

Model Use of Force Policy Beta Release Version 1.0

Chapter 8: Batons And Other Impact Weapons

November 11, 2022

OVERVIEW

This Chapter covers the use of Batons and other Impact Weapons. Batons and other Impact Weapons have the capacity to inflict lethal injuries, even though they may be less-lethal than more severe force options. As a result, this Chapter limits the carrying and use of Department-authorized Batons to trained and certified officers and prohibits or restricts the use of other Impact Weapons. This Chapter also requires the satisfaction of certain preconditions to use a Baton or other Impact Weapon in a manner that constitutes a use of force. When an officer will be using the instrument to strike or jab a subject, this Chapter also requires the satisfaction of additional preconditions and restrictions. Even when this policy authorizes the use of a Baton or other Impact Weapon to strike a subject, such use must comply with the standards set forth in the policy.

This Chapter includes a High-Level Policy Summary outlining the Chapter's overarching principles, the full Policy Language, a Supporting Memorandum providing the policy rationale and guidance, and a Comparison Memo Summary that compares this Chapter to certain other national, state, and local-level policies.

PART 1: HIGH-LEVEL POLICY SUMMARY

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1. Batons and other Impact Weapons have the capacity to inflict lethal injuries, even though they may be less lethal than more severe force options.
2. Officers must receive annual training and certification from a certified weapons instructor to carry and use Department-authorized Batons.
3. When used in a manner that constitutes a use of force, Batons and other Impact Weapons may be used only when authorized and in compliance with Chapter 1 (Authorization and Standard).
 - a. This policy limits the use of Batons to strike or jab a subject to when the subject exhibits Active or Aggravated Aggression; the officer can articulate the facts and circumstances that justify each and every strike on the person; and once the person no longer poses a threat, the officer stops striking the person.
 - b. This policy prohibits the use of Improvised Impact Weapons, except in rare and exigent circumstances. In addition, this policy prohibits certain types of Batons and Impact Weapons in all circumstances.
4. If feasible and safe, an officer must issue a verbal warning and give time for compliance before using a Baton or other Impact Weapon to strike.
5. Officers must strike only the arms or legs and avoid strikes to the head, neck, sternum, spine, groin, or kidneys, absent justification for use of Deadly Force.
6. Officers may not use a Baton or other Impact Weapon to strike a person who complies with commands or who exhibits only Passive or Active Resistance.
7. Officers may not use a Baton or other Impact Weapon to strike a member of a vulnerable population, absent justification for use of Deadly Force.
8. Officers must immediately notify their supervisor when they use a Baton or other Impact Weapon in a manner that constitutes a use of force.
9. When used to strike a person, officers must justify each strike with a Baton or IIW on their Use of Force Report. Supervisors must review all such incidents.

PART 2: POLICY LANGUAGE

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8.100 – General Considerations and Definitions

A. General Considerations:

1. Batons and other Impact Weapons have the capacity to inflict lethal injuries. They deliver blunt force and can cause serious bodily harm. Further, strikes to the head, neck, sternum, spine, groin, or kidneys are lethal force.
2. While having lethal capacity, Batons and other Impact Weapons may be considered less-lethal weapons, depending on how officers use the instruments and the targeted part of the body. Less-lethal weapons refer to instruments used to interrupt a subject's threatening behavior so that officers may take physical control of the subject with less risk of injury to the subject or officer than that posed by more severe force options.¹
3. When authorized and compliant, Department-authorized Batons may be effective tools for strikes, jab, holds and blocks. Such use, however, must comply with the authorization and standard-for-use requirements of Chapter 1.
4. Because of the risks posed by Batons, officers also must be trained and certified in accordance with this Chapter to be issued a Department-authorized Baton. Further, the use of Batons and other Impact Weapons must comply with the other provisions of this Chapter.

B. Definitions:

1. Baton: An Impact Weapon designed for blocking, jabbing, striking, or to apply control holds. Subject to the requirements of this Chapter, this Department authorizes the following types of Batons for use: the Monadnock Expandable Baton, the Crowd Control Straight Baton, and the Espantoon:
 - a) Crowd Control Straight Baton: A wooden or synthetic composite baton generally 36-42 inches in length and weighing 32-46 ounces to be used in crowd control situations.
 - b) Espantoon: Wooden baton between 22-25 inches in length and 16-32 ounces, with the striking end of the baton being between 1 ½ - 1 ¾ inches in diameter, and the grip end being 1 3/8 inches in diameter. This baton has color restrictions and may be coated only in an Oak, Ash, Maple, Hickory or Rosewood finish. This policy prohibits decorations on these batons.

