

<b>PEMBERTON POLICE DEPARTMENT</b>			
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<b>SUBJECT: USE OF FORCE</b>			
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<b>BY THE ORDER OF:</b> <b>Chief David King</b>		June 16, 2020	
<b>SUPERSEDES ORDER #:</b>			

**PURPOSE** The purpose of this directive is to bring this department into compliance with guidelines promulgated by the New Jersey Attorney General, Burlington County Prosecutor, and existing statutory and case law.

**POLICY** Police officers have been granted the extraordinary authority to use force when necessary to accomplish lawful ends. That authority is grounded in the responsibility of every sworn law enforcement officer to comply with the laws of the State of New Jersey regarding the use of force and to comply with the provisions of this directive. In situations where officers are justified in using force, the utmost restraint should be exercised. The use of force should never be considered routine. In determining whether to use force, each officer shall be guided by the principle that the degree of force employed in any situation should be only that which is reasonably necessary. Officers should exhaust all other reasonable means before resorting to the use of force. It is the policy of the State of New Jersey, and this department, that officers will use only that force that is objectively reasonable and necessary when force is required.

This directive reinforces the responsibility of personnel to take those steps possible to prevent or stop the illegal or inappropriate use of force by other personnel. Personnel are expected and required to take appropriate action in any situation where personnel are clearly convinced that other personnel are using force in violation of state law or this directive. Personnel have a legal, moral and ethical obligation to report all situations in which force is used illegally by anyone. Personnel are encouraged to do whatever they can to interrupt the flow of events before other personnel do something illegal and before official action is necessary. Personnel can serve each other and the public by simply saying or doing the right thing to prevent fellow personnel from resorting to force illegally or inappropriately.

Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision-making in the broad range of possible use of force situations. This directive is intended to provide the best guidance and direction possible to officers when called upon to confront and address the most difficult of situations. Personnel whose actions are contrary to law and the provisions of this directive may be subject to disciplinary action, up to and including criminal prosecution and/or termination.

## PROCEDURES

### I. Definitions

- A. **Constructive Authority** does not involve actual physical contact with a subject, but involves the use of the officer's authority to exert control over a subject.
1. Examples include verbal commands, gestures, warnings, and un-holstering a weapon.
  2. Pointing a firearm at a subject is an element of constructive authority to be used only in appropriate situations.
- B. **Physical Contact** involves routine or procedural contact with a subject necessary to effectively accomplish a legitimate law enforcement objective.
1. Examples include, guiding a subject into a police vehicle, holding the subject's arm while transporting, handcuffing a subject and maneuvering or securing a subject for a frisk.
- C. **Physical Force** involves contact with a subject beyond that which is generally utilized to affect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject's physical resistance to the exertion of the officer's authority, or to protect persons or property.
1. Examples include, wrestling a resisting subject to the ground, using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation.
- D. **Mechanical Force** involves the use of some device or substance, other than a firearm, to overcome a subject's resistance to the exertion of the officer's authority.
1. Examples include the use of a baton, PR-24 or other impact weapon, canine physical contact with a subject, or chemical or natural agent spray/exposure such as Oleoresin Capsicum (OC), Mace, gas, etc.
- E. **Deadly Force** is force which an officer uses with the purpose of causing, or which the officer knows to create a substantial risk of causing, death or serious bodily harm. Purposely firing a firearm in the direction of another person or at a vehicle, building or structure in which another person is believed to be constitutes deadly force.
1. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the officer's purpose is limited to creating an apprehension that deadly force will be used, if necessary, does not constitute deadly force.
- F. **Reasonable Belief** is an objective assessment based upon an evaluation of how a reasonable police officer with comparable training and experience would react to, or draw inferences from, the facts and circumstances confronting and known by the officer at the scene.
- G. **Law Enforcement Officer/Officer** is any person sworn to enforce the criminal laws of the State of New Jersey, who is certified by the Police Training Commission, or is currently employed by a public safety agency and is authorized to carry a firearm under N.J.S.A. 2C:39-6.

