount of time to evaluate and respond to unexpected
26 changes may impact an officer’s decision in the application and duration of force. The
27 officer’s judgment does not have to be the “best” decision, only a reasonable decision.

28
29 While various levels of force exist, each officer is expected to respond with that level and
30 duration of force which reasonably appears appropriate under the circumstances at the
31 time to successfully accomplish the legitimate law enforcement purpose in accordance
32 with this policy.

33 34 **DEADLY FORCE CONSIDERATIONS:**

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36 Deadly Force is defined as the intentional application of force through the use of firearms
37 or any other means reasonably likely to cause death or serious physical injury.

38
39 All officers should be immediately able to justify the use of deadly force by articulating
40 the objective and reasonable belief that their life or another’s were in imminent danger of
41 death or serious bodily injury, given the totality of the facts or circumstances known to
42 them at the time force was used.

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3 Choke holds are generally prohibited. A chokehold shall include, but is not limited to,
4 any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce
5 intake of air. This type of hold is considered deadly force and should not be used except
6
7 in those situations where the rules of the use of deadly force have been met and it is
8 reasonable and necessary for their application. Officers must be fully prepared to justify
9 this extreme action.

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11 Warning shots are generally prohibited, except in certain extreme situations. Officers
12 electing to fire a warning shot must be fully prepared to justify this extreme action.

13
14 Firing from a moving vehicle is generally prohibited, except in certain extreme situations.
15 Police officers should not discharge their firearms from a moving vehicle unless deadly
16 physical force is being used against the police officer or another person present. An
17 officer choosing to fire from a moving vehicle must be fully prepared to justify this
18 extreme action. Officers shall NOT fire at a vehicle that is no longer an imminent threat.

19
20 Firing into a moving vehicle is generally prohibited, except in certain extreme situations
21 or in situations of defense of self or others. Police officers shall not discharge their
22 firearms at a moving vehicle unless deadly physical force is being used against the police
23 officer or another person present. An officer choosing to fire at a fleeing vehicle must be
24 fully prepared to justify this extreme action. Officers shall NOT fire at a vehicle that is no
25 longer an imminent threat.

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27 **REPORTING USE OF FORCE:**

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29 Members employing any use of force shall notify their supervisor as soon as is
30 practicable and shall document in detail the use of all force on an initial offense report
31 with all details. A good accountability system begins with an appropriate record of the
32 facts. Use of Force reports should 'document in detail' the incident and include:

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34 1. The name of the officer who used force
35 2. The names of other officers present, whether or not they used force,
36 3. A detailed narrative describing the circumstances, and the valid law enforcement
37 objective, that led up to the contact with the subject
38 4. A detailed description of the circumstances that led up to the contact with the
39 subject
40 5. A detailed narrative describing the words, actions or behaviors of the subject that
41 precipitated the need for force
42 6. A detailed narrative describing any force and non-force actions used, how those
43 actions furthered the intended law enforcement objective, and the observed results
44 7. A detailed narrative describing any force clearly observed being used by other
45 officers during this incident

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- 3 8. A detailed narrative describing any apparent injury to the subject, any complaint
4 of injury, or the lack of injury, including information regarding any medical aid or
5 medical evaluation provided
- 6 9. The names of the supervisors who responded to the incident and notifications
7 made.
- 8 10. All identified witnesses (non-police) present
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10 The Patrol Supervisor and/or OIC shall be notified of a use of force incident and shall
11 conduct an objective, impartial, and complete review of the incident. If any BWC video
12 captures any use of force, the officer's BWC shall be taken to the E.P.D. by the first
13 available supervisor and uploaded into the DEMS. The supervisor will review the use of
14 force report for completeness and identify strengths and weaknesses when necessary. All
15 discrepancies with policy and/or legal standards shall be referred to the Office of the
16 Chief or his designee.

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18 If the use of ANY force resulted in death or serious bodily injury the OIC shall:

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20 The OIC shall immediately notify the DEMS Administrator of the incident and request
21 the video footage be restricted from being viewed by all departmental personnel except
22 for the Police Chief, Inspector and the appropriate investigative unit and D.A.'s office.
23 However, the Police Chief or their designee may approve access to other individuals or
24 entities if necessary or required by court order.

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26 Once the recorded media is uploaded, stored, and restricted from view, the BWC will be
27 returned to the officer, as soon as possible.

28

29 Notify the Chief of Police and/or Assistant Chief of Police, the Office of Professional
30 Standards, and other Command Staff members. The Chief of Police or designee shall
31 notify the District Attorney's Office and the president of the Fraternal Order of Police.