- c) Expandable Baton: Monadnock Autolock Expandable metal Baton with Power Safety Tip; 22 inches in length.²
- 2. Impact Weapon: Any object, whether a tool or fixed object (such as a hard surface), that officers use to interrupt or incapacitate a subject.³ This includes, but may not be limited to, Batons.
- 3. Improvised Impact Weapon (IIW): The use of instruments, other than Department-authorized Impact Weapons, as a weapon for the purpose of striking or jabbing.
- 4. Resistance: Officers may face the following types of Resistance to lawful directives:
 - a) Passive Resistance: When a person does not attack or attempt to attack the officer or another person, and does not attempt to flee, but fails to comply with the officer's commands. Examples include, but may not be limited to, going limp, standing stationary and not moving based upon lawful direction, and/or verbally signaling an intention to avoid or prevent being taken into custody.
 - b) Active Resistance: When a person moves to avoid detention or arrest, but does not attack or attempt to attack the officer or another person. Examples include, but may not be limited to, attempts to leave the scene, fleeing, hiding from detection, physical resistance to being handcuffed, or pulling away from the officer's grasp. Verbal statements, bracing, or tensing alone do not constitute Active Resistance. A person's reaction to pain caused by an officer or purely defensive reactions to force does not constitute Active Resistance.
- 5. Aggression: Officers may face the following types of Aggression:
 - a) Active Aggression: A subject's attempt to attack or an actual attack on an officer or another person. Examples include, but may not be limited to, exhibiting aggressive behavior (e.g., lunging toward the officer, taking a fighting stance, striking the officer with hands, fists, kicks). Neither Passive nor Active Resistance, including fleeing, pulling away, bracing, or tensing, constitute Active Aggression.
 - b) Aggravated Aggression: When a subject's actions create an objectively reasonable perception on the part of the officer that the officer or another person is subject to imminent death or serious physical injury as a result of the circumstances and/or nature of an attack. Aggravated Aggression represents the least encountered but most serious threat to the safety of law enforcement personnel or another person.⁴

6. Totality of Circumstances: The totality of the circumstances consists of all facts and circumstances surrounding any event.
7. Necessary: Force qualifies as necessary when the officer has exhausted non-force options and less forceful options to achieve their lawful purpose.

8.200 – Requirements for Issuance of a Baton⁵

A. Requirements for Issuance

1. A Baton may be issued only to officers who have completed and passed recruit-level training and been trained on the Use of Force policy.
2. In addition, an officer must be certified as a trained user. This policy limits such certification to eligible personnel who successfully complete the Department's authorized training course and demonstrate the required proficiency in the use of the Baton.

B. Training and Qualification

1. All training and certifying for Batons must be conducted by certified instructors.
2. Training Courses. The courses must be approved by the Training Section Lieutenant. These courses may include:
 - The Department's training section courses
 - Manufacturer's certification courses
 - Approved certification courses taught by other agencies
3. Training Frequency. Officers must receive initial and annual training to receive and maintain their certification to carry a Baton.
 - a) This policy prohibits any officer who does not successfully complete their annual training and receive renewed certification by the first anniversary of the completion of their prior Baton training from carrying or using the Baton, until they complete their annual training and receive renewed certification.

8.300 – Type of Batons, Storage and Carrying of Batons

A. Type of Baton

1. Officers may carry and use only Department-authorized Batons.
2. The Department will issue Expandable Batons to certified officers upon their successful completion of recruit-level training at the Professional Development and Training Academy (or the Department's nearest equivalent).
3. Officers may carry espantoon previously issued to them, and/or privately purchased and approved Espantoons, as they meet the dimensional stipulations.
4. The separate Chapter on Crowd Control discusses the issuance, authorization and use of the Crowd Control Straight Baton.
5. This policy prohibits any modifications of any sort to any Baton, including, but not limited to, coring, filling the Batons, notching, adding protrusions, or re-painting.

B. Prohibited Batons/Impact Weapons: This policy strictly prohibits the carrying of blackjacks/slapjacks, weighted gloves, brass knuckles, iron claw, or any other unauthorized Impact Weapons.

C. Officers authorized to carry a Baton must carry the Department-authorized Espantoon or Expandable Baton during all shifts in uniform.

D. Storage: When not on a shift in uniform, officers must store Batons securely in a manner consistent with established standards.⁶

