




MBTA Transit Police

DEPARTMENT MANUAL	
CHAPTER 171	

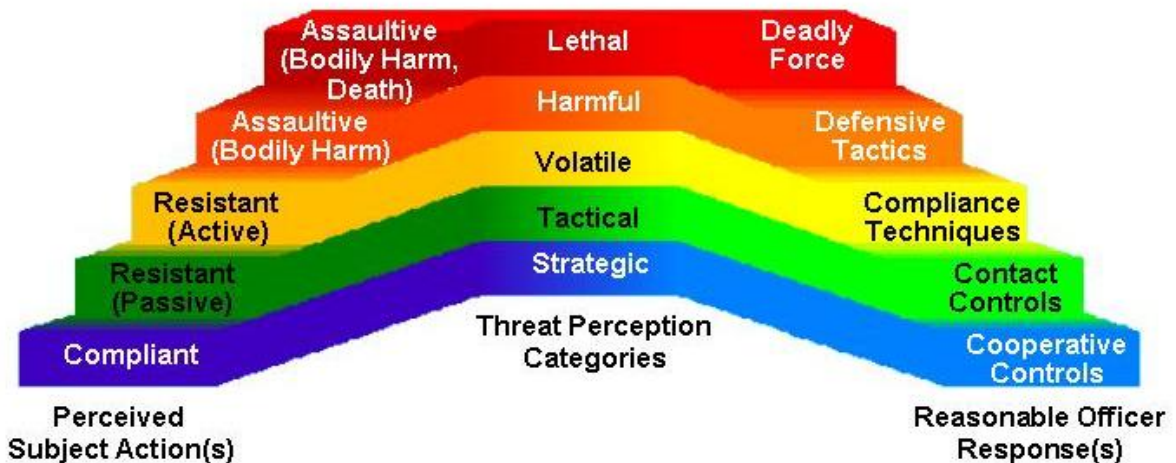
General Order No. 2017-02

SUBJECT PATROL Use of Force in Response to Resistance/Aggression		DATE OF ISSUE 04/13/2017	EFFECTIVE DATE 04/18/2017
REFERENCES CALEA 1.3.1, 1.3.2, 1.3.4-8, 1.3.10, 1.3.12, 1.3.13		ISSUING STATUS <input type="checkbox"/> NEW <input checked="" type="checkbox"/> AMENDS <input type="checkbox"/> RESCINDS	ISSUING AUTHORITY  Kenneth Green Chief of Police
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1.0 **BACKGROUND.** By statute law and when necessary, Police Officers have the right to use force in response to resistance or aggression. Firearms are but one type of force that Officers are authorized to use in carrying out their responsibilities. In addition to firearms, Officers are provided with the Monadnock Autolock Expandable Baton™ (MEB), Oleoresin Capsicum spray (OC), and other equipment issued and/or approved by the Chief of Police (e.g., trained canine (K-9) dogs, etc.). It is important that Officers of the Department exercise the utmost care and restraint when using these devices and/or animals, since they have the potential to cause death or serious injury. {1.3.4}

1.1 **USE OF FORCE.** Use of force is the verbal and/or physical action an Officer may take to attain and/or maintain control of a situation or incident, which requires lawful intervention. The degree of force used is dependent upon the amount of resistance or threat to the safety of the public or the Officer. Control is reached when a person complies with the Officer's demands or the person is restrained or apprehended. The Officer must be prepared to utilize the force options that are reasonable for the circumstances, including the possibility of force de-escalation when appropriate. {1.3.1}

