



City of Newton Police Department GENERAL ORDER

DAVID L. MACDONALD
CHIEF OF POLICE

GENERAL ORDER: 301

TO: All Sworn Officers

EFFECTIVE: January 3, 1989 (Revised 3/3/89, 8/5/92, 8/1/94, 9/19/94, 11/12/98, 11/24/98, 11/24/98, 01/25/99, 5/4/00, 8/16/00, 02/16/01, 11/26/01, 06/01/06, 04/24/08, 07/18/08, 09/10/13, 06/04/15, 06/27/16, 11/30/16)

SUBJECT: Use of Force

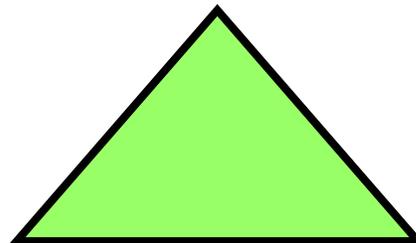
PURPOSE: To provide guidelines and regulations on the use of Deadly Force, Non-Deadly Force, Firearms, and the Use-of-Force Report.

COMMENTARY: Although many decisions and actions of police officers have serious consequences, none are so irrevocable as the decision to use force, especially deadly force. Police officers are armed and trained in the use of weapons in order to carry out their responsibility to protect themselves or others against assaults from violent suspects. Defensive actions to prevent or stop assaults of this nature are necessary and are supported by this Department.

The Newton Police Use-of-Force Model consists of five levels with each tier representing an escalation in force from the preceding level. Officers are able to move between each tier either up or down as circumstances dictate. The principles of the model and safety considerations, as well as police officer and Departmental liability factors, reinforce the importance of approaching each situation on the lowest level possible to achieve the desired results. The Use of Force Model is as follows:

TOTALITY TRIANGLE

Perceived Circumstances



Perceived Subject Action(s)

Reasonable Officer Response(s)

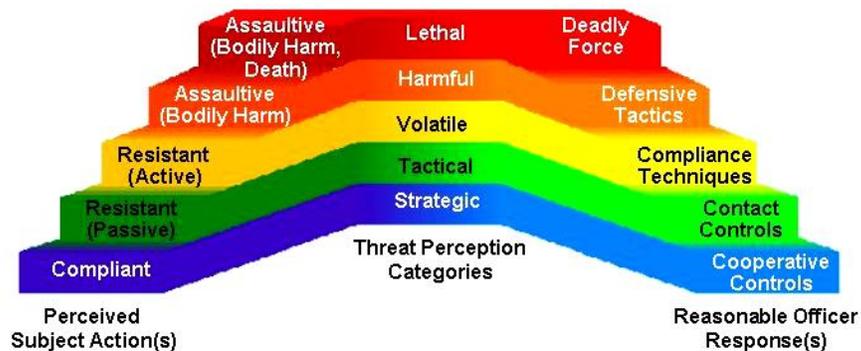
The **Totality Triangle** depicts the three elements that must be considered in determining whether an application of force was objectively reasonable.

Perceived Circumstances - The officer's perspective of the severity of any crime, the existence of an immediate safety threat to the officer or others, and the degree of compliance / non-compliance from the subject; culminating in its identification on the Use of Force Model.

Perceived Subject Action(s) - The subject action (s) as perceived by the reasonable officer that designates the subject at one or more of the Use of Force Model's compliant/non-compliant categories.

Reasonable Officer Response(s) - The "balanced" response (s) appropriate for the reasonable officer's selection from the Use of Force Model's identified response categories, in order to maintain or gain subject compliance and control.

USE OF FORCE MODEL



The Use of Force Model was developed in 1991 by Dr. Franklin Graves, Federal Law Enforcement Training Center and Professor Gregory J. Connor, University of Illinois Police Training Institute. TM 1998, G. Connor. All rights reserved.

Threat Perception Color Code - The tactically applied and color adapted correlation of the Threat Perception Categories on the Use of Force Model.

Control Superiority Principle - The understanding and visualization method utilized to reinforce the inherent principle of officer force superiority over the subject's degree of compliance / non-compliance.

Assessment / Selection Arrows - The mechanism utilized to indicate the dynamic nature of an officer's decision-making process of Tactical Transition © during the enforcement encounter.