8.400 – Authorization For Use Of A Baton And Other Impact Weapon

- A. Batons and other Impact Weapons may be used only in accordance with this policy and their Department training (e.g., blocking, jabbing, to apply control holds, passive/active escort techniques, etc.).
- B. Use of Force. The following actions with a Baton constitute a use of force:
 - 1. The use of a Baton as a weapon.
 - 2. The use of a Baton to deliver a physical strike or jab to any part of the body of another.
 - 3. Any physical contact or threat of contact by a Baton that causes or threatens to cause pain or injury to another.
 - 4. Any physical contract or threat of contact by a Baton that results in restraint or physical manipulation of the physical movement of another.
 - 5. Unholstering or displaying a Baton (including unfolding a Baton), when engaged with a subject or subjects.⁷
- C. Authorization for Use of Force (Non-Lethal)
 - 1. Department-Authorized Batons and Impact Weapons
 - a) If Chapter 1 authorizes the use of force, officers may use a Baton to guide, escort, or control persons exhibiting Passive or Active Resistance as long as they do not use the Baton to deliver strikes or jabs.
 - b) Authorization for Strikes or Jabs:
 - (1) Officers may use of Department-authorized Batons and Impact Weapons to strike or jab only when:
 - (a) Chapter 1 authorizes the use of force;
 - (b) the subject exhibits Active or Aggravated Aggression;
 - (c) the officer can articulate the facts and circumstances that justify each and every strike on the person; and
 - (d) once the person is no longer a threat, the officer stops striking the person.

2. Improvised Impact Weapons (IIWs).
 - a) This policy prohibits the use of an IIW, except in rare and exigent circumstances when the circumstances satisfy the requirements of Section 7.400(C)(1) and:
 - (1) officers have exhausted authorized force options, do not have such options available to them, or believe that such options will be ineffective and such belief is consistent with available information; and
 - (2) the officer has an articulable compelling need to use the IIW based on the totality of the circumstances.
 - b) Any officer who uses an IIW must transition from the use of such weapon to an authorized force option as soon as possible.
3. Other Factors. When deciding whether to use a Baton or other Impact Weapon, officers also should consider the following:
 - a) Impact Weapons should be deployed only as necessary based on the totality of the circumstances.
 - b) Due consideration should be given to the principles of sanctity of life, critical thinking and decision-making, and de-escalation. These principles must be an ever-present priority as an officer evaluates the serious decision of whether to use any type of force.

D. Authorization for Use of Deadly Force (Lethal)

1. This policy considers strikes to the head, neck, sternum, spine, groin, or kidneys to be lethal force and prohibits such strikes, except when the circumstances satisfy the requirements for Deadly Force in Chapter 1, including satisfaction of the preconditions that all other available non-deadly options be exhausted and that deadly force be absolutely necessary.

8.500 – Standard For Using A Baton Or Other Impact Weapon

- A. Standard: When used in a manner that constitutes a form of force, Batons or other Impact Weapons must comply with the standard for using force in Chapter 1. In particular, any such use must be limited to that which is necessary to carry out a Lawful Objective and be proportional to the totality of the circumstances.
- B. Verbal Warning Before Use. If feasible and safe, officers should provide a warning and allow a reasonable amount of time for the subject to comply with the warning, before striking the subject with a Baton or other Impact Weapon.⁸
- C. Target Areas for Use. When using a Baton or other Impact Weapon to strike, the officer must strike only the arms or legs.
 - 1. The officer must avoid striking the head, neck, sternum, spine, groin, or kidneys, unless Deadly Force is authorized and compliant with Chapter 1.
 - 2. Strikes to the torso, in areas other than the sternum, spine, groin, or kidneys, are permitted when necessary based on the totality of the circumstances but are disfavored due to the increased risk of serious physical injury and the risk of striking a prohibited area (e.g., the sternum, spine, or kidneys).
- D. Restricted and Prohibited Uses
 - 1. Officers are prohibited from using a Baton or other Impact Weapon to strike a person who is compliant or who is exhibiting only Passive or Active Resistance.
 - 2. Except when the circumstances satisfy the requirements for Deadly Force in Chapter 1, officers may not use a Baton or other Impact Weapon to strike a person if the person is:
 - a) obviously pregnant;
 - b) apparently elderly;
 - c) apparently a juvenile;
 - d) visibly frail or has a low body mass;
 - e) under the effects of a medical or behavioral health crisis; and/or
 - f) in danger of falling from a significant height.
 - 3. This policy allows the use of a Baton or other Impact Weapon on a handcuffed or restrained person only in the rare and exceptional circumstances where:

- a) The person displays combative and/or violent behavior;
- b) The person presents an imminent threat to the safety of the officer or other persons; and
- c) Lesser means or attempts to resolve the incident such as hands-on arrest or control techniques have failed.

8.600 – The Duty to Render Medical Aid, Reporting And Investigation

- A. The Duty to Render Medical Aid (discussed generally in Chapter 9) applies to the use of Batons and other Impact Weapons.
- B. Reporting And Investigation Responsibilities
 - 1. Officers.
 - a) When an officer uses a Baton or other Impact Weapon in a manner that constitutes a use of force, the officer must immediately notify their supervisor.
 - b) The officer must complete a Use of Force Report for the incident, except when the officer used the Baton solely to guide or escort a person and the person had no injury or complaint of pain or injury.
 - c) Officers must justify each strike with a Baton or IIW on their Use of Force Report.
 - 2. Supervisors. Supervisors must review all incidents of Baton/IIW strikes in accordance with the Use of Force Reporting Policy.
- C. The failure of any commander, supervisor or officer to fulfil any requirements of this policy does not prevent, inhibit or otherwise affect the ability of the Department to conduct an investigation of any misconduct arising from a use of force incident or to otherwise discipline an officer for any violation of this policy.