1.2 **USE OF FORCE MODEL.** {1.3.4}



Model taken from the MPTC

- 1.3 **USE OF FORCE FACTORS.** The amount and degree of force which may be exercised will be determined by the surrounding circumstances including, but not limited to:
- the nature of the offense;
 - the amount of resistance, both physical and verbal, displayed by the subject against whom force is used;
 - action by third parties who may be present;
 - physical odds against the Officer; or
 - the feasibility of alternatives.
- 2.0 **TERMINOLOGY.** {1.3.2}
- 2.1 **LETHAL FORCE.** Lethal force is any force that is intended to or likely to cause death or serious bodily injury. The use of a firearm is ALWAYS the use of lethal force. {1.3.2}
- 2.2 **LESS LETHAL FORCE.** Less lethal force is that amount of force that will generally not result in serious injury or death. It is usually employed as a defensive measure. Officers are issued less lethal police equipment, OC, MEB, to provide them with an advantage when fending off or subduing an unarmed assailant. {1.3.4}
- 2.3 **POLICY.** Policy is a statement of the values of the Department; the objectives and beliefs upon which the application of discretion is based.
- 2.4 **REASONABLE BELIEF.** The facts or circumstances the Officer knows, or should know, are such as to cause an ordinary and prudent Officer to act or think in a similar way under similar circumstances. {1.3.2}
- 2.5 **RESISTANCE.** Those actions made by the offender that use or threaten to use physical force or violence to prevent arrest/custody.
- 2.6 **RULE.** A rule is absolute, and sets forth things or actions which must, or must not, be done. There is no justification for violating a rule.
- 2.7 **SERIOUS PHYSICAL INJURY.** Serious physical injury is a bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement, or results in long-term loss or impairment of the function of any body member or organ. {1.3.2}
- 3.0 **USE OF LESS LETHAL FORCE.** In determining when to use force, Officers of the Department are to be guided by the principle that the appropriate amount of force necessary to control the situation is the greatest amount of force that is permissible (see Use of Force above). Any use of force must be justified. Unnecessary use of force can never be justified. {1.3.1, 1.3.4}
- 3.1 **POLICY.** The use of force is never to be considered routine, is permissible only to overcome resistance or aggression directed against the Officer or others, and only in the appropriate amount necessary to effect lawful objectives. Above all, the MBTA Transit Police Department values the safety of its employees and the public. Likewise, it is vital that Officers should use force with a high degree of restraint. {1.3.1}

3.2 **RULES.** The above policy is the basis of the following rules designed to guide Officers in cases involving the use of force. {12.2.1 g}

Rule 1 Officers shall not use force except to overcome resistance or aggression directed against the Officer or others. {12.2.1 g}

Rule 2 Officers shall only use the appropriate amount of force necessary to effect lawful objectives. {1.3.1, 12.2.1 g}

Rule 3 Officers shall not use the MEB or another instrument to strike a person on the head unless the use of lethal force is justified. {12.2.1 g}

Rule 4 No MBTA Transit Police Officer shall be authorized to carry issued less lethal weapons (MEB/OC) until he/she has: (1) been issued a copy of the Department's use of force policy, received instruction and attended a lecture regarding the use of force policy, and legal updates; and is (2) qualified by a certified MPTC Defensive Tactics Instructor. {1.3.4, 1.3.10, 1.3.12, 12.2.1 g}

4.0 **USE OF LETHAL FORCE/FIREARMS.** This section sets forth guidelines for MBTA Transit Police Officers making decisions regarding the use of lethal force. The guidelines have been developed with serious consideration for the safety of both the Officer(s) and the public, and with the knowledge that Officers sometimes must make split second decisions in life and death situations. The policy and the rules set forth below will be the standards by which the actions of MBTA Transit Police Officers will be measured.

The MBTA Transit Police Department places its highest value on the life and safety of its Officers and the public. The Department's policies, rules and procedures are designed to ensure that this value guides Officers' use of firearms or any other type of lethal force.

The citizens of the Commonwealth have vested in their Officers the power to carry and use lethal force in the exercise of their service to society. This power is based on trust and, therefore, must be balanced by a system of strict accountability. The serious consequences of the use of lethal force by Officers necessitate the specification of limits for Officer discretion; there is often no appeal from an Officer's decision to use lethal force. Therefore, it is imperative that every effort is made to ensure that each use of lethal force is not only legally warranted, but also rational and reasonable. {1.3.1}

Officers are equipped with lethal force, firearms, as a means of last resort to protect themselves and others from the immediate threat of death or serious physical injury. The basic responsibility of Officers to protect life also requires that they exhaust all other reasonable means before resorting to the use of lethal force. Even though all Officers must be prepared to use lethal force when necessary, the utmost restraint must be exercised in its use. {1.3.2}

4.1 **POLICY.** The use of lethal force is never to be considered routine, it is permissible only in defense of life or serious bodily injury, and then only as a last resort. Above all, the MBTA Transit Police Department values the safety of its employees and the public. Likewise, it is vital that Officers should use firearms/lethal force with a high degree of restraint. Whenever a police shooting occurs, an investigation will be conducted pursuant to Department Manual, Chapter 172, and Investigative Procedures for Police Shootings.

