



POLICY AND PROCEDURES MANUAL

Policy Number: 130.10

Approved by: D. Paul Waltz, Chief of Police

Issue Date: 11/19/2001

Applies to: University Police Department, Police Division

DCJS Accreditation Standards: 20.1, 20.6, 21.1, 21.2

Page(s): 1 of 10

Use of Deadly Physical Force

Review Date:	Change Description:
07/10/2020	Policy reviewed
Revised Date:	Change Description:
06/16/2020	Policy updated, section XIII, 6b

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 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.



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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.
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.
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.

IV. 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 911 of the incident location, requesting assistance and emergency medical services.



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- iv.** Notifying a supervisor and the Chief of Police.

- 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 or the Chief of Police 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.
 - 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.** Office of the Chief of Police
 - ii.** Authorized investigative personnel.
 - iii.** Qualified mental health professionals
 - iv.** Chaplains
 - v.** Union representatives



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- 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.

- 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.

V. Assisting Officer Responsibilities:



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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.

VI. 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.
 - 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 Chief and Deputy Chief of Police.
 - e) Assign an uninvolved officer to accompany the involved officer(s) until relieved by authorized investigative personnel.



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- f) Ensure that the following notifications have been made by 911 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.

VII. 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.
 - 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 Chief and/or Deputy Chief of Police will notify 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).



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- f) Arrange for family notifications and transportation as necessary.

VIII. Criminal Investigation Division Responsibilities

In accordance with the signed Memorandum of Understanding with the Onondaga County District Attorney's Office pertaining officer involved shootings the Chief of Police of the New York State University Police Department of Upstate Medical University or designee will conduct the investigation of the incident in conjunction with, 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.

IX. 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 Chief and Deputy 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.

X. Responsibilities of the Chief of Police, Deputy Chief (s) or Designee:

1. The responsibilities of the Chief of Police, Deputy Chiefs, or designee:
 - 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.



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- 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.

XI. 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.

XII. 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.



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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. Chokeholds:

- a) "Chokeholds" shall be defined as any technique(s) that use of mechanical or physical force to restrain, incapacitate or disable a person by applying force or pressure to an individual's neck which creates a substantial risk of restricting breathing (airflow) or circulation of blood to and from the brain.



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b) Officers are prohibited from using chokeholds.

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 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.

XIII. 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.



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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



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Policy Number: 130.15

Approved by: D. Paul Waltz, Chief of Police

A handwritten signature in black ink, appearing to read "D. Paul Waltz".

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Use of Physical Force

Review Date:	Change Description:
07/10/2019	Policy reviewed
Revised Date:	Change Description:
12/19/2019	Policy updated, Section VI, I section D and H

I. Purpose

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

II. Policy

1. Sworn officers shall use only that level of physical force necessary in the performance of their duties within the limits established by Article 35 of the New York State Penal Law and consistent with the training and policies of the New York State University Police Department at Upstate Medical University.
2. 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.



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3. It is the responsibility of each officer to be aware of the requirements of Article 35 and to guide their actions based upon that law and Department policy and training. Members shall not unnecessarily or unreasonably endanger themselves or others in applying these guidelines to actual situations.
4. Only issued or approved equipment will be carried on duty and used when encountering resistance, except in emergency situations when an employee may use any justifiable resource at his disposal.
5. The use of any active countermeasure, including but not limited to, pressure point control
6. ASP baton, or chemical spray is considered a use of physical force and will require a police report. Any use of force shall be documented in a Use of Force Report.

III. Definitions:

Refer to Policy 130.10, section III

IV. Notification required:

1. Officers involved in use of force incidents, on or off-duty, shall immediately notify a supervisor. If the member is off-duty and outside the City of Syracuse when the use of force occurs, the officer shall also notify the police agency with jurisdiction for investigation of the incident.

V. Responsibilities:

1. Whenever physical force is used, all Officers shall:
 - a) Immediately evaluate the need for medical attention or treatment for the person upon whom the force was used. The officer will determine if there is any injured person and render first aid when appropriate. If needed, emergency medical



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services shall be requested. The subject's acceptance or refusal of medical care shall also be documented in the officer's police report.

