



MANUAL ORDER

No. 222

Subject: Use of Deadly Physical Force		
Issuing Authority: Chief of Police	Effective Date: 01/23/2020	Supercedes:

- I. PURPOSE:** The purpose of this policy is to establish policies and procedures for the use of deadly physical force by sworn officers of the Town of Dewitt Police Department and to establish procedures for reporting and evaluating the use of such force.
- II. POLICY:** Officers of the Town of Dewitt Police Department may use deadly physical force only when the officer reasonably believes that such force is necessary to defend the life of him/herself or another person in imminent danger of death or serious physical injury. Use of deadly physical force must fall within the provisions of Article 35 of the New York State Penal Law. It is the responsibility of every officer to be aware of the requirements of Article 35 and to guide his/her actions based upon that law, Department policy and training. The intentional discharge of a firearm will always be considered to be the use of deadly physical force. However, deadly physical force can be expanded to include the use of other weapons and force if the intent is to cause serious physical injury. This shall include, but is not limited to, impact weapons such as batons, flashlights, motor vehicles, and bare hands.

III. DEFINITIONS:

- A. Deadly Physical Force – Physical force which, under the circumstances in which it is used, is readily capable of causing death or serious personal injury.
- B. Serious Physical Injury – Physical injury which creates a substantial risk of death or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
- C. 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.
- D. Force Science Training: Training in the area of human performance and behavior during high-stress and deadly force encounters that assists in enhancing the accuracy of the investigative process.

IV. PROCEDURE:

- A. Use of Deadly Physical Force
 - 1. The indiscriminate and careless use of firearms is strictly prohibited.
 - 2. Only issued or approved equipment and weapons will be carried on duty and used when encountering resistance, however, in emergency situations or when deadly physical force is permitted officers may use any resources available in response to such resistance.

- a. The use of an active countermeasure, baton, aerosol subject restraint (ASR), Taser, firearm or other weapon or device will require a Use of Force report (form 9.15A).
3. An officer may use deadly force:
- a. When the officer reasonably believes that the action is in defense of human life, including the officer's own life, or in defense of any person in imminent danger of serious physical injury.
 - b. To stop a fleeing suspect when:
 - 1) The officer has probable cause to believe the suspect has committed a felony involving the infliction or threat of serious physical injury or death; and,
 - 2) The officer reasonably believes that the suspect poses an imminent threat of serious physical injury to him/herself or others.
 - 3) When feasible, some warning should be given prior to the use of deadly physical force.
4. The age and gender of the suspect will not be considered a factor in determining whether deadly force is warranted.
5. Because of the grave consequences that can occur when a police officer uses deadly physical force, the following additional restrictions utilizing such force will be adhered to:
- a. Shooting from, or at a moving vehicle is prohibited unless the occupant of that vehicle is using deadly force against the officer, or another, by means other than the vehicle itself, unless in the discretion of the officer, it is imperative to do so to save the life of the officer or another. It is extremely difficult to stop a moving vehicle with gunfire. Striking the operator may cause a situation where the uncontrolled moving vehicle creates a secondary hazard.
 - b. Warning shots are prohibited.
 - c. Shooting at alleged felons for the sole purpose of apprehending them is prohibited.
 - d. Shooting during barricade type situations is restricted to those incidents when the intended target is clearly visible to the officer.
 - e. Shooting at a subject who is holding a person hostage is prohibited if firing can endanger the hostage or any other innocent people.
 - f. Firing at a subject in a crowd or in a public location, where a high degree of risk to innocent people exists, is not recommended. This may only be done if, in the officers' judgement, failing to use deadly physical force creates a greater risk to such people.
 - 1) Extreme care must be taken to avoid creating "crossfire" situations or putting other people at risk when they are within the area where active fire may occur. These situations may develop quickly when a suspect is moving.

