



Crescent City Lodge Use of Force Reporting Guide & Checklist



The Constitutional Standard for Use of Force

The U.S. Supreme Court case of *Graham v. Connor*, 490 U.S. 386 (1989), established “Objective Reasonableness” as the standard for all applications of force in United States. This guide is designed to assist officers in articulating the facts of a Use of Force incident in accordance with the guidance provided in *Graham*. Remember, all Use of Force applications are judged based upon:

- The totality of circumstances
- From the perspective of a reasonable officer
- On the scene
- At the moment force was used.
- Without 20/20 hindsight
- In circumstances that are tense, uncertain and rapidly evolving

The court specified four specific factors, sometimes referred to as the *Graham* factors, which assist in determining reasonableness. Although not required, nor all inclusive, articulating these factors provides a good framework for justifying a particular Use of Force. The factors are:

- The severity of the crime
- Whether the subject was an immediate threat to the officers or others
- How the subject was actively resisting arrest (seizure)
- How the subject was attempting to evade arrest by flight

Many police reports contain “conclusion” disguised as “facts.” “Conclusions” are phrases or words that describe a subject’s actions, but lack clear articulation of the subject’s behaviors. When articulating force, particular attention should be paid to the specific actions and behaviors of the subject (facts). Also, officers should not use “pat” phrases, i.e., “assumed a fighting stance” or “suspect was noncompliant.” “Pat” phrases do not adequately describe the

Police reports are often written in the first person or the third person depending on departmental directives. Force statements or reports are sometimes not subject to the same restrictions as police reports.

Officers should write in the first person and use active voice to make force statements or reports as clear as possible.

Force Statement Outline

1. Opening - Force statements discuss actions by police officers that could potentially lead to criminal liability on behalf of the officer. The first page of this guide discussed the guidelines for analyzing excessive force established by the U.S. Supreme Court in *Graham v. Connor*. In *Garrity v. New Jersey*, the U.S. Supreme Court held that if an officer is ordered to make a potentially incriminating statement and that officer perceives that he or she could be fired for refusing to make that statement, then the statement cannot be introduced as evidence in criminal proceedings. Some documents, such as police incident reports, may not fall under *Garrity* because they are documents created in the normal course of business for a police officer. Some departments, such as NOPD, have tried to make force statements like police reports in that respect. As such, it is suggested that force statement be opened with the following paragraph, edited to fit the circumstances.

I have been ordered to write this Force Statement by Sgt. FIT Team. Completion of this Force Statement is also required by NOPD Operations Manual PR300.6.1. Had I not been ordered to draft this document, I would have asserted my right to remain silent as guaranteed by the 5th Amendment of the U.S. Constitution. In addition, although I have not been advised as such, I am aware that LSA 40:2531(b)(5) makes administrative statements rendered in administrative investigations, such as this use of force investigation, inadmissible in any subsequent criminal proceedings. However, since this statement is being compelled and I would be fired for failing to comply with these orders, I am rendering the below involuntary statement with regard to the events of

2. Body - The body of the force statement will contain the facts and circumstances of the incident, the forced used, and the reason the force was used. It is this that an objectively reasonable officer would analyze to determine if the force was excessive. Officers should check their department's regulations on what must be included. The following recommendations are based on New Orleans Police Department Chapter 1.3.6. Officers may not need to address all of these items based on the circumstances surrounding the use of force. Again, we recommend these documents be written in the first person using active voice (as opposed to passive voice).

1. Was the contact video and/or audio recorded?
 - Was the incident recorded on BWC? If not, why not?
 - Was the incident recorded on MVAR? If not, why not?
 - Was the incident recorded on CEW?
 - Did recording capture the use of force?
 - If BWC or MVAR were available but not used, be sure to explain why. If there was any recorder malfunction, be sure to explain what happened.

2. What was the reason for the initial police contact?

- If dispatched:
 - What were the details of the call?
 - What type of crime?
 - Any weapons involved?

- If on-view or self-initiated:
 - What brought your attention to the subject and what did you see?
 - What, if any, information came from a complainant/witness?
 - What type of crime?
 - Any weapons involved?

- Legal authority to be at the location:
 - Public area,, consent, warrant, exigency, community caretaking (involuntary treatment)

- Legal purpose for the contact or detention:
 - Social contact, Terry stop, custodial arrest
 - Any progression of contact? For example, social contact changing to Terry stop.

