

POLICIES, PROCEDURES, AND RULES

Subject: 1.3.1 Use of Force	Effective Date: June 18, 2019
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I. PURPOSE

The purpose of this directive is to state the Fayetteville Police Department (FPD) policy regarding the use of force, including deadly force, less lethal force and defensive tactics.

II. DISCUSSION

The value of human life is immeasurable in our society. Police officers have been delegated the responsibility to protect life and property and apprehend criminal offenders. The apprehension of criminal offenders and protection of property must at all times be secondary to the protection of life. The officer's responsibility for protecting life must include his or her own.

III. DEFINITIONS

Deadly Force – Deadly force is that force which may cause death or grave injury or which creates some specified degree of risk that a reasonable and prudent person would consider likely to cause death or grave injury.

Physical Force – Physical force is any bodily impact, restraint, confinement or the threat thereof.

Reasonable Belief – Reasonable belief is fact or circumstances the officers 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.

Serious Physical Injury – Serious physical injury is bodily injury that creates a substantial risk of death; cause serious, permanent disfigurement; or results in a long-term loss or impairment of the functioning of any bodily member or organ.

IV. POLICY

It shall be the policy of the Fayetteville Police Department that its officers shall not use more force in any situation than is reasonably necessary under the circumstances [CALEA 1.3.1].

Officers will receive in-service training on the department's use of force policy on an annual basis [CALEA 1.3.11]. Officers of the Fayetteville Police Department shall only carry firearms, less-lethal weapons, and ammunition issued to them, or approved, by the Fayetteville Police Department while on duty. While working off duty assignments that have potential for police action, officers shall only carry firearms, less-lethal weapons and ammunition issued to them, or approved, by the Fayetteville Police Department [CALEA 1.3.9].

A. Use of Deadly Force

1. An officer may use deadly force to protect him/her or others if he/she has reasonable belief of immediate threat of death or serious physical injury [CALEA 1.3.2].
2. The use of deadly force shall be prohibited in the apprehension of misdemeanants, since the value of human life far outweighs the gravity of a misdemeanor offense.
3. Deadly force shall never be used on mere suspicion a crime, no matter how serious, was committed or the person being pursued committed the crime. An officer shall either have witnessed the crime or have sufficient information to know, as a virtual certainty, that the suspect committed an offense for which the use of deadly force is permissible.
4. Officers shall not be permitted to fire at felony suspects when the officer believes the suspect can be apprehended reasonably soon thereafter without the use of deadly force or when there is substantial danger to innocent bystanders. Although the requirement of using lesser force, when possible, is a legal rule, the other limitations are based on sound public policy. To risk the life of innocent persons for the purpose of apprehending a felon cannot be justified.
5. Officers shall not discharge a firearm at or from a moving vehicle, except as the ultimate measure of self-defense or defense of another person.
6. Officers shall not fire their weapons to kill, but rather to stop and incapacitate an assailant from completing a potentially deadly act. For maximum stopping effectiveness and minimal danger to innocent bystanders, the officer should shoot at "center body mass."
7. An officer may use deadly force to effect the capture or prevent the escape if the officer reasonably believes the suspect has committed a felony involving the use or threatened use of deadly force and the officer has probable cause to believe the suspect poses a significant threat of death or serious physical injury to the officer or others.
8. In order to protect the community's interest when employees may have exceeded the scope of their authority in their actions or in their use of deadly force and to shield employees who have not exceeded the scope of their authority from possible confrontations with the community, employees whose actions or use of force in an official capacity results in death or serious physical injury shall be placed on mandatory leave with pay pending an Administrative Review of the circumstances by the Office of Professional Standards. This shall include all employees, is not limited to shootings, and will include incidents such as fatal or serious physical injury motor vehicle collisions involving employees [CALEA 1.3.8].
9. The killing of an animal is justified by the following conditions:
 - a. For self-defense, to prevent injury to an officer or another, or when the animal is so badly injured that humanity requires its relief from further suffering.
 - b. The destruction of vicious animals should be guided by the same rules set forth for self-defense and safety of others.

- c. A Use of Force Report and memorandum to the officer's direct supervisor shall be completed when an animal is killed for the self-defense of officers or safety of others.
- d. A seriously wounded or injured animal may be destroyed upon approval from a supervisor, and only a Use of Force Report is required.

