



GENERAL ORDER

No. 214

Subject:

Use of Deadly Physical Force

Issuing Authority:

Chief of Police

Effective Date:

07/01/2019

Supercedes:

- I. **PURPOSE:** The purpose of this order is to establish policy and guidelines governing the use of deadly physical force by sworn officers of the Town of Manlius Police Department and to establish procedures for reporting, investigating and evaluating the use of such force. Sworn members should make every effort to adhere to the sanctity of life, valuing and preserving human life in all situations when possible. [Added: 07/01/2019]

- II. **POLICY:** It is the policy of the Town of Manlius Police Department to recognize the value of all human life and dignity without prejudice to anyone and to prevent the unnecessary loss of human life. Officers may use deadly physical force only when the use of deadly physical force is objectively reasonable and necessary to:
 - A. Prevent or terminate deadly physical force from being used against the officer or a third person, pursuant to Article 35 of the New York State Penal Law.
 - B. Effect the arrest, or to prevent the escape from custody of a person whom the officer reasonably believes to have committed an offense, and the use of deadly physical force is necessary to defend the officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force by the offender.
 - C. It is the responsibility of each officer to be aware of the requirements of Article 35 of the New York State Penal Law and the standard of objective reasonableness, established by the United States Supreme Court in *Graham v. Connor* to guide his actions based upon that law, department policy and training. As the Supreme Court has recognized, this inquiry embodies "allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary in a particular situation." [Revised: 10/02/2019]
 - D. The primary consideration in the employment of deadly physical force is justification. The fact that a police officer is justified in using deadly physical force does not allow reckless conduct by the police officer if the use of deadly physical force may injure innocent persons whom he is not seeking to arrest or retain in custody.
 - E. The discharge of a firearm will always be considered to be the use of deadly physical force, unless the projectile is an impact munition deployed from a dedicated platform.
 - F. Deadly physical force can be expanded to include the use of non-lethal weapons and force if the intent is to cause serious physical injury. This shall include, but is not limited to impact weapons, chemical agents, flashlights, motor vehicles and bare hands.
 - G. Only issued or approved firearms or impact weapons will be carried on duty and used when encountering resistance, except in extreme emergency situations when an officer may use any justifiable resource at his disposal.

- III. **DEFINITIONS:** [Revised: 10/02/2019]
 - A. **DEADLY PHYSICAL FORCE** - Physical force which, under the circumstances in which it is used, is readily capable of producing death or other serious physical/bodily injury.
 - B. **PHYSICAL INJURY** - Impairment of physical condition or substantial pain.

- C. SERIOUS PHYSICAL INJURY/SERIOUS BODILY INJURY** - Physical injury which creates a substantial risk of death, unconsciousness or which causes death or serious and protracted and obvious disfigurement, protracted impairment of health or protracted loss or impairment of a bodily member, organ or mental faculty.
- D. REASONABLE BELIEF** - Those facts and circumstances within the knowledge of the individual which would make a reasonable and prudent person tend to believe that the facts and circumstances are true.
- E. OBJECTIVELY REASONABLE** - An objective standard used to judge an officer's actions. Under this standard, a particular application of force must be judged through the perspective of a reasonable officer facing the same set of circumstances, without the benefit of 20/20 hindsight, and be based on the totality of the facts that are known to that officer at the time that the force was used.
- F. ACTIVELY POINTING** - The intentional targeting of a person with an Electronic Control Device (ECD), firearm, impact weapon, impact projectile or chemical agent. [Revised: 11/11/2019]