PART 3: SUPPORTING MEMORANDUM

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I. RECOMMENDED POLICIES

The baton, also known as, a club, billy club and night stick,⁹ constitutes a relatively simple weapon. As its name suggests, the baton refers to a stick or a club, which officers use as a compliance and defensive tool by striking, jabbing, and/or bludgeoning the subject. Authorities have described the baton as the “oldest and most fundamental law enforcement tool”¹⁰ and have regarded it as an effective law enforcement weapon.¹¹

The baton appears prevalently in some of the most poignant images and stories of police force. The late John Lewis, Civil Rights activist and congressman, suffered a fractured skull after being beaten by police officers “wielding clubs” during the 1965 march from Selma to Montgomery.¹² Numerous images from that day, known as “Bloody Sunday,” show Alabama state troopers and sheriffs holding and using batons on those who attempted to peacefully cross the Edmund Pettus Bridge.¹³ These images include depictions of a bloodied twenty-five-year old John Lewis. Almost exactly twenty-six years later, news stations aired a video of Los Angeles Police Department officers striking Rodney King with a club 56 times.¹⁴ Bloody Sunday and the beating of Rodney King contributed to the occurrence of two historic events in the United States—the passing of the Voting Rights Act of 1965¹⁵ and the 1992 Los Angeles uprising.¹⁶

Subsequent to the beating of Rodney King, police departments “have looked critically and comprehensively at the use of force and its justifications, levels, and methods.”¹⁷ Inquiries into police uses of force, including the use of batons, led to a “wave of reforms—some of which are still works in progress.”¹⁸ The Baton Model Policy embodies the spirit of these inquiries, reports, and reforms in an attempt to prevent excessive uses of batons. This memorandum identifies and summarizes findings and suggested policy reforms as they relate to baton use, and explains how they undergird the Baton Model Policy.

A. Lethal Nature of Batons, and Policies to Reduce Potential of Death Following Use of Batons

While some consider batons less lethal than firearms, use of such weapons remain “fraught with risk because. . . strikes to the head, neck, throat, spine, heart and kidneys are lethal force.”¹⁹ In fact, research shows batons inflict more injuries to the public and officers than tasers (a weapon that uses electrified darts to subdue its subjects).²⁰ Because the Model Use of Force Policy seeks to minimize police-caused deaths, the Baton Model Policy explicitly mentions the weapon’s lethal nature. As stated by the Department of Justice, any “adequate” use of force policy would “state clearly that a baton is capable of inflicting lethal injuries, but may also be considered a lower level of force, depending on how it is used and the body part attacked.”²¹ Such a statement apprises officers that improper use of a baton could lead to death. The Leadership Conference of Civil and Human Rights (the “Leadership Conference”) recommends that departments ensure that officers “understand that strikes to vulnerable body parts are considered lethal force because of their high risk of serious injury and death.”²²

Because batons may be used as lethal force, the Leadership Conference also recommends that departments absolutely prohibit officers from “striking the head or other vulnerable body parts such as the neck, chest, spine, groin, or kidneys.”²³ This proposed prohibition on the use of batons as a lethal weapon does not include any exceptions. However, many police departments allow batons to be used as a lethal weapon when the circumstances justify the use of deadly force.²⁴ In a 1992 report presented to the Los Angeles Police Department, the author wrote, “We believe that at a minimum, the policy should state that intentional head strikes with any impact weapon are strictly prohibited unless deadly force is justified under the same circumstances.”²⁵ The Baton Model Policy adopts this latter view. The Model Use of Force Policy recognizes that officers may be confronted with extreme circumstances justifying the use of deadly force. When such circumstances arise, a baton could be the best option available to the officers. Furthermore, an absolute prohibition on the use of batons as a lethal weapon may have the unintended and undesirous effect of encouraging officers to more frequently resort to using firearms instead of the “less-lethal” baton.

B. Training

As noted above, batons inflict more injuries to officers and civilians than Tasers and are susceptible to misuse. Despite these risks, some police departments do not require baton training.²⁶ In 2017, following the Department of Justice’s findings of unconstitutional and discriminatory policing by the Baltimore Police Department, a federal judge approved a consent decree that required the department to enact comprehensive policing reforms. The consent decree states, “Officers will be trained and certified for department-approved batons and espantoon (collectively ‘Impact Weapons’) before being authorized to carry Impact Weapons.”²⁷ The Baton Model Policy adopts the Department of Justice’s approach and requires baton training. The Baton Model Policy, however, also takes a more stringent approach by mandating annual baton training.

