



POLICY AND PROCEDURES MANUAL

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Approved by: Erika Taylor, Chief of Police

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Use of Deadly Physical Force

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11/19/2024	Section II updated to include new DOJ standard
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I. Purpose

The purpose of this policy is to establish procedures and guidelines governing the use of deadly physical force by sworn officers of the New York State University Police at Upstate Medical University and to establish procedures for reporting, investigating and evaluating the use of such force.

II. Policy

It is the responsibility of each officer to be aware of the requirements of Article 35.00 of the New York State Penal Law and to guide their actions based upon that law, the US Supreme Court decision in *Tennessee vs. Garner*, and Departmental policy and training. Furthermore, any use of force by law enforcement officers must be consistent with the standard established by the United States Supreme Court in *Graham v. Connor*, which held that in order for an officer's use of force to be deemed objectively reasonable, that officer must consider: the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the officer(s) or others; and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. Accordingly, officers shall employ only that level of force that is objectively reasonable and necessary to achieve their lawful objectives. The use of Deadly Physical Force is prohibited against a person whose actions are a threat solely to themselves or property unless the person poses an imminent danger of death or serious physical injury to the officer or others in proximity.

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



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include, but is not limited to, impact weapons such as batons, flashlights, motor vehicles, and bare hands.

-Refer: *Graham v Conner*, 490 U.S. 386 at 396-97 (1989)

-Refer: *Tennessee v. Garner*, 471 U.S. 1 (1985)

III. Definitions

1. **Deadly Physical Force** - Physical force which, under the circumstances in which it is used, is readily capable of producing death or other serious physical injury.
-Refer: Penal Law § 10 (11)
2. **Physical Force** - A degree of physical contact that includes, but is not limited to, striking, kicking, pushing, biting, or disabling action by means of a chemical agent capable of causing discomfort or pain, when such contact is unlikely to result in serious physical injury or death.
3. **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.
-Refer: Penal Law § 10 (10)
4. **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.
5. **Accidental Discharge of a Firearm** - A firearm will be considered “accidentally discharged” for the following reasons only: mechanical failure and/or faulty ammunition.
6. **Objectively Reasonable** – An objective standard used to judge an officers 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.

IV. Unintentional Discharge of a Firearm



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A firearm will be considered “unintentionally discharged” under the following conditions: when it is not an accidental discharge as described above, or when it is discharged without purpose or intent. “Should” and “Should not” - Indicates a generally required or expected action, absent a rational basis for failing to conform.

V. Use of Deadly Physical Force Procedures

1. Officer Responsibilities:

- a)** Whenever an officer employs the use of deadly physical force which results in death or physical injury to another person, he/she will be responsible for:
 - i.** Determining the existing danger level.
 - ii.** Immediately determining the physical condition of any injured person and render first aid when appropriate and safe to do so.
 - iii.** Notifying a supervisor.
 - iv.** Requesting assistance and any emergency medical services.
 - v.** Notifying E911 of the incident and location.
- b)** Securing the incident scene, protecting all physical evidence, and identifying all potential witnesses.
- c)** Remaining at the scene (unless injured) until the arrival of appropriate command officers.
 - i.** If the circumstances are such that the officer’s continued presence at the scene may cause the development of a more hazardous situation (violent crowd), the ranking Commanding Officer on the scene may, at his/her discretion, direct the officer to respond to another location.
- d)** Providing the responding supervisor a brief verbal summary of the incident. The supervisor will make the proper notifications and document properly.
- e)** Protecting their weapon for examination and submit it to an authorized member of the Command Staff. The responding supervisor will secure the weapon accordingly to the department’s evidence policy.



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- i. Unless circumstances are such that it is impractical to do so, the involved officer(s) weapon will be secured and replaced with another issued weapon, at University Police Headquarters.

- f) Not discussing the incident with anyone except authorized personnel. Authorized personnel are as follows:
 - i. Authorized investigative personnel.
 - ii. Union representatives
 - iii. Qualified mental health professionals
 - iv. Chaplains

- g) Officers involved in the use of deadly physical force will be allowed to confer with union representatives and attorneys prior to providing sworn statements.

- h) In accordance with the recommendations made by the IACP Police Psychological Services Section and consistent with established research, substantive personal interviews with the involved officers should be delayed 48 to 72 hours in order to provide them with sufficient recovery time to help enhance recall.