Threat Perception Categories

Strategic - The broad "mind set" of the officer, represented by the blue baseline on the Threat Perception Color Code. The contemporary officer must maintain this functional foundation, centered upon strategies designed to enhance the status of safety.

Tactical - The second level on the Use of Force Model, depicted by the color green. Here the officer perceives an increase in threat potential within the confrontational environment and tactical procedures are designated and deployed.

Volatile - The third level on the Use of Force Model utilizing the color yellow to indicate an activated level of alertness and threat potential. Here the officer is confronted with the presence or potential of critical dynamics, including threat intensity and severity within the enforcement encounter.

Harmful - At this level on the Use of Force Model the color orange denotes an accelerated perception of threat directed upon the officer or others. In this regard the officer must deploy initial defensive force in the effort toward eventual subject compliance and control.

Lethal - The highest level on the Use of Force Model correlates to the most intense color in the Threat Perception Color Code ©, red. Although this potentially lethal degree of threat is most infrequent, it remains most crucial for the continuation of officer safety and security.

Perceived Subject Action (s) Categories

Compliant - Represents the vast majority of officer / citizen confrontations in the form of cooperation and control. Such cooperation is generally established and maintained via cultural acceptance, verbalization skills, etc.

Resistant (*Passive*) - The preliminary level of citizen non-compliance. Here, the citizen, although non-compliant, offers no physical or mechanical energy enhancement toward the resistant effort.

Resistant (*Active*) - The subject's non-compliance is increased in scope and / or intensity. The subject's non-compliance now includes energy enhanced physical or mechanical defiance.

Assaultive (*Bodily Harm*) - The officer's attempt to gain lawful compliance has culminated in a perceived or actual attack on the officer or others. The officer makes the reasonable assessment that such actions by the subject would not result in the officers or other's death or serious bodily harm.

Assaultive (*Serious Bodily Harm/Death*) - The officer's attempt to gain lawful compliance has culminated in the perception of an attack or the potential for such an attack on the officer or others. The officer makes the reasonable assessment that such actions by the subject could result in serious bodily harm or death to the officer or others.

Officer Response (s) Categories

Cooperative Controls - Include contemporary controls developed to preserve officer safety and security, including communication skills, restraint applications, etc.

Contact Controls - Includes resistant countermeasures designed to guide or direct the non-compliant subject. These "hands on" tactics would include the elbow / wrist grasp, Hand Rotation Position, etc.

Compliance Techniques - Includes resistant countermeasures designed to counter the subject's enhanced degree of resistance. These tactics could include the Hand Rotation Technique, chemical irritants, etc.

Defensive Tactics - Includes assaultive countermeasures designed to cease the subject's non-lethal assault on the officer or others, regain control, and assure continued compliance. These tactics could include baton strikes, kicking techniques, etc.

Deadly Force - Includes assaultive countermeasures designed to cease an assault that is lethal or could cause great bodily harm on the officer or others. These tactics could include the use of a firearm, lethal strikes, etc.

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No set guideline for the Use-of-Force could possibly cover every situation that might arise. Every officer of this Department is expected to respond with the highest level of good judgment and professional competence. Officers shall use only that force necessary and reasonable to effect lawful objectives. The officer's justified use-of-force ends when the subject's resistance ends. In addition to the subject's actions, the totality of circumstances includes, but is not limited to, the following:

1. Nature of the Subject's Offense.
2. Actions of Third Parties.
3. Officers' Physical Odds.
4. Feasibility or Availability of Force Alternatives.

An officer acting alone may be required to resort to a higher level of force than would be necessary if another officer had been present to provide assistance. Acting alone threatens the physical safety of the officer as well as that of the subject. Therefore, whenever possible, an officer should call for and await back-up assistance.

The presence and appearance of an officer may often convey an image that can influence the outcome of a situation. The officer should be neat and well groomed. He or she should be mindful of body language and always maintain the highest level of vigilance and competence.

Effective verbal communication can often reduce and/or manage anxious, aggressive, or even violent behavior. The appropriate use of verbal communication can often prevent or at least minimize the need for force.

Light physical tactics in the form of physical contact as a means of guiding or directing is not considered "force." Light physical tactics are appropriate for use with cooperative subjects. Even in the case of arrests or other custody situations it is possible for the subject to be anxious and upset, and yet the subject may still respond cooperatively to an officer's order or request. Examples of light physical tactics include physical contact used to guide the subject into handcuffs, assist him or her into or out of a vehicle, or directing the subject into a room or another location.