B. Use of Physical Force and Less-Lethal Weapons

All police officers of the Fayetteville Police Department are directed to obtain defensive tactics training and certification to carry and use the departmental authorized less-lethal weapons. Officers will be issued copies of FPD policy 1.3.1 and will be instructed in this policy [CALEA 1.3.12]. Defensive tactics and less-lethal weapons provide officers with additional use of force options for gaining compliance of resistant or aggressive individuals in arrest and other enforcement situations.

It shall be the policy of the Fayetteville Police Department that officers use defensive tactics and less-lethal weapons when warranted, but only in accordance with guidelines set forth in FPD policy 1.3.4, and in accordance with guidelines established in this policy and the applicable general orders.

All departmentally approved less-lethal devices are deployed as additional police tools and are not intended to replace firearms or self-defense techniques. Officers choosing to use these devices should not compromise their safety.

C. De-escalation of Force

De-escalation tactics and techniques are those actions undertaken by an officer(s) to avoid physical confrontations, unless immediately necessary to protect someone or to stop dangerous behavior, while minimizing the need to use force during an incident when the totality of the circumstances and time permit. De-escalation tactics and techniques are employed to increase the likelihood of voluntary compliance and cooperation.

1. When time and circumstances reasonably permit, an officer(s) shall consider whether a subject's lack of compliance is a deliberate attempt to resist or is the result of an inability to comply based on factors including, but not limited to:
 - a. Medical conditions,
 - b. Mental impairment,
 - c. Developmental disability,
 - d. Language barrier,
 - e. Drug Interaction, or
 - f. Behavioral crisis.
2. An officer's awareness of these possibilities, when time and circumstances reasonably permit, shall then be balanced against the facts of the incident and which tactical options are the most appropriate to bring the situation to a safe resolution. An officer is not expected to engage in force de-escalation measures that could jeopardize the safety of the community or of any employee.
3. Officers need only select a level of force that is within the range of "objectively reasonable" options. Officers must rely on training, experience and an assessment of the

situation to decide an appropriate level of force to be applied. Reasonable and sound judgement will dictate the force option to be employed.

4. Officers may either escalate or de-escalate the use of force as the situation progresses or as circumstances change. When a subject is under control, either through the application of physical restraint or the suspect's compliance, the degree of force shall be de-escalated accordingly.

D. Firearms

1. All officers of the Fayetteville Police Department shall be issued individual copies of and receive instruction on the department's policy regarding use of deadly force prior to being issued a firearm [CALEA 1.3.12].
2. Qualification with the issued primary handgun is an essential job function of a Fayetteville police officer. Failure to qualify may result in disciplinary action, up to and including termination of employment. Additionally, failure to qualify with any other department-approved firearms would prohibit that officer from being allowed to carry that particular firearm [CALEA 1.3.10]. An Arkansas Commission on Law Enforcement Standards and Training (CLEST) certified weapons instructor shall conduct training and qualification [CALEA 1.3.11 a].
 - a. Officers shall qualify with the issued primary handgun four times each year, at least one of which will meet a CLEST approved Standard Qualification Course of Fire for one target [CALEA 1.3.11 b].
 - b. On all other qualification relays, officers shall qualify with a score equal to or better than the established standard set by the Chief of Police.
 - c. Officers certified on the department approved secondary handgun, shotgun or rifle shall qualify annually on a CLEST approved course.
 - d. All firearms training and qualification scores, including remedial training if necessary, will be documented and maintained by the Training Division. The records will be maintained for the duration of an employee's employment, plus five years. [CALEA 1.3.11 b].
 - (1) An officer who fails to qualify with his/her issued handgun(s), shotgun, or rifle after two consecutive attempts shall be referred for remedial training by a certified firearms instructor.
 - (2) The firearms instructor providing the remedial training shall notify the officer's immediate supervisor and the Chief of Police in the event the officer is still unable to qualify at the conclusion of the extra training session.
 - a) Upon notification an officer has failed to qualify with their issued primary handgun, the supervisor shall immediately relieve the unqualified officer of the issued primary handgun. The officer will be placed on restricted duty as determined by the Chief of Police or his / her designee. The unqualified officer will be directed to report to the Training Division the next working day for additional remedial training. The officer's authority to carry the primary handgun shall remain revoked until such time as the officer qualifies or the determination is made the officer is not responding to further training [CALEA 1.3.11 c].
 - b) If an unqualified officer does not satisfactorily respond to remedial training and remains unqualified, the Chief of Police shall be notified in writing.