Further, even among police department policies that include baton training, some do not address what such training should consist of. Other police department policies provide specifics, including the number of hours of training and the content of the training.²⁸ A study conducted by the Police Executive Research Forum concluded that police recruits received a median of eight hours of baton training. In comparison, the study found that recruits had the same hours for Taser training but 50 hours more for firearm training.²⁹ The Baton Model Policy opts to provide police departments with benchmarks on what baton training should consist of.

C. Use of Improvised Batons

The majority of police department policies that we reviewed generally prohibit the use of “improvised impact weapons,” which refer objects (such as flashlights) that do not have the purpose of serving as weapons, but officers nevertheless use to subdue a subject.³⁰ These policies, however, allow officers to use improvised impact weapons under exigent circumstances.³¹ Such an exception allows officers to achieve the same goals as a baton in circumstances when the officers do not have a baton available or otherwise cannot use a baton. Such an exception also provides officers with the option of using less-lethal improvised impact weapons and avoid resorting to firearms and more-lethal force options. Because our Model Use

of Force Policy seeks to minimize the use of force generally, and lethal force especially, the Baton Model Policy generally prohibits the use of improvised impact weapons but provides an exception for exigent circumstances.

D. Vulnerable Populations

Out of the nearly one-hundred use-of-force policies we reviewed, we found that only eleven discussed using batons against vulnerable populations. The policies that fail to distinguish between vulnerable and non-vulnerable populations reflect the following two problems. First, such policies may cause confusion regarding when the use of a baton is “reasonable.” To illustrate, consider the use of a baton against a ninety-nine-year-old woman, on the one hand, and against an Olympic athlete in her prime, on the other.³² If a policy notes that an officer may use a baton when a subject is resisting but does not take into account characteristics such as age, an officer may believe that they are authorized to strike an elderly person with the same force as someone much younger and stronger.³³ Second, research supports the premise that people are more likely to obey the law when those enforcing it have legitimate authority to tell them what to do.³⁴ Legitimacy from the public stems from (i) treating people with dignity and respect; (ii) giving individuals a voice during encounters; (iii) being neutral and transparent in decision making; and (iv) conveying trustworthy motives.³⁵ The use of force and the use of physical control equipment and techniques against vulnerable populations can undermine the public’s trust, which as noted above, may lead to the public delegitimizing police departments’ authority to enforce laws.³⁶ Therefore, the Baton Model Policy provides specific guidelines and restrictions on to the use of batons against vulnerable populations.

The use of batons against handcuffed individuals poses similar concerns. The Baton Model Policy prohibits using batons against people who are restrained, even if they fail to comply with commands, unless they pose an imminent threat to officers or others.³⁷

E. Use of Batons for Intimidation

Some authorities do not consider particular uses of a baton as “force,” but instead consider them to be an exertion of power, authority, and persuasion (e.g., pounding a baton on a subject’s car hood).³⁸ Other authorities disagree. The Baton Model Policy takes the latter view. The Model Use of Force Policy seeks to reduce all forms of police brutality. “Police brutality” refers to “any behavior that in their judgment treats them with less than the full rights and dignity owed to citizens in a democratic society.”³⁹ Popular conceptions of police brutality include, among others, “threats to use force if not obeyed [and] prodding with a nightstick.”⁴⁰ As a result, the Baton Model Policy considers the use of a baton for intimidation to be a use of force and, therefore, subject to the Model Use of Force Policy’s limitations on the use of force.⁴¹

II. ALTERNATIVES

The Baton Model Policy allows officers to use, when authorized and compliant, (i) batons as deadly force and (ii) improvised impact weapons. Some police department policies, however, do not allow such use.

For example, the Aurora Police Department states, “Use of the baton is justified in those proper and lawful situations requiring a degree of force greater than provided with weaponless control techniques, but less than deadly force.”⁴² The Aurora Police Department policy does not contain an “exigent circumstances” exception. We did not adopt this approach because the officers’ lives and the lives of those whom the officers may be protecting are equally as sacred as the lives of subjects. Thus, in instances where circumstances justify the use of deadly force but officers do not have lethal weapons available to them, the Baton Model Policy allows the officers to protect themselves and others by using batons as lethal weapons.

The Baton Model Policy also deviates from the Miami Police Department’s policy with respect to the use of improvised impact weapons. As noted above, the Baton Model Policy provides an exigent-circumstances exception to the general prohibition against using improvised impact weapons. The Miami Police Department policy does not contain such an exception. That policy states, “Flashlights are not intended to be weapons, and the calculated use of a flashlight as a weapon is hereby prohibited.”⁴³ We did not adopt that view because, as described above, disallowing officers from using improvised impact weapons under narrow circumstances may have the unintended consequence of increasing the use of lethal weapons.