Neutralizing agents such as pepper spray can give officers an added degree of flexibility at two critical points in the Use-of-Force Model: (1) as a Compliance technique or, (2) as a Defensive tactic. In addition, the use of a less-than-lethal projectile weapon that shoots "beanbag-like" projectiles intended to stop a suspect through blunt, non-lethal force provides one more option of less-than-lethal force. The less than lethal projectile weapon is to be used on the subject who is assaultive/bodily harm.

Officers should exhaust all minimum levels of force before resorting to more severe options, except when the totality of circumstances require the immediate use of a higher level of force in order to prevent the commission of a crime, or serious bodily injury or death would result to the officer or another person.

The Department recognizes that there are other methods and/or tactics, e.g., tool of immediate need, that an officer may be forced to choose from when confronting a hostile subject(s). If a method and/or tactic is used that is not listed, its use must be objectively reasonable as it relates to the officer's risk assessment and the subject's action(s).

Officers must be prepared to provide any and all "after action" called for based upon the level of force utilized and any other circumstances attached to the particular incident. Medical care must be provided as soon as it is safe to do so. The scene must additionally be secured and/or preserved in accordance with the type of incident.

DEFINITION OF
DEADLY/LETHAL
FORCE:

DEADLY OR LETHAL FORCE: Deadly or Lethal Force is any force that is likely to cause death or serious bodily injury. The discharge or use of a firearm is ALWAYS the use of deadly force.

PROCEDURES FOR
DEADLY/LETHAL
FORCE:

A. Use of Deadly/Lethal Force.

1. An officer is authorized to use deadly/lethal force only in the following circumstances and if there is no other reasonable alternative available:
 - (a) To defend himself or another person from unlawful attack when he or she has reason to believe there is imminent danger of death or serious bodily injury. The unlawful attack must involve the means capable of inflicting death or serious bodily injury. Serious bodily injury is defined as an injury which creates a substantial risk of death or which causes permanent disfigurement or long term loss or impairment of the functions of any bodily member or organ. "The reasonableness determination is based on objective reasons in light of the facts and circumstances confronting them (officers), without regard to their underlying intent or motivation. Reasonableness is judged from the perspective of the reasonable officer on the scene. Allowance should be made for split-second decisions about the force necessary in a particular situation (Graham vs. Connor, 1989, SJC)."
 - (b) Flight in and of itself is not necessarily evidence of the commission of a crime and is not a sufficient reason for the use of deadly/lethal force. The use of deadly/lethal force against a fleeing felon shall only be authorized to defend the officer or another person from unlawful attack when the officer has reason to believe there is imminent danger of death or serious bodily injury.
2. If necessary, and when the situation is safe to do so, provide emergency medical attention to the victim. Call for an ambulance to further treat the victim if the situation requires. In the event of exposure to blood or other bodily fluids see General Order 588, *Infectious Diseases*, for more detailed treatment information.

FIREARMS
PROCEDURE:

B. Firearms.

1. Only authorized firearms and ammunition that meet agency specifications shall be used in the performance of duty. See General Order 325, *Authorized Equipment*, for particulars.
2. Only officers demonstrating a proficiency in the use of agency authorized firearms shall be allowed to carry such firearm.
3. Officers shall qualify at least annually with any firearm that the officer is required and authorized to use. The standards of proficiency shall follow the guidelines of the Municipal Police Training Committee (MPTC) standards for firearms qualification. In addition, use-of-force guidelines and other contents of this General Order shall be reviewed each time an officer qualifies on the range.
4. Use of Firearms. All officers who carry issued or authorized firearms are subject to the following rules:
 - (a) Officers shall not fire their firearm except to protect themselves or others from death or serious bodily injury. This includes the so-called “fleeing felon.”
 - (b) Officers shall only discharge their firearm when doing so will not endanger the lives of innocent persons.
 - (c) Officers shall not discharge their firearm to threaten or subdue persons whose actions are destructive to property or injurious only to that person, unless such actions pose an imminent threat of death or serious bodily injury to the officer, the subject or other persons. The use of the less-than-lethal shotgun to subdue a subject would be authorized if the subject were armed and threatening to take his/her own life.
 - (d) Officers encountering a situation where the use of deadly force is warranted shall issue a verbal warning first if circumstances and safety considerations allow. The preferred verbal warning is **Police – Don’t Move!**
 - (e) Officers shall not discharge their firearm at a moving vehicle unless there is an imminent danger of death or serious bodily injury from the vehicle in motion to the officer or other person(s), and, there is no available means of escape for the officer or other person(s) involved.
 - (f) Officers shall not fire their firearm from within a moving vehicle unless the lives and safety of the public or the Officer are at risk of death or serious bodily injury and there is no other alternative.
 - (g) Officers shall not fire warning shots unless the lives and safety of the public or the Officer are at risk of death or serious bodily injury and there is no other alternative.
 - (h) Officers shall not direct their firearm at a subject unless there is a reasonable belief that there is a threat of death or serious bodily injury.