IV. GUIDELINES:

- A. TRAINING** - All officers shall receive instruction regarding the use of deadly force, and be provided a copy of this order, and shall familiarize themselves with pertinent sections of Article 35 of the New York State Penal Law prior to receiving authorization to carry firearms or police batons.
- B. DRAWING AND DISPLAYING WEAPONS**
 - 1. The drawing or displaying of an officer's weapon represents escalation toward the use of deadly physical force, increasing the risk of accidental discharge or weapon loss, and may contribute to fear or panic. Officers are justified in removing firearms from holsters and/or gun mounts if:
 - a. The member reasonably believes that the situation poses or may pose an immediate threat of death or serious physical injury to the officer or another person; and/or
 - b. There is justification to use deadly physical force against a person.
- C. WARNING SHOTS** - Warning shots are prohibited under any circumstances.
- D. MOVING VEHICLES** - Discharging a firearm at a moving vehicle is prohibited unless the officer reasonably believes that the occupants of the vehicle are using or about to use deadly physical force against the officer or another person and all other options have been exhausted. Officers should note that a motor vehicle presents a formidable shield against most firearms and if the officer disables the operator the vehicle can be expected to continue uncontrolled creating a hazard to officers and the public.
- E. ANIMALS** - Officers are justified in discharging firearms to destroy an animal for self-defense, to prevent substantial harm to the officer or another or when the animal is so badly injured that humanity requires its relief from further suffering. The watch supervisor shall be notified as soon as practical whenever a firearm is discharged to destroy an animal. [Revised: 11/11/2019]

- F. **JUVENILES** - No distinction shall be made relative to the age of the intended target of deadly physical force. Self-defense and imminent threat shall be the only procedural guidelines for employing deadly physical force.
 - G. **FLEEING FELONS** - Officers may use deadly physical force against fleeing felons only when the use of deadly physical force is necessary to effect the arrest or to prevent the escape from custody a person whom the officer reasonably believes to have committed an offense listed in Article 35 of the New York State Penal Law and the use of deadly physical force is necessary to defend the officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force by the offender.
 - H. **RISK TO INNOCENT PERSONS** - Officers are prohibited from discharging firearms when it appears likely that an innocent person in the immediate line of fire may be injured.
 - I. **DUTY TO INTERVENE** - Any officer present and observing another officer using force that he/she reasonably believes to be clearly beyond that which is objectively reasonable under the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm. [Revised: 07/01/2019]
- V. **DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE**: [Added: 10/02/2019]
- A. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.
 - B. Factors that may be used in determining the reasonableness of force include, but are not limited to:
 - 1. The severity of the crime or circumstances.
 - 2. The level and immediacy of threat or resistance posed by the suspect.
 - 3. The potential for the injury to citizens, officers and suspects.
 - 4. The risk or attempt of the suspect to escape.
 - 5. The knowledge, training and experience of the officer.
 - 6. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion and the number of officers or subjects.
 - 7. Other environmental conditions or exigent circumstances.
- VI. **PROCEDURE**:
- A. Officers involved in the use of deadly physical force, on or off-duty, shall immediately notify the watch supervisor or Duty Chief in his absence after notifications to a 911 Center have been made. This requirement shall apply to all firearms discharges except for the following instances:
 - 1. Authorized training.
 - 2. Target practice.
 - 3. Hunting.
 - B. **OFFICER-INVOLVED INCIDENTS** [Revised: 10/02/2019]

1. Whenever deadly physical force is employed and results in death or serious physical/bodily injury or where a firearm was discharged at a suspect, the officer should do the following:
 - a. Immediately determine the physical condition of any injured person and render first aid when appropriate and safe to do so.
 - b. Notify the Control Center of the incident and location.
 - c. Request assistance as needed, notify the watch supervisor or Duty Chief in his absence and emergency medical services.
 - d. Isolate a radio channel.
 - e. Limit further communications regarding the incident to telephones if possible.
 - f. Secure the incident scene and act to protect all physical evidence and to identify all potential witnesses.
 - g. Remain at the scene (unless injured) until the arrival of the appropriate command staff. However, if the circumstances are such that his continued presence at the scene might cause a more hazardous situation to develop (violent crowd), the ranking commanding officer at the scene shall have the discretion to instruct the officer to respond to another more appropriate location.
 - h. Protect his weapon for examination.
 - i. Brief watch supervisor/Duty Chief of the incident.
 - j. When relieved by a senior ranking officer, return to Headquarters or other designated location and cooperate with investigative personnel by completing and signing a Public Safety Statement which provides basic details needed to further the investigation (who, what, why, where, when, how). This is separate from a detailed written statement. The involved officer must be accompanied by the Operations Division Commander or a designated supervisor or senior officer.
 - k. Within 72 hours the officer shall prepare and submit all necessary departmental reports and be available for the internal affairs investigation portion of the case. This may include an internal memorandum detailing the incident as well as a formal interview with the IA officer or his designee. This deadline shall be extended if the officer is unable to respond due to hospitalization or unconsciousness.
 - l. With regards to the criminal investigation, the involved officer shall be afforded all rights that are consistent with the U.S. Constitution.
 - m. Be allowed to communicate with family members, PBA representative, chaplain, attorney or anyone else required.
 - n. Refrain from discussing the incident with unauthorized personnel. Advise the Chief of Police of any discussions with authorized personnel, outside the department. Authorized personnel are as follows:
 - i. Chief of Police.