III. SELECTED RESOURCES CONSULTED

1. Aurora Police Department, Directive Manual 5.8.4 (2015).
2. Amnesty International, *Blunt Force*, <https://www.amnesty.org/en/latest/research/2021/09/blunt-force/#:~:text=Baton%20injuries%20can%20range%20from,in%20permanent%20disability%20or%20death> (Last visited July 8, 2022)
3. Brandon Garrett & Seth Stoughton, A Tactical Fourth Amendment, 103 Va. L. Rev. 211, 274.
4. Carl B. Klockars, A Theory of Excessive Force and Its Control, in *And Justice for All: Understanding and Controlling Police Abuse of Force* 11, 13 (William A. Geller and Hans Toch eds., 1995)
5. Chelsea Matiash and Lily Rothman, The Beating that Changed America: What Happened to Rodney King 25 Years Ago, *Time* (March 3, 2016), <https://time.com/4245175/rodney-king-la-riots-anniversary/>.
6. Confrontations for Justice, The U.S. Nat’l Archives and Recs. Admin., <https://www.archives.gov/exhibits/eyewitness/html.php?section=2> (last visited Feb. 24, 2021).
7. Consent Decree, *United States v. Police Dep’t of Baltimore*, No. 1:17-CV-99-JKB, ¶ 149 (D. Md. 2017) [hereinafter *Baltimore Consent Decree*].
8. Equal Justice Initiative, *Bloody Sunday: Civil Rights Activists Brutally Attacked in Salem*, <https://calendar.eji.org/racial-injustice/mar/7> (Last visited July 8, 2022).

9. Federal Bureau of Investigation, *Technique and Use of the Police Baton* 1 (1967) (“The police baton, in the hands of an officer who has been trained in its use, is a very formidable weapon for defense and counterattack.”)
10. Geoffrey P. Alpert & Michael R. Smith, *Police Use-of-Force Data: Where We Are and Where We Should Be Going*, 2 *Police Q.* 57 (1999).
11. James G. Kolts, *A Report presented to the Los Angeles County Sheriff’s Department* 189 (1992).
12. Julian Mark, *Buffalo officers can return to duty after pushing 75-year-old protester*, (April 22, 2022) <https://www.nytimes.com/2022/04/11/nyregion/martin-gugino-buffalo-police-ruling.html>.
13. Ken Peak & Jenny D. Hubach, *The World’s Oldest Tool for Professional Law Enforcement: Historical and Legal Perspectives on the Police Baton*, 7 *Just. Prof.* 1 (1992).
14. The Marshall Project, *We Spent a Year Investigating Police Dogs. Here are Six Takeaways*, <https://www.themarshallproject.org/2020/10/02/we-spent-a-year-investigating-police-dogs-here-are-six-takeaways#:~:text=Their%20bites%20can%20be%20more,man's%20face%20was%20ripped%20off.> (Last visited July 8, 2022).
15. Miami Police Department, *Departmental Order 14 1.4.9.1.12.3* (2020).
16. Nat’l Inst. of Justice, U.S. Dep’t of Justice, *Police Use of Force, Tasers and Other Less-Lethal Weapons* ii (2011),
17. “Nightstick.” Merriam-Webster.com Thesaurus, Merriam-Webster, <https://www.merriam-webster.com/thesaurus/nightstick>. Last Accessed Feb. 24, 2021.
18. Police Executive Research Forum, *Critical Issues in Policing Series: Guiding Principles on Use of Force* 12 (2016).
19. *1 Revolts, Protests, Demonstrations, and Rebellions in American History: an Encyclopedia* 1095 (Steven L. Danver, ed. 2011).
20. Richard Winton, *How the Rodney King Beating ‘Banished’ the Baton from the LAPD*, L.A. Times (March 2, 2016), <https://www.latimes.com/local/california/la-me-rodney-king-baton-20160303-story.html>.
21. Seattle Police Department Manual, 8.300 Use of Force Tools, (2021). <https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-weapons-and-tools>
22. See U.S. Dep’t of Justice, Civ. Rights Div., *Investigation of the New Orleans Police Department* 1 (2011) [hereinafter *New Orleans Finding Report*], https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf.

23. The Leadership Conference on Civil and Human Rights, New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing 138 (2019).
24. Tom Wicker, Johnson Urges Congress at Joint Session to Pass Law Insuring Negro Vote, N.Y. Times (March 16, 1965).
25. T C Coxx, J S Fraughn, and W M Nixon, Police Use of Metal Flashlights as Weapons- An Analysis of Relevant Problems, (1985) (abstract only).