4.2 **RULES.** The above policy is the basis of the following rules designed to guide Officers in all cases involving the use of lethal force and/or firearms: {1.3.4, 1.3.12, 12.2.1 g}

- Rule 1** Officers shall use lethal force only when they reasonably believe that the action is necessary to protect himself or herself or another person from imminent death or serious physical injury. {1.3.2, 1.3.4, 12.2.1 g}
- Rule 2** Officers shall not use lethal force against a fleeing felon except to protect himself or herself or another person from imminent death or serious physical injury, as a direct result of the felon's flight. {1.3.4, 12.2.1 g}
- Rule 3** Officers may discharge their firearms only when doing so will not unreasonably endanger innocent persons. {1.3.4, 12.2.1 g}
- Rule 4** Officers shall not use lethal force to subdue persons whose actions are destructive to property or injurious only to themselves unless such actions are an imminent threat of death or serious physical injury to the Officer or others. {1.3.4, 12.2.1 g}
- Rule 5** Officers shall not discharge their weapons at a moving vehicle unless there is imminent threat of death or serious physical injury to the Officer or others and there is no reasonable alternative. {1.3.4, 12.2.1 g}
- Rule 6** Officers shall not shoot a firearm while operating a motor vehicle. {1.3.4, 12.2.1 g}
- Rule 7** Officers shall not fire warning shots or shoot to signal for help. {1.3.3, 1.3.4, 12.2.1 g}
- Rule 8** Officers shall not draw or display their firearms unless they reasonably believe there is a threat or probable cause to believe there is a threat to life or serious bodily injury. {1.3.4, 12.2.1 g}
- Rule 9** No MBTA Transit Police Officer shall be authorized to carry a Department firearm until he/she: {1.3.4, 1.3.12, 12.2.1 g}
- has been issued a copy of the Department's use of force policy; {1.3.4, 1.3.12, 12.2.1 g}
 - has received instruction and attended a lecture regarding the use of force policy, home safety, and legal updates; and {1.3.4, 1.3.12, 12.2.1 g}
 - is qualified by a certified MBTA Transit Police Firearms Instructor. {1.3.4, 1.3.12, 12.2.1 g}

4.3 **DESTROYING ANIMALS.** Officers are authorized to use a firearm to destroy an animal if it can be done safely and with the permission of their immediate Supervisor under these circumstances;

- vicious or suspected rabid animal when it presents a danger to person(s) or other animals in the area and other methods of containment are either insufficient or unavailable; and
- animal that is so seriously injured that humanity dictates its relief from further suffering.

4.3.1 Officers will adhere to the following guidelines when destruction is necessary.

- an Officer destroying a suspected rabid or vicious animal should make an effort to avoid shooting the animal in the head;
- ensure that the destruction can be done without endangering the life and/or property of anyone, including being cognizant of the shooting background;
- immediately notify Animal Control and remain on the scene until it is picked up for examination if a person has been bitten or attacked by the animal;
- before destroying any domestic animal make a reasonable effort to locate the animal's owner or person(s) caring for the animal; and
- if the animal's owner/caretaker cannot be located or is not available, determine if Animal Control can respond to transport the animal to an appropriate facility.

5.0 **INJURIES.** If any visible injury results from the use of force, or if the suspect complains of any injury, immediate appropriate measures will be undertaken in accordance with first responder protocol. After any initial first aid is administered, the Officer(s) will arrange to have the injured party examined by Emergency Medical Services (EMS) personnel. The complaint and resulting medical attention will be documented in the police incident report and BlueTeam (see below). {1.3.5}

5.1 **STRESS COUNSELING.** When an Officer has used force and that use of force has resulted in a serious injury or death, the Officer will automatically be referred to stress counseling pursuant to Department Manual, Chapter 245, CRITICAL INCIDENT STRESS MANAGEMENT.