- c) Any officer, who fails to qualify with their issued primary handgun, and receives remedial training more than once during a calendar year, shall be subject to disciplinary action.
 - d) Upon notification an officer has failed to qualify with a secondary handgun, shotgun or rifle, the officer's authority to carry the firearm shall remain revoked until such time the officer qualifies. The Training Division shall schedule all additional remedial training and qualifications with department shotguns and rifles. It shall be the responsibility of the officer to schedule additional remedial training and qualifications with secondary handguns.
 - e. Officers shall attain and demonstrate knowledge of the laws concerning the use of firearms and be familiar with and recognize safe-handling procedures for the use of these weapons.
 - f. Any officer returning to duty after an absence exceeding three months shall report to the Training Division for refresher training and a CLEST approved qualification prior to being permitted to return to full duty.
- E. Except for general maintenance, storage or authorized training, officers shall not draw or exhibit their firearms unless circumstances cause the officer to believe it may be necessary to lawfully use the weapon in conformance with other sections of this policy.
- F. Warning shots are strictly prohibited. [CALEA 1.3.3].
- G. It shall be the policy of the Fayetteville Police Department to permit full-time sworn members of the department to possess and carry a concealed firearm while off-duty. Officers should also be aware that Federal Law, known as the Law Enforcement Officers Safety Act of 2004, provides certified law enforcement officers with the right to carry a concealed firearm in any jurisdiction of the United States.
 - a. Officers are not required to carry a firearm while off-duty, but may do so at their option.
 - b. Officers exercising the option to carry a firearm while off-duty are authorized to carry their issued primary and/or secondary handgun(s).
 - c. Authorization for officers to carry firearm while off-duty shall be subject to the following conditions:
 - (1) Officers will be required to have in their possession the department-issued badge and official identification card.
 - (2) Officers in plain clothes wearing their firearms exposed to the public view shall display their department badge near the firearm in a manner that is clearly visible to the public unless special circumstances exist.
 - (3) Officers who choose to carry a firearm other than one issued by the police department shall qualify to demonstrate proficiency in the use of that firearm with the Training Division on an annual basis at their own expense.
- H. Department-Issued Weapons and Ammunition: Reference may be made to FPD policy 41.3.5 for specifications of department-issued weapons and ammunition.
 - a. All department-issued firearms will be inspected on an annual basis by a certified armorer and must be approved by the armorer before being issued and/or carried [CALEA 1.3.9 c,d,e].
 - (1) The Training Division will maintain weapons inspections reports.
 - (2) Firearms determined to be unsafe or irreparable by certified weapons instructors or armorers shall immediately be removed from service with a report indicating such status [CALEA 1.3.9 d.].

- (3) For weapons in need of repair, a certified armorer will make the decision to repair the weapon or to send the weapon to the factory's certified repair center [CALEA 1.3.9 d.].
- (4) The Training Division will maintain a record on all weapons in service to include inspection date(s) and maintenance [CALEA 1.3.9 e.].
- b. Officer Responsibility for Department-Issued Firearm:
 - (1) Officers must take reasonable and adequate care of any firearm issued to them.
 - (2) Officers shall be responsible for reporting damaged or unsafe firearms to the on-duty supervisor who will ensure unsafe firearms are removed from service and the certified armorer is notified. Officers shall complete a memorandum documenting the damaged or unsafe firearm to his immediate supervisor to be forwarded through the chain of command, as well as to the certified armorer [CALEA 1.3.9 d.].
 - (3) In the event a firearm is lost, damaged, destroyed or stolen, the officer may be subject to financial liability and/or dismissed if a preponderance of evidence establishes negligence or willful destruction or damage of the firearm by the officer.
 - (4) In the event a department-issued firearm is lost or stolen, the officer will immediately notify the shift supervisor who will in turn notify the Chief of Police. The supervisor will also notify local law enforcement authorities of the lost or stolen firearm and ensure it is entered into ACIC/NCIC.
- I. Discharge of Weapon: If an officer, on or off duty, fires a department-issued weapon while acting in his official capacity (except for training purposes such as range qualifications) or in the event of an accidental discharge, the officer shall comply with the following:
 - a. The officer who fired the weapon shall notify the shift supervisor as soon as practical after the firing has taken place.
 - b. The supervisor shall make a preliminary investigation each time an officer under his command fires a weapon.
 - c. The supervisor shall cause a report to be filed immediately with the Chief of Police regarding the firing of any weapon by police personnel [CALEA 1.3.6 a.].
 - d. If during the performance of duty or on any occasion an officer fires a weapon and in doing so wounds or kills a suspect or perpetrator of a crime, the procedures in FPD policy 1.3.6 shall be followed immediately.
 - e. If the facts of the incident support a conclusion the shot was the result of negligence, the officer shall be required to undergo firearms certification training and may be subject to disciplinary action up to and including termination.
- J. The Fayetteville Police Department authorizes the following weapons and will govern proficiency requirements as follows for each weapon. Only agency personnel demonstrating proficiency in the use of agency-authorized weapons shall be approved to carry such weapons [CALEA 1.3.10]:
 - a. Each officer will be assigned and issued a primary handgun that will be either the Glock model 35 .40 caliber semi-automatic handgun or the Glock model 23 .40 caliber semi-automatic handgun [CALEA 1.3.9 a.]:
 - (1) Officers must meet the qualification standards for their issued handgun as previously stated in this policy [CALEA 1.3.11 b.].