PART 4: COMPARISON MEMO SUMMARY

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We have evaluated numerous other model policies, use of force guidelines, and state law mandates and compared them to the Model Policy provisions. The following memo reflects a summary of our opinions about the key differences or similarities between the reviewed policies and the Model Policy. In particular, this Comparison Memo Summary compares our Model Policy provisions concerning Batons and other Impact Weapons with other policies.

The national, state, and local policies we compared⁴⁴—and the comparisons derived from them—provide a general opinion on differences in use of force options. We will continually review and update these comparisons. This Comparison Memo Summary is currently in draft form as a part of the Model Policy Beta Release. Some of the information provided may be subject to change.

STANDARDS OF BATON USE

- Many policies do not have specific language about batons and their use. Examples include Lexipol, IACP, Minnesota, New York, PERF Principles, and the NYU Policing Project.
- The SCRJ Model Policy provides explicit guidelines for what a baton is, which types are permitted and not permitted, what training/certification is required to carry a baton, and when and how it can be used.
- Some policies have more permissive clauses on baton use. Examples include New Jersey and Santa Monica.
- The SCRJ Model Policy limits the carrying and use of a baton to officers who complete annual training and receive and maintain certification. The policy further sets forth clear preconditions to using a baton in a manner that constitutes a use of force and requirements governing such use. The Model Policy also identifies circumstances when the use of a baton is restricted or limited.

BATON USE AS “DEADLY FORCE”

- Some policies have a more limited view of when baton use is considered “deadly force.” Examples include policies from New Jersey (limited to intentional strikes to the head or neck) and the NYU Police Project (limited to strikes to the head).
- The SCRJ Model Policy considers any strikes with a baton (intentional or not) to the head, neck, sternum, spine, groin, or kidneys to be considered “deadly force.”
- Some policies do not require absolute necessity and/or exhaustion of all non-deadly options before striking areas of increased risk of serious physical injury. Examples include policies from Santa Monica.
- The SCRJ Model Policy requires that all other available non-deadly options be exhausted and that deadly force be absolutely necessary before using a baton to strike any areas of increased risk of serious physical injury.

ENDNOTES

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- ¹ Seattle Police Department Manual 8.300 (2021).
- ² Baltimore Police Department Policy 1111 (Batons) (2019).
- ³ Seattle Police Department Manual 8.050 (2021).
- ⁴ Baltimore Police Department Policy 1111 (Batons) (2019).
- ⁵ Unless otherwise noted, the language used from this point onward is similar to Baltimore's Baton Policy.
- ⁶ This requirement is not found in Baltimore's Baton Policy. Instead, it is found in the Birmingham Police Department's Response to Resistance Policy. Birmingham Police Department, Rules and Regulations: Response to Resistance 8 (2016).
- ⁷ Minneapolis Police Department Policy and Procedure Manual Vol. 5 (Code of Conduct and Use of Force) (2022).
- ⁸ This requirement is not found in Baltimore's Baton Policy. Instead, it is found in Boston Police Department's Use of Less-Lethal Fore Policy. Boston Police Department, Rules and Procedures: Use of Less-Lethal Force, Rule 303A 1 (2020).
- ⁹ "Nightstick." Merriam-Webster.com Thesaurus, Merriam-Webster, <https://www.merriam-webster.com/thesaurus/nightstick>. Last Accessed Feb. 24, 2021.
- ¹⁰ Ken Peak & Jenny D. Hubach, The World's Oldest Tool for Professional Law Enforcement: Historical and Legal Perspectives on the Police Baton, 7 Just. Prof. 1 (1992).
- ¹¹ Federal Bureau of Investigation, Technique and Use of the Police Baton 1 (1967) ("The police baton, in the hands of an officer who has been trained in its use, is a very formidable weapon for defense and counterattack.").
- ¹² *Confrontations for Justice*, The U.S. Nat'l Archives and Recs. Admin., <https://www.archives.gov/exhibits/eyewitness/html.php?section=2> (last visited Feb. 24, 2021).
- ¹³ See Equal Justice Initiative, *Bloody Sunday: Civil Rights Activists Brutally Attacked in Salem*, <https://calendar.eji.org/racial-injustice/mar/7> (Last visited July 8, 2022).
- ¹⁴ Chelsea Matias and Lily Rothman, *The Beating that Changed America: What Happened to Rodney King 25 Years Ago*, Time (March 3, 2016), <https://time.com/4245175/rodney-king-la-riots-anniversary/>.
- ¹⁵ Tom Wicker, *Johnson Urges Congress at Joint Session to Pass Law Insuring Negro Vote*, N.Y. Times (March 16, 1965).
- ¹⁶ 1 Revolts, Protests, Demonstrations, and Rebellions in American History: an Encyclopedia 1095 (Steven L. Danver, ed. 2011).
- ¹⁷ Geoffrey P. Alpert & Michael R. Smith, Police Use-of-Force Data: Where We Are and Where We Should Be Going, 2 Police Q. 57 (1999).
- ¹⁸ Richard Winton, How the Rodney King Beating 'Banished' the Baton from the LAPD, L.A. Times (March 2, 2016), <https://www.latimes.com/local/california/la-me-rodney-king-baton-20160303-story.html>.
- ¹⁹ The Leadership Conference on Civil and Human Rights, New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing 138 (2019).
- ²⁰ Nat'l Inst. of Justice, U.S. Dep't of Justice, Police Use of Force, Tasers and Other Less-Lethal Weapons ii (2011).
- ²¹ See U.S. Dep't of Justice, Civ. Rights Div., Investigation of the New Orleans Police Department 1 (2011) [hereinafter New Orleans Finding Report], https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf.
- ²² The Leadership Conference on Civil and Human Rights, New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing 138 (2019).
- ²³ New Era 138.
- ²⁴ See Baton Policy Chart.
- ²⁵ James G. Kolts, A Report presented to the Los Angeles County Sheriff's Department 189 (1992).
- ²⁶ Police Executive Research Forum, Critical Issues in Policing Series: Guiding Principles on Use of Force 12 (2016).
- ²⁷ Consent Decree, United States v. Police Dep't of Baltimore, No. 1:17-CV-99-JKB, ¶ 149 (D. Md. 2017) [hereinafter Baltimore Consent Decree].