- (i) Officers are allowed to carry their department issued firearm outside the Commonwealth of Massachusetts on official business or off-duty. The Law Enforcement Officer Safety Act (LEOSA) enacted in 2004 allows, “qualified Law Enforcement Officers to carry a concealed firearm in any jurisdiction in the United States regardless of state or local law with certain exceptions. It shall be the officer’s responsibility to understand and comply with the Law Enforcement Officers Safety Act (LEOSA).
5. An officer may use a firearm to dispatch a dangerous animal or an animal so badly injured that humanity requires its removal from further suffering. See General Order 585, *Animal Control Procedures*, for additional information.
6. Whenever an officer discharges a firearm accidentally or intentionally, other than for training, recreational or animal control purposes, he or she shall notify the on-duty Officer-in-Charge immediately (if physically able) and submit a Use-of-Force Report to the Chief of Police as soon as possible. If the facts support a conclusion that the discharge was the result of negligence, the officer shall be required to undergo remedial firearms certification training. See Standard Operating Procedure 200-11, *Remedial Training*, for additional information.
7. Off-Duty Firearms and Ammunition: Any firearm or ammunition that an officer routinely carries on his or her person while off-duty (excluding the officer’s issued firearm) will be considered an off-duty firearm.
 - (a) Officers are authorized to carry their issued firearm and ammunition while off duty.
 - (b) Any officer wishing to carry a firearm or ammunition while off-duty, other than their Department issued firearm and ammunition, must possess a valid Massachusetts License to Carry a Firearm.
 - (c) All officers are responsible for the safekeeping of their issued and off-duty firearms at all times. All officers are required to store any and all firearms in a locked storage unit or utilize trigger locks in accordance with State law when the firearms are not carried on their person.

LESS-LETHAL,
NON-DEADLY FORCE
PROCEDURES:

C. **Less-than-Lethal / Non-Deadly Force.**

1. Less-than-Lethal force may be used by a police officer in the performance of his or her duty:
 - (a) When necessary to preserve the peace, prevent crimes, to prevent suicide or self-inflicted injury; or
 - (b) When necessary to overcome resistance to lawful arrests, searches and seizures, and to prevent escape from custody; or
 - (c) When in self-defense or defense of another against unlawful violence to his person or property.

2. Officers shall be properly trained in the use of less-than-lethal tools such as batons, Oleoresin Capsicum (pepper spray) and less-than-lethal projectile shotgun before being authorized to carry such.
3. **BATONS.** These guidelines shall be followed when the use of the expandable baton becomes necessary:
 - (a) Strikes capable of inflicting possibly fatal or permanent injury must be avoided unless the use of deadly force is intended and circumstances warrant the use of the baton as opposed to a firearm. For example, strikes to the head, temple, ears, hollow behind ears, bridge of nose, upper or lower jaw, throat, back of the neck, spine, tailbone, solar plexus, kidney or groin may result in serious bodily injury or even death.
 - (b) The baton should never be raised above the head to deliver a strike. Overhead swings of the baton are easily blocked and also make it possible for the baton to be taken away from the officer and used against him/her. Overhead strikes (not including overhead blocks with the baton) are ineffective and also reinforce stereotypes of how the police use or misuse the baton.
 - (c) In accordance with the MPTC and Monadnock Expandable Baton training, strikes from a baton shall be delivered to the appropriate target areas with enough force so as to immediately end the confrontation. The strike should be forceful, and the number of strikes limited to ONLY that number required to bring the assaultive/bodily harm subject under control. The baton may also be used as a compliance technique on the Active Resistant subject. When an officer is forced to strike a subject with the baton the technique must work. As a means of less-than-lethal force, baton strikes are intended to temporarily incapacitate the aggressor but not cause serious bodily harm. Although the general perception of the baton is that it is an impact tool, it is also a very effective defensive tool. It can be used to block a number of grabs, strikes and kicks in accordance with provided training.
4. **OC SPRAY.** Oleoresin Capsicum (pepper spray) is not intended to be a substitute for higher levels of force application. If lethal or deadly force is used or threatened by the subject, a response of the same level must be considered as a countermeasure. These guidelines shall be followed when the use of Oleoresin Capsicum (pepper spray) is necessary and appropriate:
 - (a) If tactically possible, prior to OC use announce that you are going to spray in a loud, clear voice by stating, "SPRAY."
 - (b) The best tactic is to spray from a distance of 4 to 6 feet. Spray directly in the face (eyes, nose, mouth) with a one-quarter to one second burst.
 - (c) Immediately create a safe distance between yourself and the subject by employing lateral movement if possible. In other words, Spray and Evade.
 - (d) Allow time for the OC spray to become effective. Wait a period of up to ten seconds, give forceful and clear verbal commands, and then handcuff the subject as soon as it is feasible and safe to do so.