- H. **Employee** shall mean any employee of the Pemberton Township Police Department, sworn and unsworn, full time and part time.
- I. **Imminent Danger** describes threatened actions or outcomes that may occur during an encounter absent action by the officer. The period of time involved is dependent on the circumstances and facts evident in each situation and is not the same in all situations. The threatened harm does not have to be instantaneous. For example, imminent danger may be present even if a subject is not at that instant pointing a weapon at the officer, but is carrying a weapon and running for cover.
- J. **Substantial Risk:** Any discharge of a firearm entails some risk of an unintended outcome. A substantial risk exists when an officer disregards a foreseeable likelihood that innocent persons will be endangered. For example, firing a weapon into a confined space (room, vehicle, etc.) occupied by innocent persons exposes those persons to a substantial risk of harm.
- K. **Serious Bodily Injury** means bodily injury, which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

## II. Authorization and Limitations

### A. Use of Less Lethal Force

- 1. Officers may use physical force or mechanical force in the performance of their duties when they reasonably believe that the use of force is immediately necessary in the following situations:
  - a. To protect themselves or others against the use of unlawful force by another person and the officer's immediate intervention is necessary, or;
  - b. To prevent another from committing suicide or inflicting serious bodily harm upon oneself, or;
  - c. To prevent the commission or consummation of a crime or offense involving or threatening bodily harm, damage to or loss of property or a breach of the peace, or;
  - d. To prevent the escape of an arrested person from custody, or;
  - e. To affect the lawful arrest of any person for an offense or crime under the laws of the State of New Jersey. The use of less lethal force to affect an arrest however is not justifiable unless;
    - i. The arrest is lawful, and the officers make known the purpose of the arrest or reasonably believe that their identity and purpose are otherwise known by or their identity and purpose cannot reasonably be made known to the person to be arrested, and;
    - ii. When the arrest is made under a warrant and the warrant is valid or reasonably believed by the officer to be valid.

2. Once all resistance or physical force being used to resist or prevent officers from carrying out their duties has ceased, use of further force on the officers' part shall cease.
3. When the officer reasonably believes that less lethal force is immediately necessary, the officer should assess the totality of the circumstances and apply the minimum force necessary to overcome resistance when an individual is using or threatening to use force unlawfully, and bring the situation under control in the safest manner possible.

**B. Use of Deadly Force**

1. Officers may use deadly force when the officer(s) reasonably believe such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.
2. Officers may use deadly force to prevent the escape of a fleeing suspect:
  - a. Whom the officer has probable cause to believe has committed an offense that the suspect caused or attempted to cause death or serious bodily harm; and
  - b. Who will pose an imminent danger of death or serious bodily harm should the escape succeed; and
  - c. When the use of deadly force presents no substantial risk of injury to innocent persons.
3. If feasible, officers should identify themselves and state their intention to shoot before using a firearm.

**C. Restrictions on the Use of Deadly Force**

1. Officers are under no obligation to retreat or desist when resistance is encountered or threatened. However, an officer shall not resort to the use of deadly force if an officer reasonably believes that an alternative to the use of deadly force will avert or eliminate an imminent danger of death or serious bodily harm and achieve the law enforcement purpose at no increased risk to the officer or another person.
2. Officers shall not use deadly force to subdue persons whose actions are only destructive to property.
3. Deadly force shall not be used against persons whose conduct is injurious only to themselves.
4. Under current state statutes, the discharge of any projectile from a firearm is considered deadly force, including less lethal means such as beanbag ammunition or rubber bullets. For that reason, these and similar less lethal means of deadly force can only be used when an officer reasonably believes such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.
5. Officers shall not discharge a weapon as a signal for help or as a warning.

6. While any discharge of a firearm entails some risk, discharging a firearm at or from a moving vehicle entails an even greater risk of death or serious injury to innocent persons. The safety of innocent people is jeopardized when a fleeing suspect is disabled and loses control of their vehicle. There is also a substantial risk of harm to occupants of the suspect vehicle who may not be involved, or involved to a lesser extent, in the actions that necessitated the use of deadly force. Due to this greater risk, and considering that firearms are not generally effective in bringing moving vehicles to a rapid halt, officers shall not fire from a moving vehicle or at the driver or occupant of a moving vehicle unless the officer reasonably believes:
  - a. There exists an imminent danger of death or serious bodily harm to the officer or another person; and
  - b. No other means are available at that time to avert or eliminate the danger.
7. Officers shall not fire a weapon solely to disable moving vehicles.
8. Officers shall normally not fire a weapon into buildings, doors, windows, or other openings when the person being fired upon is not clearly visible.
9. Destroying an animal is justified only in the following circumstances:
  - a. Officers may use a firearm to destroy an animal where the animal presents an immediate threat to human life; or
  - b. Officers may use a firearm to destroy a wild animal that is so badly injured that humanity requires its relief from further suffering. If the injured animal is domesticated, personnel must contact an Animal Control Officer (ACO) to have them respond and must also make every reasonable effort to notify an owner. The firearm discharge shall create no substantial risk to personnel or third parties and must be approved by a supervisor.
    - 1) Officers shall be mindful that some animals have insufficient body mass to prevent a bullet from passing completely through their bodies. Therefore, officers must be cognizant of surrounding conditions, such as the composition of the material behind or below the animal, and nearby persons or structures that could be affected by a ricochet or deflection.
    - 2) When there is suspicion that the animal may be rabid, the point of aim should be the front shoulder area and not the head.
    - 3) Personnel shall not touch an animal without first protecting themselves from blood borne pathogens.
    - 4) Personnel shall protect any area contaminated with animal body fluids for cleansing by animal shelter personnel.
    - 5) Personnel must complete an incident report documenting the event.