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- ²⁸ An example of a department that lists the training guidelines for baton usage is the Glendale Police Department's "Straight Stick Baton Recertification Course," is a 10 hour course. Glendale Police Department also included the training lesson plan.
<https://www.glendaleca.gov/home/showpublisheddocument/54455/637124282493700000>.
- ²⁹ Police Executive Research Forum, Critical Issues in Policing Series: Guiding Principles on Use of Force 12 (2016).
- ³⁰ See T C Coxx, J S Fraughn, and W M Nixon, Police Use of Metal Flashlights as Weapons- An Analysis of Relevant Problems, (1985) (abstract only). For example, "[p]olice metal flashlights are often used defensively to strike blows to the head to subdue persons resisting arrest." *Id.*
- ³¹ Seattle Police Department Manual, 8.300 Use of Force Tools, (2021).
<https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-weapons-and-tools>.
- ³² See Julian Mark, *Buffalo officers can return to duty after pushing 75-year-old protester*, (April 22, 2022) <https://www.nytimes.com/2022/04/11/nyregion/martin-gugino-buffalo-police-ruling.html> (reporting that two Buffalo police officers pushed a 75-year-old human rights demonstrator causing him to hit his head on the sidewalk and lie motionless while bleeding from his head.)
- ³³ Brandon Garrett & Seth Stoughton, A Tactical Fourth Amendment, 103 Va. L. Rev. 211, 274.
- ³⁴ See Tom Tyler, *Why People Obey the Law* (1990).
- ³⁵ New Era 94.
- ³⁶ See CBS Los Angeles, *Video Allegedly Shows VA Police Officer Using Baton to Beat Suspect 32 Times*, (March 2, 2022) <https://www.cbsnews.com/losangeles/news/video-shows-va-police-officer-using-baton-to-beat-suspect-32-times/>.
- ³⁷ The Leadership Conference on Civil and Human Rights, *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing* 138 (2019).
- ³⁸ Carl B. Klockars, A Theory of Excessive Force and Its Control, *in* And Justice for All: Understanding and Controlling Police Abuse of Force 11, 13 (William A. Geller and Hans Toch eds., 1995).
- ³⁹ *Id.* at 16.
- ⁴⁰ William A. Geller & Hans Toch, Police Executive Research Forum, *And Justice For All: Understanding and Controlling Police Abuse of Force* 16 (1995),
<https://www.ojp.gov/pdffiles1/Digitization/155434NCJRS.pdf>.
- ⁴¹ See Baton Policy, Prohibited Uses—9.
- ⁴² Aurora Police Department, Directive Manual 5.8.4 (2015).
- ⁴³ Miami Police Department, Departmental Order 14 1.4.9.1.12.3 (2020).
- ⁴⁴ Selected policies include:
- Lexipol National Use of Force Policy
 - International Association of Chiefs of Police National Consensus Policy on Use of Force
 - Campaign Zero Model Use of Force Policy
 - Minnesota Use of Force and Deadly Force Model Policy
 - New York Use of Force Model Policy
 - Texas Police Chiefs Association Use of Force Model Policy
 - New Jersey Office of the Attorney General Use of Force Policy
 - Santa Monica Use of Force Policy
 - Police Executive Research Forum Guiding Principles on Use of Force
 - NYU Policing Project Police Use of Force Policy Guidelines