B. Officer Involved Incidents

1. Officer involved shootings will be investigated jointly by the Department and the District Attorney's Office.
2. Department personnel conducting an officer involved shooting investigation must include individuals who are trained, certified or have experience in Force Science; or in the investigation of such incidents.
3. Whenever deadly physical force is used by an officer and it results in death or physical injury he/she will adhere to the following procedures:
 - a. If the incident involves the discharge of a firearm which results injury of any kind to the officer or another person, the officer will immediately attempt to determine the condition of the injured party, and seek or render first-aid if appropriate and safe to do so.
 - b. Notify the 911 Center of the incident and location.
 - c. Notify the on duty supervisor immediately.
 - 1) Notification to an on duty supervisor will occur whether the officer is on or off duty and;
 - 2) Whether the firearm was department issued or authorized; or personally owned.
 - d. If the incident occurs while the officer is on duty, he/she will remain at the scene (unless injured) until the arrival of a supervisor and appropriate personnel and provide a preliminary account of what occurred.
 - 1) If the continued presence of the involved officer at the scene causes a hazardous situation (violent crowd), the supervisor or ranking officer may instruct the officer to move to a more appropriate location.
 - e. The on duty supervisor will respond immediately and:
 - 1) Secure the scene and start a preliminary investigation
 - 2) Notify the Duty Chief
 - 3) Contact the District Attorney's Office immediately or as soon as practicable.
 - 4) Direct personnel, and call in additional personnel as needed, to assist in the investigation, conduct interviews and provide scene security.
 - f. If the incident involves the discharge of a firearm, the officer will protect it for forensic examination purposes and submit it to the appropriate investigator upon request.
 - 1) Under no circumstances will the officer's firearm be taken at the scene, while in public view.
 - 2) The officers' firearm will not be taken until it can be replaced with another firearm.

- g. Notification will be made to the Criminal Investigations Commander who will coordinate the investigation and assign a lead investigator.
 - 1) In the absence of the Criminal Investigations Commander, the Duty Chief will assume responsibility for coordinating the investigation.
- h. The lead investigator will be responsible for:
 - 1) Immediately conducting an investigation of the incident. He/she may request that additional personnel assist with interviewing witnesses, obtaining statements or conducting other tasks related to the investigation.
 - 2) Ensuring that all statements are accurate and complete.
 - 3) Submitting a detailed report of the incident including all statements, reports and any discovered evidence to his/her immediate supervisor.
- i. If necessary, during a criminal investigation, the involved officer will be read his/her Miranda warnings.
- j. The involved officer will prepare the required reports pertaining to the incident and cooperate with investigative personnel during the investigation.
- k. The involved officer should not discuss the case with anyone except supervisory and internal investigations personnel, the officer's privately retained attorney, and/or union representative, immediate family, clergy or individuals with whom the prosecutor or Chief of Police has granted such authority.
- l. The Criminal Investigations Division Commander will be responsible for:
 - 1) Coordinating the investigation with the District Attorney's Office.
 - 2) Providing status updates on the investigation to the Chief of Police.
 - 3) Reviewing all reports submitted by the lead investigator, along with all other statements, reports, and evidence regarding the incident. He/she will direct that further investigation be conducted if needed and assign the necessary personnel.
 - 4) Preparing a written report containing the facts and findings of the completed investigation and submit it to the Chief of Police.
- m. The Chief of Police has final authority over the investigation and is responsible for the following:
 - 1) Upon receipt, review all reports, evidence, and statements and request additional investigation if needed.
 - 2) Communicate with the Road Patrol Commander, Criminal Investigation Division Commander, District Attorney's Office, Chairperson of the Police Commission and the Town Supervisor to ensure that a complete and thorough investigation has been conducted, and that all the needs of the involved officer(s) have been met.

- 3) Approve all releases of information regarding the incident.
 - (a) The name of involved officers will not be released for at least seventy-two hours after the incident.
- n. If the incident occurs while the officer is off duty, he/she will remain at the scene (unless injured) until the arrival of law enforcement personnel having jurisdiction over the area of occurrence. The involved officer will provide a preliminary account of what occurred to arriving law enforcement personnel.
 - 1) The involved officer will keep this department's on-duty supervisor or Duty Chief apprised of the investigation.