- ii. Duty Chief.
 - iii. Division Commander.
 - iv. Internal Affairs Officer.
 - v. Watch supervisor of involved officer.
 - vi. Assigned investigative personnel.
 - vii. Department/PBA attorney.
 - viii. Privately retained attorney.
 - ix. Department/private psychologist.
 - x. Chaplain.
 - xi. PBA representative.
 - xii. Physician.
 - xiii. Immediate family.
 - o. Submit to counseling with a department-approved psychologist. The purpose of this debriefing will be to allow the officer to express his feelings and to deal with the moral, ethical, and/or psychological after-effects of the incident. The debriefing shall not be related to any department investigation and nothing discussed in the briefing will be reported to the department. The debriefing will remain protected by the privileged physician-patient relationship
2. Guard Officer responsibilities:
- a. Secure and preserve all evidence found on the suspect's person.
 - b. Advise the Chief of Police (or Duty Chief in his absence) of the suspect's condition.
 - c. Remain with the suspect at all times. Accompany the suspect in the ambulance and through all stages of medical treatment until properly relieved.
 - d. Obtain clothing from the suspect at the hospital. Secure the names of all attendants removing clothing or treating the suspect. Preserve all items as evidence.
 - e. Obtain a search warrant if necessary, for toxicology tests to be performed; (e.g. blood/urine, etc.). Secure the names of persons to whom requests are made.
 - f. Maintain a list of all medications administered and by whom.
 - g. Secure the names of all persons involved with the suspect and their extent of involvement.
 - h. If suspect is deceased, advise all medical personnel and the medical examiner that all personal items must be preserved as evidence.
 - i. Do not discuss the incident with unauthorized personnel.
3. Watch supervisor or in his absence, Senior Ranking Officer (SRO) responsibilities:

- a. Respond immediately to the scene.
 - b. Assume control and maintain integrity of the scene until properly relieved.
 - c. Notify the Chief of Police/Duty Chief, Operations Division Commander, Administrative Division Commander, Internal Affairs Officer and the SIS supervisor.
 - d. Verify that all officers present at the time of the incident did not utilize their firearms by manually checking their magazine capacity against the remaining ammunition observed.
 - e. Request investigative/forensic personnel from the agency selected by the Chief of Police or Duty Chief when directed to do so. [Revised: 07/01/2019]
 - f. Direct and assign incoming officers pending the arrival of command personnel.
 - g. Document and photograph all injuries. [Added: 10/02/2019]
 - h. Secure names and addresses of all witnesses and make arrangements for their seclusion and subsequent statements.
 - i. Isolate the involved officer from the scene as soon as possible. If the officer is injured, assign a senior officer to accompany him at all times.
 - j. Administer the Public Safety Statement to the involved officer(s).
 - k. Assign an officer to guard and accompany the suspect at all times.
 - l. Perform other duties as assigned.
 - m. Ensure that all officers present at the scene complete a report as to their actions and observations. These will be completed after the officers are relieved at the scene.
 - n. Prepare a detailed report as to actions taken, observations and participation in the investigation.
4. Operations Division Commander Responsibilities:
- a. Respond immediately to the scene.
 - b. Contact the agency selected by the Chief of Police or Duty Chief and request an investigative response. [Revised: 07/01/2019]
 - c. Coordinate with the Chief of Police/Duty Chief at the scene. At the direction of the Chief of Police, act as a liaison with the selected agency. [Revised: 07/01/2019]
 - d. Ensure that the weapon(s) used by the officer(s) is/are treated as evidence. If the firearm used was the involved officer's duty weapon, issue a spare pistol as soon as possible.
 - e. Ensure that the Public Safety Statement has been completed with the involved officer. The supervisor obtaining the Public Safety Statement should outrank the involved officer. [Added: 07/01/2019]