- b. Officers assigned to the 4th Judicial District Drug Task Force (DTF) will be authorized to carry the Glock model 27 .40 caliber semi-automatic handgun [CALEA 1.3.9 a.].
 - (1) DTF officers issued this handgun will qualify annually on an approved qualification course [CALEA 1.3.11 b.].
- c. Officers are authorized to carry an issued Glock model 27 .40 caliber semi-automatic handgun as a secondary weapon [CALEA 1.3.9 a.].
 - (1) Officers who have an assigned secondary weapon are required to carry it while on-duty.
 - (a) Officers are not required to carry secondary weapons while attending training classes.
 - (b) ERT members will be exempted from this requirement during training and deployments.
 - (2) Officers issued this weapon will qualify annually on an approved qualification course [CALEA 1.3.11 b.].
- d. Officers are authorized to carry an AR 15 type carbine (16-inch barrel) rifle capable of semi-automatic fire in caliber 5.56 mm (.223 caliber) magazine fed. This rifle will be either of the A2 type with fixed carry handle with iron sights only, or the A3 flat top equipped with a reflex sight approved by the Chief of Police and co-witness flip-up iron sights [CALEA 1.3.9 a.]:
 - (1) Officers selected to carry the AR 15 rifle must successfully complete a patrol rifle certification course approved by CLEST [CALEA 1.3.11 b.].
 - (2) Officers certified on the AR 15 rifle must pass a CLEST approved patrol rifle qualification course using both types of sights annually [CALEA 1.3.11 b.].
- e. Officers are authorized to carry the Remington 11-87 gas operated semi-automatic 12 gauge shotguns. They will be either 14 inch barreled or 20 inch barreled. The Remington 870 12-gauge pump action shotgun using approved specialized ammunition may be deployed as determined by the ERT Team Commander [CALEA 1.3.9 a.]:
 - (1) Shotguns will be authorized for ERT members and for sworn officers.
 - (2) Officers selected to carry a shotgun must successfully complete a shotgun certification course approved by CLEST [CALEA 1.3.11 b.].
 - (3) Officers certified on the shotgun must pass a CLEST approved shotgun qualification course annually [CALEA 1.3.11 b.].
- f. The Emergency Response Team (ERT) members are authorized to carry the FN SCAR 16 CQC rifle equipped with a reflex sight approved by the Chief of Police and co-witness flip iron sights [CALEA 1.3.9 a]:
 - (1) The FN SCAR 16 CQC rifle will be authorized for use by the ERT members, and the rifle shall also be carried by the ERT members while on duty.
 - (2) ERT members must have successfully completed an approved patrol rifle certification course approved by CLEST.
 - (3) ERT members must have successfully completed a select-fire rifle operator's certification course approved by CLEST [CALEA 1.3.11 b.].
 - (4) ERT members must pass a CLEST approved select-fire rifle qualification course using both sights annually [CALEA 1.3.11 b.].