- (e) Remember that OC spray does not have the intended results on all subjects. The officer must be prepared to utilize another force option if the subject is not subdued sufficiently for arrest.
 - (f) **DO NOT RUB.** Verbally and clearly inform anyone sprayed to not rub their eyes or any other part of the body. If any subject sprayed with OC is wearing contact lenses, the lenses should be removed by the subject or EMS to speed recovery time.
 - (g) Cleaning affected skin areas with soap and water will expedite recovery since the resin that sticks to the skin will be removed. The subject, if wet with OC, should be dry before being transported in a police cruiser to avoid cross-contamination. The best treatment for the subject under normal conditions is copious amounts of cool water, air, and paper towels.
 - (h) All symptoms should disappear within 45 to 60 minutes with no after-effects. If any symptoms persist beyond the normal 45-minute recovery period or if subject requests that you do so, **GET MEDICAL ATTENTION PROMPTLY.**
 - (i) **PROHIBITED USE** – Once a violent subject has been subdued and then brought under control, there is no further justification to continue the use of OC against the subject. It shall not be used as a threat in order to force a subject to comply with an officer's verbal commands when no violence is imminent. It shall not be used against any subject for their verbal abuse of a police officer, or to illicit information from the subject or any other person. Officers are prohibited from equipping themselves with any chemical agent or similar device other than those issued by the Department.
5. **LESS-THAN-LETHAL PROJECTILE SHOTGUN.** Less-than-lethal projectiles (beanbags) are not intended to be a substitute for higher levels of force. If lethal or deadly force is used or threatened by the subject(s) a response at the same level must be considered.
- (a) Less-than-lethal projectiles are intended as an option along the Use-of-Force Model in cases in which a violent or potentially violent subject cannot be subdued in any other less-than-lethal manner without the threat of death or serious bodily injury to the officer or other persons. This tool is intended to incapacitate the subject and prevent further aggressive actions.
 - (b) Less-than-lethal projectiles do pose a threat of serious injury to a subject and, therefore, shall be used **ONLY** when methods of force lower on the Use-of-Force Model is determined to be ineffective or inappropriate. The blunt trauma force from a projectile has been determined to be greater than that of a thrown fastball by a major league baseball pitcher. For this reason, only those officers who have been specifically trained in the use of the less-than-lethal shotgun, and who have demonstrated proficiency in the use of this tool, will be authorized to use such. The use of this weapon must be on a person who is Assaultive/Bodily Harm. Other than a less-than-lethal force option tool, due to its design the less-than-lethal shotgun is also considered a firearm. Therefore, any officer who for any reason is not authorized to use

his or her Department-issued firearm will also be ineligible to use the Less-than-Lethal shotgun.