- i) Any officer who, while in the performance of duty, becomes involved in an incident which results in serious physical injury or death to another person will be required to participate in one post-shooting debriefing with a qualified mental health professional prior to returning to duty. Services will be provided by a Department assigned psychologist or one chosen by the requesting officer. These counseling services will be separate and independent from any Departmental investigation of the incident. All information exchanged between the involved officer and the psychologist will be protected, privileged communication. Any participation beyond the initial session is encouraged, but will be at the officer's discretion.



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- j) In all cases when any person has been injured or killed as a result of a traumatic police incident, the involved officer and his/her family will have available to them the services of the Department's chaplain. This provides the officer and his/her family with a source of professional consultation to aid them in dealing with the potential moral and ethical after effects of a traumatic incident. The chaplain's services will not be related to any part of the Department's investigation of the incident. The information discussed will not be divulged to the Department, as these consultation sessions are protected, privileged communication.

VI. Assisting Officer Responsibilities:

1. Whenever an officer employs the use of deadly physical force which results in death or physical injury to another person, the first responding officers on the scene will be responsible for the following:
 - a) Ensure that there are no further safety threats.
 - b) Secure and separate suspects.
 - c) Relay critical information to the dispatcher.
 - d) Request emergency medical services and provide first aid as needed.
 - e) Secure the scene.
 - f) Locate witnesses.
 - g) Prepare reports as required.

VII. Supervisor Responsibilities:

1. Whenever an officer employs the use of deadly physical force which results in death or physical injury to another person, the first supervisor on the scene will be responsible for the following:
 - a) Determine the existing danger level.
 - b) Ensure that the injured are receiving medical attention.



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- c) Assume control and maintain the integrity of the scene until properly relieved.
- d) Obtain brief but pertinent information of the basis of the incident to relay information via public safety radio to responding units as appropriate and proper but brief elements of the incident that will be provided to command staff, the Deputy Chief and Chief of Police.
- e) Assign an uninvolved officer to accompany the involved officer(s) until relieved by authorized investigative personnel.
- f) Ensure that the following notifications have been made by E911 and Public Safety Dispatch:
 - i. Chief of Police.
 - ii. Deputy Chief(s) which is responsible for internal investigations of the department.
 - iii. Crime Scene Unit from an outside agency to assist with preserving the crime scene and process evidence.
 - iv. Any outside agencies that would be utilized to assist such as but not limited to, New York State Police, Syracuse Police, and the Onondaga County Sheriff's Department
- g) Once relieved from the scene, ensure that all applicable statements and reports are completed by all officers assigned to the incident.

VIII. Command Responsibilities

- 1. Whenever an officer employs the use of deadly physical force which results in death or physical injury to another person, command officers will be responsible for the following:
 - a) Render command assistance and coordinate all activities at the scene.
 - b) Ensure that proper notifications have been made.
 - c) Brief the Chief of Police and Deputy Chief(s) and coordinate all activities with them.



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- d) Ensure that the involved officer(s) make no statements to unauthorized personnel and that they are transported to the Deputy Chief of Police's Office. The Deputy Chief and/or Chief of Police will brief the Onondaga County District Attorney's Office and will notify the New York State Attorney General's Office if deemed necessary.
- e) Ensure that an officer not involved in the incident has been assigned to accompany the involved officer(s).
- f) Arrange for family notifications and transportation as necessary.

IX. Criminal Investigation Division Responsibilities

The Deputy Chief of Police of the New York State University Police Department of Upstate Medical University will conduct the internal investigation of the incident with consulting the Chief of Police and the necessary outside agencies such as, but not limited to: Onondaga County District Attorney's Office, Syracuse Police, New York State Police, Onondaga County Sheriff's Department, and New York State Attorney General's Office.

X. Office of Profession Standards (OPS) Responsibilities:

- 1. An investigation will be conducted by the Office of Professional Standards for the purpose of determining if an incident falls within the procedures and guidelines of Department policy and applicable laws:
 - a) Whenever deadly physical force is employed and results in death or physical injury.
 - b) In all cases involving the discharge of a firearm by police personnel, except in the destruction of animals. The Deputy Chief and Chief of Police will work directly with the proper outside agency in regards to the incident. This will be most likely with, but limited to the New York State Attorney General's Office and Onondaga County District Attorney's Office.