- g. Precision rifles will be either the Remington model 700 LTR bolt action .308 caliber or the Larue PredatOBR semi-automatic, gas operated, magazine fed .308 caliber rifle [CALEA 1.3.9 a.]:
 - (1) Precision rifles will be authorized for selected ERT members.
 - (2) Precision rifle operators must successfully complete a Sniper certification course approved by CLEST [CALEA 1.3.11 b.].
 - (3) Precision rifle operators must pass a CLEST approved precision rifle qualification course annually [CALEA 1.3.11 b.].
- K. Requirements to Carry Firearms While On Duty
 - a. All department issued handguns must be carried in department approved holsters.
 - (1) All department approved holsters will be recorded on the Authorized Uniform and Equipment List.
 - (2) The Chief of Police can grant exceptions to this requirement.
 - b. Officers who are qualified and authorized to carry a department rifle and/or shotgun shall carry one of these firearms while working on a patrol shift in a marked vehicle. ERT members that are assigned a FN SCAR 16 CQC rifle must carry the rifle while on patrol duty.
 - c. A rifle and/or a shotgun in a marked vehicle shall be carried in an approved locking mechanism.
 - d. Officers shall document which rifle or shotgun was carried by completing the logbook that is located in the arsenal and noting it on their vehicle inspection form.
 - e. Officers working special assignments, secondary employment, or officers working in non-uniform assignments are exempt from the requirement to carry a rifle or shotgun while on-duty.
- L. Storage of Department Firearms
 - 1. Officers may choose to leave their issued handgun(s) in their locked lockers at the department. If officers choose to remove their issued handgun(s) from the department while off duty, it is recommended they be stored in a locked box, separate from the ammunition [CALEA 1.3.9 f].
 - 2. Department rifles and shotguns shall be locked and stored in approved department arsenals, safes, or locked containers when not in use [CALEA 1.3.9 f].
 - 3. The ERT rifles shall not be stored in a vehicle while the officer is off-duty except when traveling to and from work [CALEA 1.3.9 f].
 - 4. Other specialized firearms used by the ERT shall be stored in the ERT arsenal [CALEA 1.3.9 f].
- M. Use of Force Reports: The purpose of this section is to establish specific guidelines that define the situation when a Use of Force Report must be completed. Not every touching by an officer requires a report; circumstances that require a report are outlined in this section [CALEA 1.3.6].
 - 1. All officers are directed to complete a Use of Force Report when the following criteria are met and turn it in to his or her supervisor before the end of his shift. These situations ~~that~~ require supervisor notification as soon as practical and the completion of a Use of Force Report [CALEA 1.3.6 b, c, d]:
 - a. An officer exercising police authority uses force which causes death or any visible or apparent physical injury, or which results in the subject saying that he or she was injured;

- b. An officer exercising police authority uses any object including but not limited to a hand, fist, foot or intermediate weapon to strike a blow to a subject;
 - c. An officer exercising police authority physically removes or drags a struggling subject from one place to another, or forcibly places or keeps a person in a prone position;
 - d. An officer exercising police authority uses force during or after which a subject loses consciousness;
 - e. An officer uses any intermediate weapon or less lethal weapon;
 - f. An officer discharges a firearm, regardless of duty status and regardless of whether the discharge was accidental or intentional. (Exception: range activity and other lawful and safe target practice) [CALEA 1.3.6 a.];
 - g. An officer points a firearm or a conducted electrical weapon (CEW) at anyone;
 - h. An officer performs an “Arc Display” to gain control of a suspect or crowd; or
 - i. Whenever there is an allegation that a police canine has bitten or otherwise injured an individual. Canine training scenarios are exempted from this reporting requirement.
2. Officers shall photograph and document any injury, or reported injury, on the Use of Force Report.
 3. Use of Force Reports will be reviewed by the employee’s supervisor to determine if the use of force was compliant with department policies and general orders. The supervisor will then submit the report to the department’s administration [CALEA 1.3.7, 41.3.8]:
 - a. A supervisor will conduct a documented review of camera captured data in the following circumstances:
 - (1) Uses of Force that involve the use of less lethal weapons; or
 - (2) Weaponless uses of force which result in a subject receiving medical treatment.
 - b. Each Use of Force Report will be reviewed by the division’s respective captain and by the Chief’s designated head of Office of Professional Standards (OPS) [CALEA 1.3.7].
 - c. The designated head of OPS will conduct an annual analysis of all Use of Force Reports, activities, policies, and practices and submit a report to the Chief of Police [CALEA 1.3.13].