6.0 **USE OF FORCE VIDEO REQUEST.** The Shift Supervisor on duty at the time of the incident will ensure the Use of Force Report is completed correctly and accurately. All Use of Force Reports will include the completed body image. The Supervisor will forward the report via Blue Team to the appropriate Shift Lieutenant for review and approval.

The Shift Lieutenant/Supervisor will request all video of the incident via email at videorequest@mbta.com and the Professional Standards Unit will be "cc'd" at ProfessionalStandards@mbta.com. All video requests must contain the following information:

- date of Incident;
- time of Incident;
- location of incident/bus number;
- purpose for request;
- case number; and
- Officer(s) involved.

All video will be secured in the Digital Information Management System (DIMS) under the appropriate case number. The Shift Lieutenant/Supervisor will ensure the Officer's Blue Team narrative includes a statement that video evidence was requested. If no video is available, the Shift Lieutenant/Supervisor will state in Blue Team his/her approval was based solely on the Officer's reports and statements.

Prior to approving the Officer's Use of Force report the Shift Lieutenant will review the video to ensure his Officer is in compliance with this chapter. Upon completion, the Shift Lieutenant will forward his/her recommendation to the Professional Standards Unit via Blue Team.

7.0 USE OF FORCE REVIEW. The following procedures will be adhered to in all cases where an Officer uses force, except firearm (see section 8.0), in the performance of his/her duty: {1.3.7}

7.1 USE OF FORCE REPORTS. Any Officer who applies physical force at a level three (Active Resistant) or higher as defined in the Use of Force Model in § 1.2 will be required to complete a Blue Team Use of Force Report. Escort holds will not require a Blue Team Use of Force Report, however, if the use of force escalates to a restraint hold (i.e., arm bar takedown, wrist lock, etc.) a Blue Team Use of Force Report will be required.

Any Officer who uses an MEB, discharges their OC, causes a canine to bite or draws his/her firearm and points it at any person, group, or vehicle, or employ any other application of force that results in or alleged to have resulted in, an injury or death, other than the discharge of a firearm, will complete a Blue Team Use of Force Report. Each field is to be filled out as completely as possible. The summary of incident section must contain all pertinent information regarding the Use of Force. {1.3.6 b, c, d, 1.3.7}

This report will be electronically submitted to the Officer's immediate Supervisor for review and approval before completion of the tour of duty during which the incident occurred or within a reasonable amount of time with a Supervisor's approval. The Supervisor will electronically forward the report through the chain of command to the Office of Professional Standards as soon as possible, but no later than the Officer's next tour of duty. If the Blue Team entry is not complete, the Supervisor will return it to the Officer. The Office of Professional Standards will forward a copy of the report to the Patrol Operations Division Commander. {1.3.7}

7.2 USE OF FORCE COMMITTEE. Use of Force Reports will be reviewed by a standing Committee on Use of Force, appointed by the Chief of Police, consisting of the Superintendent or his/her designee, Patrol Operations Division Commander, a Supervisor assigned to the Professional Standards Unit, the Training Supervisor, the Department Firearms Instructor, and a Patrol Officer. {1.3.7}

Quarterly, the Use of Force Committee will review each Use of Force Report to determine whether the use of force was in compliance with Department policy, rules, and procedures. The Committee's findings will be submitted through the chain of command to the Chief of Police for review and appropriate action. {1.3.7}

7.3 ANNUAL USE OF FORCE ANALYSIS. Annually, the Administrative Services Division (ASD) Commander or his/her designee will complete an analysis of all Use of Force Reports. He/she will submit the results of this report through the chain of command to the Chief of Police. This analysis will include a review of any reports submitted in accordance with the Firearms Discharge Section referred to in this chapter. {1.3.13, 11.4.1 b, c, d, e}

7.4 **REMOVAL FROM LINE-DUTY ASSIGNMENT.** When an Officer has used force and that use of force has resulted in serious physical injury or a death, the Officer will automatically be reassigned to administrative duties pending the review of the case by the Committee on Use of Force (see Sections 8.0 and 8.6 of this Chapter for firearms). {1.3.8}

8.0 **FIREARMS DISCHARGE REVIEW.** The following procedures will be adhered to in all cases where a Police Officer discharges a firearm other than for training purposes, competition, or practice at an approved range. These procedures will also be followed whenever a firearms discharge results in an injury, regardless of the circumstances. If, in the performance of duty, an Officer draws his/her firearm and points it at any person, group, or vehicle, the Officer will complete a Blue Team Use of Force Report. {1.3.6 a, 1.3.7}