- f. Ensure that the involved officer makes no statements to unauthorized personnel.
 - g. Remove the involved officer from the scene and ensure that he is transported to Headquarters or another designated location as soon as possible. Designate a supervisory or senior officer to accompany the involved officer.
 - h. When appropriate make arrangements for the involved officer to be taken for examination and required blood tests.
 - i. Provide whatever support needed for the involved officer. When appropriate, ensure that the officer's rights are protected.
 - j. Make arrangements for the involved officer to contact family members and anyone else requested or if unable to do so, make those contacts for him.
 - k. Ensure adequate patrol coverage (e.g. call-ins, etc.).
 - l. Arrange for the involved officer to undergo a debriefing with the department psychologist as soon as possible, but within 24 hours of the incident.
 - m. Avail the services of the department chaplain to the involved officer and his family to aid them with the after-effects of the incident. The chaplain services shall not be related to any department investigation of the incident and will remain protected by the privileged relationship.
 - n. Arrange for a debrief of all involved department personnel with applicable critical incident stress management professionals.
 - o. Prepare a written report for the Chief of Police detailing actions during the incident, and the subsequent internal investigation.
5. Assistant Operations Division Commander Responsibilities:
- a. Respond to the scene immediately.
 - b. Coordinate with the Operations Division Commander at the scene.
 - c. Assign personnel to identify witnesses and to take any statements that cannot be held for the responding agency. [Revised: 07/01/2019]
 - d. Ensure that the crime scene is secured and held for the agency selected by the Chief of Police or Duty Chief. [Revised: 07/01/2019]
 - e. Ensure that all-necessary reports are completed.
6. Internal Affairs Officer Responsibilities:
- a. Respond to the scene immediately.
 - b. Ensure the Public Safety Statement has been administered to the involved officer(s).
 - c. Conduct a separate but concurrent investigation to determine if the incident falls within department policy.
 - d. Inform the Chief of Police of the status of the investigation.

- e. Prepare a full report to the Chief of Police regarding his investigation and conclusion.
7. Chief of Police or in his absence Duty Chief Responsibilities:
- a. The Chief will immediately be notified of any officer-involved incident.
 - b. Ensure the Public Safety Statement has been administered to the involved officer(s).
 - c. Delegate a department liaison (Operations Division Commander or Assistant Operations Division Commander) to the investigating agency.
[Revised: 07/01/2019]
 - d. Be responsible for press coverage of the incident.
 - e. Notify the Town Attorney.
 - f. Place the involved officer on administrative leave or duty.
 - g. Keep the involved officer, his division commander and watch supervisor apprised of the status of the investigation.
 - h. Establish and maintain a liaison with the District Attorney.
 - i. Present the case to the District Attorney for review.
 - j. At the conclusion of both the criminal and/or departmental investigation, make the final determination of action to be taken.
 - k. Review policies, training, equipment, etc., with division commanders for possible improvement.
 - l. Report the incident to the Town of Manlius Police Committee.

C. USE OF FORCE REPORT [Revised: 10/02/2019]

1. In addition to documenting the incident in their police report, officers shall prepare a "Use of Force Report" whenever deadly physical force is used, including when:
 - a. A firearm is discharged for purposes other than training or recreation at or in the direction of another person whether or not a person was struck or injured by the projectile to include any accidental discharge.
 - b. Any conduct that results in or is alleged to have resulted in, injury or death of another person.
 - c. Deadly force is applied through the deploying of lethal or less-than lethal weapons. [Revised: 11/11/2019]
2. When a "Use of Force Report" is prepared as a result of a firearms discharge, the reporting officer shall include:
 - a. The make, model, serial number and caliber of the firearm used.
 - b. The type of ammunition used.
 - c. The number of rounds discharged.

- d. Notation of any weapon or ammunition malfunction.
- e. Number of bystanders present if any and their proximity to the discharge.
3. If more than one officer is involved in the use of deadly physical force, each officer shall complete the "Use of Force Report" describing the force used by that officer.
4. If the officer is incapacitated a supervisor shall prepare the use of force report based upon the supervisor's investigation of the incident.
5. A superior officer shall review the "Use of Force Report" for completeness and accuracy.
6. All use of force reports, following initial supervisory review shall be directed to:
 - i. The officer's Division Commander for review.
 - ii. The Internal Affairs officer for review.
 - iii. And the Chief of Police for findings.