### **III. Exhibiting a Firearm**

- A. Officers shall not unholster or exhibit a firearm except under any of the following circumstances:
  - 1. For maintenance of the firearm;
  - 2. To secure the firearm;
  - 3. During training exercises, practice or qualification with the firearm;
  - 4. When circumstances create a reasonable belief that it may be necessary for the officer to use the firearm;
  - 5. When circumstances create a reasonable belief that the display of a firearm as an element of constructive authority helps establish or maintain control in a potentially dangerous situation in an effort to discourage resistance and ensure officer safety;
  - 6. When ordered by a supervisor or other lawful authority.

### **IV. After Action Requirements**

- A. Following the use of force, officers shall immediately evaluate the need for medical attention or treatment for the person upon whom the force was used and provide first aid to the extent of their training except where the application of first aid will expose the officer to immediate danger.
- B. Any person requesting and/or deemed in need of medical attention shall be transported to the nearest available emergency medical treatment center or hospital. The extent of the injury and the treatment offered/provided shall be documented in the incident or supplemental narrative report.
  - 1. Under no circumstances shall department personnel sign or endorse any medical authorization for any person under arrest or in custody. Persons shall use their own medical insurance or the medical facility/hospital shall seek remuneration from the appropriate indigent care funds.
- C. In addition to providing the appropriate medical aid, officers shall also:
  - 1. Promptly notify their immediate supervisor of the incident.
  - 2. Attempt to locate and identify all witnesses.
- D. As soon as practicable, the supervisor shall respond to the scene of any incident where force had been used and, as the result of the application of force, an officer, bystander, or detainee/prisoner is injured or complains of injury, and requires medical attention. The supervisor shall also:
  - 1. Ensure that affected persons receive the necessary assistance, including medical attention;
  - 2. Ensure that the need for medical treatment for any bystander or detainee/prisoner is evaluated and provided where necessary; and

- E. Any employee whose action(s) or use of force in an official capacity results in death or serious bodily injury to any person shall be promptly removed from line-duty assignment(s) pending a meaningful review. In cases of serious bodily injury, a command officer shall initiate the meaningful review within twenty-four hours and provide a preliminary report to the Chief of Police as soon as possible. This will assist in determining when the officer will return to the line-duty assignment.
  - 1. The meaningful review shall normally be conducted by the employee's commanding officer or designee and shall determine whether policy, training, equipment or disciplinary issues should be addressed.
  - 2. In some instances, the Chief of Police may assign the meaningful review to another unit/person at their discretion.
  - 3. Employees should be afforded the appropriate level of critical incident stress debriefing or counseling consistent with department policy.
  - 4. The Chief of Police may cause the employee to undergo a psychiatric/psychological evaluation and/or counseling by a mental health professional.

**V. Arrests Requiring the Use of Force**

- A. Whenever a person being arrested resists the officer's action and force is used, one of the following charges (whichever is applicable) shall be made against the subject. This charge is in addition to the charges that precipitated the arrest.
  - 1. NJSA 2C:29-2a – Disorderly Person: a person is guilty of a disorderly persons offense if he purposely prevents a law enforcement officer from affecting a lawful arrest; or
  - 2. NJSA 2C:29-2a (1) or (2) – Fourth Degree Crime: (1) subject used, or threatened to use, physical force or violence against the law enforcement officer or another; or, (2) subject used any other means to create a substantial risk of causing physical injury to the public servant or another.

**VI. Notification and Investigation Requirements**

- A. The Chief of Police and the Burlington County Prosecutor's Office shall be immediately notified when the use of physical, mechanical, or deadly force results in death or serious bodily injury, or when an injury of any degree results from the use of a firearm by an officer.
  - 1. The Prosecutor's Office will normally conduct the subsequent investigation into the use of force. The Division of Criminal Justice may supersede the investigation where there may be a conflict or if the matter is better handled at the State level.
  - 2. Internal Affairs shall conduct a concurrent administrative investigation; but, any administrative investigation is subordinate to the Prosecutor's investigation.
  - 3. If the Division of Criminal Justice becomes the lead investigating agency, a shooting response team consisting of DCJ investigators and members of the New Jersey State Police Major Crimes Unit shall normally conduct the

investigation.