- b)** Attempt to locate and identify any witnesses and document the incident.
 - c)** Notify a supervisor of the incident and/or an evidence technician so photographs can be taken. Note: A photograph showing an absence of injury is as important as one that shows injury. Photographs may be taken regardless if an injury exists or not.
 - d)** Report or cause to be reported all facts relative to the incident in a police incident report including injuries to the subject and/or officers, force utilized by the subject and/or officers, and whether or not an arrest is made. Each officer involved in the use of force will complete a supplemental report documenting such use (Use of Force Report).
- 2.** It shall be the investigating Supervisor's responsibility to immediately respond to the scene of the incident to ensure that:
- a)** The officer involved receives necessary assistance, including medical treatment if needed.
 - b)** The person upon whom the force was used receives necessary medical attention.
 - c)** If possible, color photographs are to be taken of any person upon whom force was used in order to document the presence of, or lack of, injuries resulting from the use of force.
 - d)** Injuries to the officer or the person upon whom the force was used are fully documented.
 - e)** All reports are prepared and forwarded per department policy. In the event that an officer is unable to complete reports due to injuries, the supervisor shall prepare or cause them to be prepared, along with his own reports of the incident.



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- f) The Chief and Deputy Chief of Police is notified if through the use of force:
 - i. Injury is sustained or inflicted by a member of the Department.
 - ii. A firearm is discharged or deadly physical force is employed.
 - iii. There is an allegation of misconduct on the part of a member of the Department.
- g) The Chief and or Deputy Chief of Police shall respond to the scene if deemed appropriate.

VI. Use of Force Report:

1. In addition to documenting a use of physical force in their police report, officers shall prepare and submit a "Use of Force Report" when:
 - a) The use of force involved the discharge of a firearm, other than training or recreational purposes, whether or not a person was struck or injured by the projectile.
 - b) He takes action that results in, or is alleged to have resulted in, injury of another person.
 - c) The use of force involved acts such as striking, punching, kicking, K-9 bite or the use of pressure point controls.
 - d) The use of force involved the employment of an impact weapon, impact munitions, chemical agents, ECD (Taser) device, chokehold or pepper spray or threatens/displays to use said weapon/device.
 - e) The person is charged with the crime of resisting arrest.
 - f) The officer actively points a firearm at another person.
 - g) The officer is directed to complete a "Use of Force Report" by a superior officer.
 - h) Officers who un-holster and display the Taser laser (e.g. laser compliance) involving no probe discharge or drive stun, shall document their actions in a Taser Use of Force Report. Refer to Department Policy 302.90 Use of Electronic Control Device.
2. If more than one officer is involved in the use of force, each officer shall complete the "Use of Force Report" describing the force used by that officer.



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3. Physical force used against crowds or unknown persons will be documented recording all possible information.
4. If an officer is incapacitated, his supervisor shall prepare the use of force report based upon the supervisor's investigation of the incident. This will satisfy the use of force requirement.
5. A superior officer shall review the "Use of Force Report" for completeness and accuracy.
6. All other use of force reports, following initial supervisory review shall be directed to:
 - a) The office of the Deputy Chief.
 - b) And the Chief of Police for review and findings.

VII. Evaluating the use of force

1. The Command Staff shall review the incident to ensure that the use of force was reasonable, authorized, necessary, not reckless, and therefore justified.
2. The Command Staff shall determine whether the use of force was:
 - a) Within department policy and applicable laws.
 - b) Out of department policy and/or in violation of applicable laws.
3. The Command Staff shall annually submit to the Chief of Police an analysis of all Use of Force incidents in order to identify:
 - a) Patterns or trends that support training needs.
 - b) Any equipment upgrades.
 - c) Any policy modifications.

VII. TRAINING

- A. All officers should receive training and demonstrate their understanding on the proper application of force.
- B. Training topics could include use of force, conflict prevention, conflict



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resolution and negotiation, and de-escalation techniques and strategies,

including, but not limited to, interacting with persons presenting in an agitated condition as well as duty to intervene and prohibited conduct.

VIII. Duty to Intercede

1. Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another officer use of force that exceeds the degree of force permitted by law shall promptly report these observations to a supervisor.