8.1 **INJURIES.** If any injury results from the discharge of a firearm, **immediate** appropriate measures will be undertaken in accordance with first responder protocol. After any initial first aid is administered, the Officer(s) will arrange to have the injured party **immediately** examined by Emergency Medical Services (EMS) personnel. The complaint and resulting medical attention will be documented in the police incident report and Firearms Discharge Report (see below). {1.3.5, 1.3.7}

8.2 **FIREARMS DISCHARGE REPORT.** An MBTA Police Firearms Discharge Report and a Blue Team Report will be completed by an Officer discharging his/her firearm and submitted to his/her Supervisor before completion of the tour of duty during which the incident occurred or within a reasonable amount of time with a Supervisor's approval. Reports will be forwarded through the chain of command, to the Office of Professional Standards who will provide the Patrol Division Commander with a copy of the reports. A copy of the Blue Team Report, the police incident report, and/or affidavit with detailed information regarding the incident will be attached to the Firearms Discharge Report. The Firearms Discharge Report and Blue Team narrative section will contain all pertinent information regarding the firearms discharge. ***No reference to any attached documents will be made.*** {1.3.6 a, 1.3.7}

If the discharge occurred during the Officer's time off, he/she will submit the Firearms Discharge Report as soon as practicable.

In either case, if the Officer is incapacitated due to injury and/or hospitalization, the report will be completed as soon as practicable.

8.3 **FIREARMS DISCHARGE REVIEW COMMITTEE.** A Firearms Discharge Review Committee appointed by the Chief of Police will review firearm Discharge Reports within 30 days of the incident. The Committee may request additional time if circumstances require it. The Committee will consist of the Superintendent, the Patrol Operations Division Commander, the ASD Commander, a Supervisor assigned to the Professional Standards Unit, the Training Supervisor, the Department Firearms Instructor, a Patrol Supervisor, and a Patrol Officer. {1.3.7}

The Committee will review each incident to determine whether the firearms use was in compliance with the Department's policies, rules and procedures. During the review process, the Committee will have access to all investigative reports and materials that were submitted regarding the shooting. {1.3.7}

The findings of the Committee will be submitted through the chain of command to the Chief of Police for review and appropriate action. {1.3.7}

The District Attorney's Office, of the appropriate jurisdiction where the shooting occurred, will conduct a parallel investigation independent from the Department inves-

tigation (Department Manual, Chapter 172, Investigative Procedures for Police Shootings), or the Firearms Discharge Committee's review.

The Committee sits as an investigatory body in determining the legitimacy of the use of force by Officers. As such, the conduct and content of its proceedings are privi-
leged. No member of the Committee may comment publicly or privately on the Committee's proceedings or deliberations without the express permission of the Chief of Police. Furthermore, all evidence received and reviewed by the Committee, including but not limited to, police reports, memoranda, photographs, diagrams, written or recorded statements of witnesses, medical reports, ballistic reports, video or audio recordings and any other document of any kind and in any format is the property of the MBTA Transit Police Department and may not be copied or disseminated to any person or entity without the express permission of the Chief of Police.

- 8.4 **REMOVAL FROM LINE-DUTY ASSIGNMENT.** When a Officer has discharged a firearm during the performance of his/her duties, the Officer will automatically be re-assigned to administrative duties pending the completion of the Department police shooting investigation, and upon approval of the Chief of Police. {1.3.8}
- 8.5 **FIREARMS RE-CERTIFICATION.** If the facts of the incident support a conclusion that the use of lethal force was not in compliance with MBTA Transit Police policies, rules and procedures, the Officer will be required to successfully complete a firearms certification training program in addition to any discipline that may be imposed.

Section 1.0, 2.6, 3.1, 4.3, 6.1, 7.0 Rules 1, 4, 6 revised 9/2010

Section 4.1, 5.0, 6.1, 6.3 revised 7.2 deleted 1/2014

Sections 6.2, 6.3, 7.2, 7.3 revised 5/16

Sections 6.0 added, 7.1, 7.2, 8.3 revised 11/16

Section 7.1 revised 4/17