4. When a Prosecutor's detective or investigator, Assistant Prosecutor, or the Prosecutor is involved in the use of force incident, DCJ will be the lead investigating agency.
  5. When a State investigator, Deputy Attorney General, or Assistant Attorney General, or any other law enforcement officer employed by a State or Federal agency is involved in a use of force incident, the Burlington County Prosecutor's Office will generally conduct the subsequent investigation unless otherwise directed by the Attorney General.
  6. When a member of the New Jersey State Police or a member of any agency supervised by the new Jersey State Police is involved in a use of force incident, DCJ is normally the lead investigating agency, but DCJ may refer the case to the Prosecutor's Office.
- B. The Division of Criminal Justice, Operations Bureau must be notified within twenty-four (24) hours of any force used by an officer that involves death or serious bodily injury, or when an injury of any degree results from the use of a firearm by an officer.
- C. All use of force incidents not resulting in death or serious bodily injury or any injury caused by the use of a firearm shall be reported to the Chief of Police by the end of the next business day.

## **VII. Reporting Requirements**

- A. In all instances when physical, mechanical or deadly force is used, whether on or off duty, personnel who had employed such force shall complete and submit
1. A Use of Force Report; and
  2. Any incident report and/or supplementary report made necessary by the nature of the underlying incident.
- B. In all instances where constructive authority results in the pointing of a firearm at another person, the facts and circumstances shall be reported in the incident or supplemental narrative report made necessary by the nature of the precipitating incident.
- C. A written report is also required:
1. In all instances whenever an employee discharges a firearm, for other than training or recreational purposes (on or off duty);
    1. Employees shall first make a verbal report to the shift supervisor immediately, or as soon as practicable.
  2. In all instances where an employee takes an official action that results in, or is alleged to have resulted in death or injury to another person.
- D. The duty supervisor shall review the Use of Force report and any incident or supplemental narrative reports for accuracy and completeness and shall promptly address any issues as they may pertain to policy changes, training, weapons or equipment, or discipline. Recommendations to modify policy; apply remedial

training beyond what can be performed by the supervisor; change weapons, equipment, or tactics; or apply discipline shall be thoroughly documented and forwarded through the chain of command.

- E. The Use of Force and supporting report(s) shall be forwarded to Internal Affairs Supervisor. Copies of the Use of Force and supporting report(s) shall be forwarded to the Internal Affairs Unit at the beginning of the next business day.
- F. All use of force incidents will also be reviewed by the Internal Affairs Unit to determine whether:
  - a. Departmental rules, policy or procedures were adhered to;
  - b. The relevant directive was clearly understandable and effective to cover the situation;
  - c. Department equipment is adequate;
  - d. Department training is currently adequate.
- G. All findings of violations of directives or training inadequacies shall be reported to the Chief of Police for resolution and/or corrective action.
- H. Internal Affairs Supervisor shall be responsible for completing the annual Use of Force Summary Report in a manner prescribed by the Burlington County Prosecutor.

## **VIII. Training**

- A. All department personnel authorized to carry department lethal and less lethal weapons shall be issued copies of, and be instructed in, this directive prior to being authorized to carry a weapon. The issuance and instruction shall be documented and forwarded to training supervisor.
- B. Weapons instructors are responsible for conducting use of force training and the biannual firearms training and qualification sessions. This training must reflect current standards established by statutory and case law, as well as State, County and departmental policy, directives, and guidelines. The training program will include the use of force in general, the use of physical and mechanical force, the use of deadly force, decision making skills; the limitations that govern the use of force and deadly force; and all applicable aspects of departmental directives.
- C. All use of force training shall be documented each time it is provided listing all personnel being trained. This documentation shall be forwarded to training supervisor.
- D. The supervising weapons instructor is responsible for ensuring that all weapons instructors comply with the mandates of this directive. The supervising weapons instructor is also responsible for completing and forwarding the annual Burlington County Firearms Training Report when due.
  - 1. The supervising weapons instructor is responsible for distributing any training materials to other weapons instructors.
  - 2. Copies of all training records shall be forwarded to training supervisor who shall update the department's master training records.

3. Training supervisor shall also ensure that each officer's training records are updated as required.
- E. All personnel who are or might be assigned to duties that require the application of less lethal force shall be adequately trained by a weapons instructor(s) and shall demonstrate proficiency in the use of authorized less lethal weapons and approved control and restraint techniques prior to being authorized to carry and use such less lethal weapons or control and restraint techniques.
1. Training in the use of chemical or natural agents such as Oleoresin Capsicum (OC), Mace, gas, etc shall include procedures for the treatment of persons exposed to such chemical/natural agents.
  2. Training in chemical/natural agents or impact weapons (baton, PR-24, ASP, etc.) shall include safe handling and storage procedures.