- (c) The following additional rules regarding the less-than-lethal shotgun shall be observed:
 - 1. Officers shall not fire this tool from within a moving vehicle;
 - 2. Officers shall not fire warning shots as they pose a serious danger to other persons who may be present in the area; and
 - 3. Officers shall not draw or display this tool unless involved in an incident in which such use of force may be called for.
- (d) Less-than-lethal shotguns are mounted in all patrol supervisors' vehicles. An officer shall request a supervisor to respond to a situation in which it is believed that such a tool may be appropriate.
- (e) Less-than-lethal shotguns are distinguished from other shotguns by the orange-painted stocks and fore-ends. The orange stock is also labeled "Less Lethal." These weapons SHALL NOT be used for any other purpose or with any other ammunition other than 12-gauge, less-than-lethal rounds. These rounds are also known as "super sock bean bag" rounds.
- (f) MEDICAL ATTENTION SHALL BE SUMMONED PROMPTLY UPON USE OF LESS-THAN-LETHAL PROJECTILE WEAPONS.

PROCEDURE:

D. **Investigations.**

- 1. The following command staff members shall be notified anytime the use of force or actions of any employee results in the death of a person, an injury likely to cause the death of a person, and/or a shooting incident involving other persons or officers:
 - (a) Chief of Police;
 - (b) Internal Affairs Unit; and
 - (c) Captain of Detectives.
- 2. The officer's immediate supervisor shall conduct all other Use-of-Force investigations with a full report through the chain-of-command to the Chief of Police.
- 3. If the actions of a civilian employee result in death or serious bodily injury, the incident shall be investigated by Internal Affairs with a full report forwarded to the Chief of Police
- 4. Any employee whose actions or use of force has resulted in a death or serious bodily injury shall be re-assigned to temporary administrative duty pending the review of the case and until appropriate action can be taken.
- 5. When any employee's actions or use of force has resulted in a death, he or she shall be referred to the Department stress unit.

PROCEDURE FOR
USE OF FORCE
REPORT:

E. **Use of Force Report.**

1. A written report shall be submitted whenever an officer:
 - (a) Discharges a firearm for any reason other than training, recreational or animal control purposes.
 - (b) Takes action or uses force that result in, or is alleged to have resulted in, injury or death of another person.
 - (c) Applies force through the use of lethal or less-than-lethal weapons (including Oleoresin Capsicum and Batons).
 - (d) Draws or displays their firearm
 - (e) Applies weaponless physical force. This does not include light physical tactics as previously defined.
2. In the above circumstances, a Use of Force Report must be completed by the officer and submitted to his or her immediate supervisor and officer-in-charge as soon as possible. Copies of this report shall then be forwarded through the Chain-of-Command for review.

COMPLETION
OF USE OF
FORCE REPORT:

F. **Completion of Use of Force Report.**

1. The Use of Force Report form must be attached to a complete and detailed incident report. Included in the narrative of the incident report must be a complete description of the events that led to the use of force, any verbal commands issued, any response or failure of the subject to respond, the type of force used and the ultimate results, including any resulting injuries to any parties and any medical services required and received. Officers should also note in the Use of Force Report if the subject or involved parties refuse medical services. Include the names of all police witnesses, and the names, addresses, phone numbers and birth dates of any civilian witnesses in the police incident report. Also include a description of all evidence obtained.
2. The reporting officer will submit the Use of Force Report form and attached copy of the incident report narrative to the reporting officer's supervisor/sergeant to be reviewed, signed and dated. The entire package will then be forwarded up the chain-of-command via the reporting officer's supervisor to the Officer-in-Charge, Bureau Commander and then to the Internal Affairs Officer. The Use of Force Report form must be reviewed, signed and dated by all appropriate personnel along the chain-of-command. The Internal Affairs Officer will notify all involved if any additional review or follow-up actions are necessary.

3. The Internal Affairs Officer will conduct a documented annual analysis of Departmental use-of-force reports to reveal patterns or trends that could indicate training needs, equipment upgrades, and/or policy modifications. The findings of this analysis shall be forwarded to the Chief of Police by January 31st of each year.

G. Discharge of Firearms to Dispatch Sick or Injured Animals.

A detailed incident report narrative will be completed for every incident involving the discharge of a firearm to dispatch a sick or injured animal. The report will include the type of animal, any and all indications that the animal was sick or injured, the number of shots fired to dispatch the animal, and the method of disposal of the animal. A Use of Force Report form is not necessary unless a supervising officer determines that the incident requires further review. If this is the case, the Use of Force Report procedures outlined above should be followed in their entirety.

Per order of:

A handwritten signature in black ink, appearing to read "David L. MacDonald". The signature is cursive and includes a large, stylized initial "D" and "M".

David L. MacDonald
Chief of Police