XI. Responsibilities of the Chief of Police, Deputy Chief (s) or in their absence, responding Lieutenant:



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1. The responsibilities of the Chief of Police, Deputy Chiefs, or responding Lieutenant are to:
 - a) Assume overall command of the entire investigation, delegating appropriate assignments to Division Commanders, and Office of Professional Standards personnel.
 - b) Be responsible for press coverage of the incident.
 - c) The name of the involved officer(s) will not be released for at least seventy-two (72) hours after the incident.
 - d) Place the involved officer(s) on administrative leave or duty without loss of pay or benefits for a minimum of seventy-two (72) hours.
 - e) At the conclusion of both the criminal and Departmental investigation, make a final determination on the action to be taken with respect to the involved officer(s).
 - f) Arrange for the involved officer(s) to undergo a debriefing with the Department's psychologist as soon as possible.
 - g) Make available the services of the Department chaplain to the involved officer(s) and his/her family to aid them with the after-effects of the incident.
 - h) Review policies, training, equipment, etc. with Command Staff for possible improvement.

XII. Return to Duty:

1. Consideration should be given to officers' readiness to return to duty following a critical incident. Toward that end, upon completion of the criminal investigation and prior to returning to duty, officers involved in the discharge of a firearm during the employment of deadly physical force should:
 - a) Debrief the incident with a use of force instructor, a firearms instructor, and other training instructors as appropriate.
 - b) Complete a course of reality-based training designed by use of force instructors, firearms instructors, and other training instructors as appropriate.
 - c) Complete a course of firearms requalification.



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XIII. Use of Deadly Physical Force Special Circumstances Guidelines

1. Only approved equipment, firearms or impact weapons will be carried on duty and used when encountering resistance, except in extreme emergency situations when officers may use any justifiable resources at their disposal.
2. Drawing and Displaying Weapons - Officers are justified in removing firearms from holsters and/or gun mounts if he/she reasonably believes that the situation may pose an immediate threat of death or serious physical injury to themselves or another person.
3. Warning Shots - Warning shots are prohibited under any circumstances.
4. Moving Vehicles - Discharging a firearm at or from a moving vehicle is prohibited unless an 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 the officer reasonably believes there are no other reasonable means available to avert the deadly threat posed by the vehicle or its occupants:
 - a) When confronted by an oncoming vehicle, an officer should not position him or herself into the path of the vehicle, and should make every attempt to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.
 - b) Officers should not discharge their firearm at a vehicle when it is reasonable to believe that the vehicle may contain an innocent passenger or when it is reasonably apparent that doing so may cause the vehicle to careen out of control and injure an innocent bystander.
 - c) An officer should not discharge his or her firearm at any part of a vehicle in an attempt to disable the vehicle.
5. Juveniles - No distinction shall be made relative to the age of the intended target of deadly physical force
6. **Lateral Vascular Neck Restraint (LVNR) and/or Chokehold or other Similar Restraint–**



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- a) LVNR shall be defined as any control technique(s) when applied to the sides of the neck, using a combination of physiological factors to restrict blood flow to the brain which may cause the subject to lose consciousness and should only be employed when deadly physical force is justified.
- b) Chokehold or other similar restraint shall be defined as any application of sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air. This technique should only be employed when deadly physical force is justified.
- c) An application of pressure to throat or neck of a person, or blocking the nose or mouth of a person, with the intent to impede the normal breathing or blood circulation of a person, without justification, is prohibited by law when not objectively reasonable.
-Refer: Penal Law Article 35, §121.11, §121.13, and § 121.13(a)

7. Animals:

- a) Deadly physical force may be employed against an animal when:
 - i. The animal is attacking or presenting an imminent danger of substantial harm to the officer or another person.
 - ii. When an animal is badly injured, diseased, threatening, or destructive.
- b) The officer should make an effort to obtain permission from the owner of the animal, if known, prior to employing the use of deadly force.
- c) Whenever deadly physical force is used to dispatch an animal, the officer will contact E-911's channel 2 and request that the Department of Public Works (DPW) respond to remove the animal unless it is being removed by the owner or their representative.
- d) It shall be the responsibility of the involved officer's supervisor to:
 - i. Investigate the use of deadly physical force against animals.
 - ii. Ensure that the incident is documented in a police report.
 - iii. Ensure that any firearm casings are recovered.



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XIV. Deadly Physical Force Notification Requirements:

1. Officers involved in the use of deadly physical force, on or off duty, shall immediately notify an on-duty supervisor.
2. Whenever an officer unintentionally or accidentally discharges a firearm, on or off duty, the officer will immediately notify a supervisor.
3. The notification and reporting procedures for the unintentional or accidental discharge of a firearm resulting in physical injury shall be the same as reporting the use of deadly physical force.
4. If the officer is off-duty and outside the geographic jurisdiction of New York State University Police at Upstate when deadly force is employed, he/she will notify the agency who has jurisdiction and will be responsible for investigation of the incident.
5. This requirement shall not apply to firearm discharges in the following instances:
 - a) Authorized training.
 - b) Target practice.
 - c) Hunting