



SUBJECT: <b>Use of Force Investigation</b>	PAGE <u> 1 </u> OF <u> 6 </u>
	NUMBER: <b>63-UOF-03</b>
RULE/CODE REFERENCE: AR 5120-9-01, 5120-9-02	SUPERSEDES: 63-UOF-03 dated 06/30/13
RELATED ACA STANDARDS:	EFFECTIVE DATE: November 25, 2016
	APPROVED: 

**I. AUTHORITY**

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

**II. PURPOSE**

The purpose of this policy is to establish a standardized process for the purpose of documenting, investigating, and distributing information related to the use of force on inmates.

**III. APPLICABILITY**

This policy applies to all persons employed by the Ohio Department of Rehabilitation and Correction (DRC) and to independent contractors providing a service to the DRC who interact with inmates and may be involved in the reporting of and investigation of use of force incidents (excluding employees of the Adult Parole Authority (APA) who are required to follow DRC policy 104-TAW-02, APA Use of Force.

**IV. DEFINITIONS**

All definitions set forth in DRC policy 63-UOF-01, Use of Force, shall be applicable in this policy.

**V. POLICY**

It is the policy of the Ohio Department of Rehabilitation and Correction (DRC) to monitor and ensure that responses to resistance and uses of force are appropriate and consistent with applicable administrative rules and DRC policies by documenting and investigating such incidents where appropriate.

**VI. PROCEDURES****A. Composition**

The managing officer shall appoint one (1) exempt employee (unless additional exempt employees are deemed necessary by the managing officer) to serve as the Use of Force Investigator utilizing the Deputy Warden Review of Use of Force (DRC4181). When necessary the use of force investigator shall consult a physical skills instructor for clarification of techniques. Members of the rules infraction board (RIB) or the hearing officer who conducted or will be likely to conduct hearings against the inmate arising from the same incident in which force was used shall not be assigned as the use of force investigator.

**B. Training**

No employee shall be assigned as the use of force investigator unless he/she has successfully completed the appropriate departmental training.

**C. Documents**

A completed use of force report packet shall include:

1. Use Of Force Incident Reports (DRC1000/1001);
2. Inmate Use of Force Statement (DRC2737) from each inmate physically involved in the use of force;
3. A Supervisor's Use of Force Summary Report (DRC2611);
4. Witness statements, whether staff or inmate (unless confidential);
5. Medical Exam Reports (DRC5251) on all staff and inmates physically involved in the use of force;
6. A Use of Force Investigation Summary Report (DRC2641), if applicable;
7. Any other related documents, photographs, diagrams, video, or information used to describe the incident.

**D. Non-institutional Use of Force Investigator**

Pursuant to Administrative Rule 5120-9-02 (K), Use of Force Reports and Investigations, the chief inspector may initiate an investigation of a use of force upon his/her own initiative or at the request of the Director, managing Director of Operations, Regional Directors, or the Managing Officer of the institution in which the incident took place. In such cases, the chief inspector may coordinate or assign a use of force investigator utilizing other DRC staff as necessary and appropriate.

**E. Function**

1. The use of force investigator shall make every reasonable effort to interview each employee and inmate physically involved in the use of force incident and any other witness (staff or inmate) considered relevant.

2. Exceptions to this requirement include if the inmate has been released from DRC supervision or the employee no longer works for the DRC. If any employee or inmate involved is no longer located at the institution where the incident occurred and it is not feasible for the use of force investigator to conduct an interview at that employee's or inmate's current location, the use of force investigator may conduct the interview via speakerphone or teleconference. All interviews shall be taken as soon as possible after the incident is reported.

#### **F. Use of Force Investigator Responsibilities**

1. The use of force investigator shall impartially review the incident using all available reports, statements, photographs, video, testimony, technical support, etc., pertinent to the matter. The use of force investigator shall have the authority to call any employee to give statements, accounts, and information regarding any matter under review.
2. All employees are under an affirmative duty to fully cooperate with any use of force investigation if called upon to do so as stipulated in the DRC Standards of Employee Conduct. The employee witness may invoke protections against self-incrimination to prevent the statements from later use in court. However, that does not excuse the employee from testifying before the use of force investigator.
3. Any employee(s) called before the use of force investigator shall be permitted to have a representative accompany him/her during the interview in accordance with applicable Collective Bargaining Agreements.
4. The investigation report is the official record of the use of force investigator.
5. The use of force investigator shall determine whether the employee was justified in using force and whether the force used was appropriate and/or excessive. The use of force investigator shall identify any policy or procedure violations related to the use of force and shall explain how the violation impacted the use of force incident. The use of force investigator shall formulate any recommendations concerning the matter for inclusion in investigation report.