- Describe the scene when you arrived:
 - Inside or outside?
 - Lighting?
 - Weather?
 - Environmental/physical hazards?
 - Possible weapon?

3. Detailed description of the incident to include words, actions, and threat posed by the subject:

- Subject descriptors:
 - Subject's physical or verbal reaction to officer
 - Subject's size/strength in comparison to the officer
 - Tone of voice and any statements made
 - Body posture and movement
 - Perceived intoxication or mental state
 - Attempts to flee, fight, or resist arrest

4. Detailed description of the force used by you during the incident:

- What specific techniques did you use?
 - Control, grappling, or strikes?
 - Document and explain all strikes you remember.
 - Was it effective?
 - Use specific language for all physical contact, do NOT use general statements such as:
 - "took subject to the ground"
 - "suspect was handcuffed after a struggle"
 - "suspect's legs were restrained"

- CEW (TASER)
 - Were you able to give a verbal warning?
 - Distance from the suspect?
 - Document and explain each application you remember:
 - Probe or drive stun application?
 - Was it effective?
 - Serial number of TASER and cartridge(s)?
 - Medical screening?

- Impact weapons:
 - What type of impact weapon (baton, ASP, other)?
 - Document and explain all strikes you remember.
 - Was it effective?

- Firearm:
 - What type of firearm?
 - Threat to officers at the time?
 - Threat to bystanders, if any, at the time?
 - Was weapon drawn before decision to fire? If so, why?
 - Was it effective?

- Were you trained with these weapon or techniques?
 - Academy training, departmental training, outside training?
- What did you tell the suspect prior to and during the use of force?
 - How did the suspect respond to your direction?
- Reasonableness of force:
 - How did the totality of the circumstances influence the force used?
 - What force options did you have available to you and what was their feasibility?
- Were you able to reduce or stop using force?

5. Detailed description of the force used by other officers, if you clearly observe it.

- List ALL officers you remember being there, even if they did not use force.
- Describe what you personally saw or heard.

6. Detailed description of any visible injury, complaint of injury, or lack of injury and if any medical assistance was needed or provided:

- Were there visible injuries to the subject before force was used?
- Were there visible injuries to the subject after being taken into custody?
- Did the subject complain of injury after being taken into custody?
- Was the subject given medical treatment of any kind?
 - Who provided medical treatment (NOEMS, NOFD)?
 - Did the subject go to the hospital?

7. Document the supervisory notification and in-person supervisory response to the arrest and use of force.

- Document the name of the supervisor notified and the time of the notification.
- Name of any supervisor who responded to the scene.
- Names, if known, of any civilian witnesses to the use of force.

8. Other information you believe is pertinent to the investigation.

FORCE STATEMENT CHECKLIST

- A detailed account of the incident from the officer's perspective.
- The reason for the initial police presence, e.g.: response to (nature of) call, on-view suspicious activity (describe the suspicious activity), flagged by a citizen (nature of citizen's concern), shots fired, or screams heard, etc.
- A specific description of the acts that led to the use of force.
- The specific description of resistance encountered.
- A description of every type of force used or observed.
- Names of all assisting officers and supervisors participating in the actions leading up to the use of force.
- The name of the supervisor the involved officer notified, and the time of the notification.
- The name of the supervisor who responded to the scene.
- Name, if known, of any civilian witnesses.
- A description of any injuries suffered by the officer, subject, or witness.
- Whether a body worn camera was activated and its identifiable file location.
- Whether a vehicle camera was activated and its identifiable file location.
- Whether a CEW activation occurred, even if the CEW was not discharged.

This Use of Force Reporting Guide and Checklist was developed using information compiled by other people in addition to myself. As such, credit is due to AELE for their UOF Reporting Guide and unknown persons with the Seattle Police Department for their UOF Reporting Guide.

This document is based primarily on the New Orleans Police Department Use of Force Reporting regulations (NOPD Chapter 1.3.6). However, that regulation was developed to comply with the federal consent decree in *United States of America v. City of New Orleans* (32 F.Supp.3d 740). Therefore, the underlying principles and the information based on *Graham v. Connor* (490 U.S. 386) should be applicable to other departments. Officers should review their department's use of force requirements. You are welcome to adapt this Use of Force Reporting Guide and Checklist based on your department's regulations. If you do, please email me a copy. Anyone who wants this document in Apple Pages or Microsoft Word, please send me an email.

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