D. HUMANE ANIMAL DESTRUCTION

1. In addition to documenting the incident in a police report, officers shall prepare a "Humane Animal Destruction Report" whenever a firearm is discharged for purposes other than training or recreation to facilitate the destruction of a dangerous or injured animal.

E. INVESTIGATING THE USE OF DEADLY PHYSICAL FORCE

1. There will be two separate but concurrent investigations into officer involved incidents. They are the criminal investigation and the departmental internal investigation.
2. The agency selected by the Chief of Police or Duty Chief will conduct the criminal investigation. Either the Operations Division Commander or the Assistant Operations Division Commander will be designated as the departmental liaison with the selected agency. The Internal Affairs Officer will conduct the departmental investigation. Both the Operations Division Commander and Internal Affairs Officer shall report directly to the Chief of Police. [Revised: 07/01/2019]
3. The criminal investigation will determine what actually transpired and whether or not there is criminal liability involved.
4. The departmental investigation will determine whether the incident falls within department policies and guidelines.
5. The departmental investigation shall be conducted in accordance with General Order #211, "Internal Affairs."
6. In conducting the departmental investigation, the Internal Affairs Officer shall continuously inform the Chief of Police of the status of the investigation.
7. The Internal Affairs Officer shall prepare a full report to the Chief of Police regarding his investigation and conclusion.

F. EVALUATING THE USE OF DEADLY PHYSICAL FORCE [Revised: 10/02/21019]

1. The Chief of Police shall review the investigations to ensure that the use of deadly physical force was objectively reasonable, authorized, necessary, not reckless and in accordance with department policy and therefore justified.
2. Upon the conclusion of any criminal investigation or departmental investigation, the Chief of Police will make a final determination of action to be taken.
3. If the use of force report was submitted as the result and the ensuing investigation supports that the discharge was negligent or inappropriate, the officer involved shall be required to undergo remedial training in the use of force and rectification in the use of firearms.

G. ADMINISTRATIVE LEAVE/DUTIES [Revised: 07/01/2019]

1. The involved officer shall be relieved of regular duty and assigned to administrative leave or duties at Police Headquarters until the investigation has been completed. Assignment to administrative leave or duties shall be non-disciplinary and is intended to serve two purposes:
 - a. To address the personal and emotional needs of an officer involved in the use of deadly physical force, which results in injury or death.
 - b. To assure the community that verification of all the facts surrounding such incidents are fully and professionally explored.
2. While on administrative leave the officer shall remain available at all times for official departmental interviews and statements and shall be subject to recall to duty at any time.
3. Upon returning to duty, the officer may be assigned to administrative duty for a period of time as deemed appropriate by the involved officer, his psychologist and the Chief of Police.

H. MISCELLANEOUS

1. All personnel should be sensitive to the psychological trauma that is associated with these types of incidents. Behavior such as blaming, ridiculing, teasing, and isolating the involved officer will only increase the potential trauma and therefore shall not be tolerated.
2. Supervisors shall ensure that the officer is treated in a dignified manner. A fellow officer should accompany him during the initial phases of the inquiry.
3. The Internal Affairs Officer shall cause an annual analysis of all use of force incidents to be completed. The analysis should identify: [Revised: 07/01/2019]
 - a. Date and time of incidents.
 - b. Types of encounters resulting in the use of force.
 - c. Trends or patterns resulting in injury to any person including employees.
 - d. Impact of findings on policies, practices, equipment and training.

I. POSTING THE USE OF FORCE POLICY

1. This Use of Force policy shall be conspicuously posted on the department's public website in accordance with Executive Law Section 837-t (Currently 72 hours after amendments). [Revised: 11/11/2019]

[Original: 05/01/1992]

[Revised: 06/30/1993]

[Revised: 04/15/1997]

[Revised: 03/17/2000]

[Revised: 02/15/2001]

[Revised: 07/11/2011]

[Revised: 07/01/2014]

[Revised: 05/21/2015]

[Revised: 05/23/2017]

[Revised: 07/01/2019]

[Revised: 10/02/2019]

[Revised: 11/11/2019]