V. REPORTING PROCEDURES FOR USE OF DEADLY PHYSICAL FORCE

- A. When an officer uses deadly physical force while on duty, he/she shall immediately notify a shift supervisor of the incident.
 1. The officer will complete all necessary reports including a Use of Force report (form 9.15A) and submit them to the shift supervisor.
- B. If an officer is unable to complete reports due to injuries, the shift supervisor will prepare or cause them to be prepared.
 1. The shift supervisor will complete all required supervisor reports and submit them to his/her commanding officer, along with the involved officers' reports.
 2. If an officer is involved in the use of deadly physical force while off duty, he/she will follow the procedure set forth in section IV, sub-division B-1n of this policy.

VI. ADMINISTRATIVE LEAVE/DUTY

- A. Any officer that has been directly involved in a deadly physical force incident that results in death or serious physical injury he/she will be removed from operational assignments and placed on temporary administrative leave or administrative duty after completing his/her preliminary report of the incident.
 1. The report will be submitted to the Chief of Police for administrative review.
- B. Administrative Leave will not be referred to or interpreted as a suspension.
 1. Officers on administrative leave will continue to receive pay and benefits, pending results of the incident investigation.
 2. Administrative leave time will not be charged against any of the officer's other time accrued and shall not be interpreted to imply or indicate that the officer acted improperly.
 3. While on administrative leave, the officer will remain available for official department interviews and statements regarding the incident and will be subject to recall to duty at any time.

- C. Administrative duty will entail work other than patrol duties and/or investigations that would require personal contact with suspects.

VII. EMPLOYEE ASSISTANCE FOR INVOLVED OFFICERS

- A. Whenever deadly physical force is used which results in death or physical injury, the involved officer(s) will be entitled to psychological assistance through the Employee Assistance Program (EAP).
- B. Other types of assistance to help deal with moral, ethical and/or psychological after effects of the incident may be set up by the Department and at the direction of the Chief of Police.
 - 1. These services shall not be related to any department investigation of the incident and nothing discussed during such sessions will be divulged to the Department. Consultation sessions will remain protected by patient confidentiality.

VIII. UNINTENTIONAL AND ACCIDENTAL DISCHARGE OF A FIREARM

- A. If an unintentional or accidental discharge of a firearm occurs, on or off duty, not including during training or for lawful, recreational purposes, the officer will immediately, or as soon as possible, notify an on duty supervisor.
- B. The involved officer will complete a memorandum regarding the circumstances of the incident and submit it to the Chief of Police.
- C. The Chief of Police will review the memorandum and take appropriate action if needed.
- D. Whenever there is an accidental discharge of a firearm while on duty that does not involve an injury, the on duty supervisor will cause an investigation to be conducted.
 - 1. The Duty Chief will be notified as soon as possible.
 - 2. Completed investigation reports will be forwarded to the Chief of Police for review and further action, if needed.

IX. DESTRUCTION OF ANIMALS

- A. Officers discharging a firearm at an animal will first ensure that doing so will not endanger any persons or property.
- B. When all reasonable, alternative methods of apprehending an animal have failed, or are not feasible, an officer may discharge his/her firearm to destroy the animal under any of the following circumstances:
 - 1. The animal poses an imminent threat of serious injury to the officer or another.
 - 2. An animal is severely injured or ill and must be destroyed for humane reasons, or is suspected to be rabid or is attacking people or other animals.
 - 3. A domestic animal is severely injured and the consent of the owner has been obtained, in writing, if possible.

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- 4. A domestic animal is severely injured and must be destroyed for humane reasons, and the owner is unknown or cannot be contacted within a reasonable amount of time.
 - 5. A court has ordered the officer to destroy an animal.
- C. When an officer discharges his/her weapon to destroy an animal, they will make written notification to the Chief of Police.

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