#### **G. Standards and Issues**

It must be recognized that situations requiring the use of force can develop quickly and thus change the level of response that is appropriate. Circumstances presented by the inmate involved in the use of force situation and surrounding circumstances must be considered. To determine if the force used by an employee was appropriate and reasonably necessary under the circumstances, the use of force investigator shall consider:

1. The actual force applied and the formal techniques applied, if any;
2. The need for the force;
3. The relationship between the force and the necessity for using force;
4. The extent of any injuries received by physically involved parties;
5. The behavior(s) and background of the inmate against whom the force was used;
6. The actions by third parties who were present;

7. The inmate's ability to cause harm;
8. The inmate's opportunity to cause harm;
9. The potential harm to the employee(s);
10. The feasibility or availability of alternative courses of action;
11. The behavior of the employee during and immediately preceding the incident.

#### **H. Record of Testimony**

Additional documentation may include:

1. A transcription of an interview - In the event such a transcription is made, the subject of the interview shall read the transcript for accuracy and sign it.
2. Written statements - Inmates and/or employees may be required to write out their version of the incident or the use of force investigator may write down the testimony as it is being given. In either case, the witness shall verify that the written statement is accurate by providing their signature to the statement.

#### **I. Report**

After all testimonies have been taken, the use of force investigator shall determine what the facts of the use of force incident are and shall draw a conclusion as to whether or not the employee used a reasonable response and whether or not excessive force was applied under the circumstances. Administrative Rule 5120-9-01, Use of Force, shall be the standard for determining whether or not the response was reasonable. The use of force investigator's written report shall summarize the Use of Force Investigation Summary Report (DRC2641) and shall also include:

1. A brief statement of the facts as found by the use of force investigator;
2. A conclusion as to the necessity for the response and if the force used was appropriate;
3. A conclusion as to whether or not excessive force was employed and its conclusions regarding any allegation of abuse;
4. The reasons supporting these conclusions;
5. Any other recommendations formulated by the use of force investigator; and
6. The signature of the use of force investigator.

#### **J. Deadlines and Action**

Regardless of any formal deadlines, it is always important to complete the investigation as soon as possible after an incident so that memories are fresh and needed records are readily retrievable. The use of force investigator shall complete all interviews within twenty (20) business days after the use of force investigator has received the case. The use of force investigator shall submit the written report to the managing officer within thirty (30) business days after being assigned. Only the managing officer may authorize exceptions to this deadline; however, the deadline may not be extended beyond an additional thirty (30) business days.

**K. Submitting the Report and Record**

The use of force investigator shall forward the use of force report and record, including all attachments and the Use of Force Investigation Summary Report (DRC2641), to the managing officer, or to the chief inspector when the investigation has been conducted and/or coordinated by the Office of the Chief Inspector. The managing officer or chief inspector shall then distribute the report as appropriate. The record shall include:

1. All relevant Use of Force Incident Report/Supplement (DRC1000/1001);
2. Inmate Use of Force Statement (DRC2737) from each inmate physically involved in the use of force;
3. The Use of Force Investigation Summary Report (DRC2641);
4. The results of the Medical Exam Report (DRC5251) for all inmates and/or staff members physically involved in the incident; and
5. All relevant supplemental information (i.e., pictures, videos and other descriptive information).

**L. Review**

1. The managing officer shall review the entire record within seven (7) calendar days of receipt from the use of force investigator. The managing officer may accept the report or he/she may send it back to the use of force investigator for additional investigation if necessary, or reassign the investigation to a new use of force investigator. Any additional interviews must be conducted in accordance with section VI.H of this policy.
2. Once the managing officer is satisfied that the incident has been completely investigated, he/she may either accept or reject the investigative findings and conclusions, in whole or in part. In either case, if it is determined the employee involved was not justified in their level of response, or that excessive force was used, the managing officer or other appropriate appointing authority shall discipline the employee subject to applicable civil service laws and regulations or union contracts and DRC Standards of Employee Conduct.
3. The managing officer may refer the use of force incident to the Ohio State Highway Patrol for criminal prosecution.
4. The use of force investigation and subsequent report shall also serve as the administrative investigation into conduct which may be in violation of DRC policies, procedures, and/or rules. The Use of Force Investigation Summary Report (DRC2641) may be used to support employee disciplinary action.
5. Investigations of incidents that are suspected to be criminal in nature shall not be initiated by the Department's officials unless the Ohio State Highway Patrol is aware of the nature of the incident and has granted the DRC consent to conduct an administrative investigation.

**M. Office of Prisons**

Within fourteen (14) calendar days of the managing officer's final review, the managing officer shall have a scanned copy of the use of force packet forwarded, via email or an available web link, including a fully completed Use of Force Investigation Summary Report (DRC2641) and related documents to the institution's regional operations manager. Once received, the record shall be reviewed by the assigned regional operations manager who may order further action if deemed appropriate.

**N. File**

A copy of the entire record shall be kept in the managing officer's/designee's office. A copy of the Use of Force Investigation Summary Report (DRC2641) and the report prepared by the use of force investigator, minus any attachments, shall be placed in the inmate's unit file and in the designated employee file.

**Related Department Forms:**

Incident Report	DRC1000
Incident Report Supplement	DRC1001
Supervisor's Use of Force Summary Report	DRC2611
Investigation Summary Report	DRC2641
Inmate Use of Force Statement	DRC2737
Deputy Warden Review of Use of Force	DRC4181
Medical Exam Report	DRC5251