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33 The Office of Professional Standards shall immediately begin conducting an investigation
34 into the justification of the use of force. This force investigation serves as the basis for
35 reviewing the force incident to determine whether the officer acted both lawfully and
36 consistently with departmental policy, as well as to determine whether the incident raises
37 policy, training, tactical, or equipment concerns that need to be addressed for officer and
38 civilian safety. (Ref: 2.23 Internal Affairs)

39

40 The Office of Professional Standards will confer with the Office of the District Attorney
41 and decide if another law enforcement entity should be involved in the continuing
42 investigation. The use of outside law enforcement entity will allow for an open and
43 independent investigation into all of the circumstances of the incident.

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3 The Commander, Office of Criminal Investigation, or designee, shall have overall control
4 of the criminal investigation/incident scene, and shall make all proper notifications to
5 include the District Attorney, Coroner, etc.
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7 In cases involving the use of a firearm by an officer, the officer is prohibited from,
8 unloading, reloading, or altering the firearm in any manner following the incident. The
9 on scene supervisor shall secure the officer's weapon and provide the officer with another
10 weapon at that time. The Officers' weapon shall be secured as evidence.
11

12 In cases involving a death of another by a member of the department, such member shall
13 only be returned to duty after the officer has been determined to be ready for duty by
14 competent medical and/ or mental health professionals. The officer shall then be returned
15 to duty provided the internal investigation is complete and the actions of the officer found
16 to be justified. (Ref: 2.24 Critical Incident Investigations and Review)
17

18 This policy is not intended to suggest, imply or indicate that the officer has acted in an
19 improper manner, used unreasonable force or violated citizen rights. All legal
20 considerations (Garrity, Miranda etc.) shall be made to the officers involved.
21

22 The officer involved shall make him / herself available at all times for official interviews
23 or statements regarding the incident. In the event the officer is leaving the Erie area the
24 officer shall notify the Chief of Police or designee.
25

26 The officer shall not discuss the incident with anyone except representatives of the
27 department, Erie County District Attorney's Office representatives, the officer's
28 bargaining unit representatives, private attorney, or mental/ medical professional.
29

30 **PROVISIONS OF MEDICAL SERVICES:**

31
32 In all instances where a person under the officer's control has received physical injury as
33 a result of use of force, or any other reason, the officer shall notify their supervisor and
34 immediately seek medical assistance when necessary.
35

36 Police officers are not trained nor allowed to make a medical assessment beyond
37 determining that a subject's behavior or situation is unusual and requires medical
38 attention. While police officers cannot and should not attempt to make a diagnosis, they
39 should be aware that some of the symptoms they may be encounter during patrol
40 activities mimic and may be mistaken as criminal conduct.
41

42 Officers should be aware of these unusual mental health and/or medical characteristics
43 such as anxiety, rapid emotional changes, sweating, shaking, hallucinations,
44 hyperthermia, paranoia (may lead to lashing out) and seizures and should seek medical
45 assistance when necessary.

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3 Department personnel shall be responsible for provisions of medical treatment for all
4 injured persons, for those requesting medical treatment, or those appearing to need
5 medical care.

6
7 **ADMISTRATIVE REVIEW OF CRITICAL INCIDENTS:**

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9 All reported use of force incidents shall be reviewed by division command personnel for
10 determination of the following: (1) Adherence to department policies and procedures. (2)

11
12 That the relevant policy was clearly understandable and effective, and that departmental
13 training was relevant and current.

14
15 All findings of policy violations or training inadequacy shall be reported to the Chief of
16 Police with recommendations for possible discipline, resolution, policy or training
17 modification and/or tactical or equipment concerns that need to be addressed for officer
18 and civilian safety.

19
20 Some critical incidents will be reviewed under Policy # **2.24 Critical Incident**
21 **Investigation and Review.** Critical Incident Reviews are intended to provide additional
22 information to improve police response, enhance risk management, increase public safety
23 and reduce potential department liability. It also analyzes the Departments response to
24 ensure that it reflects current best practices and addresses the need for any changes to
25 policies, procedures and/or training.

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28 **SUMMARY:**

29
30 The decision to use force rests with each officer. The Erie Police Department recognizes
31 that community trust and confidence in the police is critical to effective policing and is
32 achieved largely through fair and equitable treatment of the public. While there is no way
33 to specify the exact duration or type of reasonable and necessary force to be applied in
34 any situation, each officer is expected to use these guidelines to make reasonable force
35 decisions in a professional, impartial, and safe manner.

36
37 End.