

ENGLEWOOD POLICE DEPARTMENT			
POLICY & PROCEDURES			
SUBJECT: Use of Force			
Volume:	Chapter:	# of Pages: 11	
BY ORDER OF: Chief Lawrence D. Suffern		EFFECTIVE DATE: March 6, 2015	
Accreditation Standards: 1.10.2a, 3.3.1, 3.3.2, 3.3.3, 3.3.4			Supersedes Order # N/A

PURPOSE The purpose of this policy is to maintain compliance with guidelines and directives promulgated by the New Jersey Attorney General, the Bergen County Prosecutor, and existing statutory and case law.

POLICY Officers have been granted the extraordinary authority to use force when necessary to accomplish lawful ends. 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, officers 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 to accomplish lawful objectives.

Employees are required to take appropriate action in any situation where they are clearly convinced that other employees are using force in violation of state law or this policy. Employees have a legal, moral and ethical obligation to report all situations in which force is used illegally by anyone. Employees are encouraged to do whatever they can to interrupt the flow of events before agency employees do something illegal and before any official action is necessary. Employees can serve each other and the public by simply saying or doing the right thing to prevent fellow employees from resorting to force illegally or inappropriately.

Deciding to utilize force when authorized in the conduct of official responsibilities is among the most critical decisions made by officers. It is a decision that can be irrevocable. It is a decision that must be made quickly and under difficult, often unpredictable and unique circumstances. Officers whose actions are consistent with the law and the provisions of this policy will be strongly supported by the law enforcement community in any subsequent review of their conduct regarding the use of force. Conversely, officers whose actions are contrary to law and the provisions of this policy 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 officers' 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. **Deadly Force** is force which officers use with the purpose of causing, or which an 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. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the purpose is limited to creating an apprehension that deadly force will be used, if necessary, does not constitute deadly force.
- C. **Employee** shall mean all employees of the Englewood Police Department regardless of sworn status, job title, or assignment.
- D. **Imminent Danger** describes threatened actions or outcomes that may occur during an encounter absent action by officers. 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 officers, but is carrying a weapon and running for cover.
- E. **Law Enforcement Officer (Officer)** is any employee 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 the Englewood Police Department and is authorized to carry a firearm under NJSA 2C: 39-6 or Special Law Enforcement Officer (SLEO).
- F. **Mechanical Force** involves the use of some device or substance, other than a firearm, to overcome a subject's resistance to the exertion of an officer's authority. Examples include the use of a baton, PR-24 or other object, canine physical contact with a subject, or chemical or natural agent spraying.
- G. **Physical Contact** involves routine or procedural contact with a subject necessary to effectively accomplish a legitimate law enforcement objective. Examples include, guiding a subject into an agency vehicle, holding the subject's arm while transporting, handcuffing a subject and maneuvering or securing a subject for a frisk.
- H. **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 an officer's authority or to protect persons or property. 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.

- I. **Reasonable Belief** is an objective assessment based upon an evaluation of how reasonable officers with comparable training and experience would react to, or draw inferences from, the facts and circumstances confronting and known by the officers at the scene.
- J. **Resisting Arrest** refers to the act of a person who purposely prevents a law enforcement officer from affecting an arrest, to include such things as threatening to use physical force or violence against the law enforcement officer or use of any other means to create a substantial risk of causing physical injury to a law enforcement officer when acting under the color of his official authority (NJSA 2C: 29-2).
- 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.
- L. **Substantial Risk:** Any discharge of a firearm entails some risk of an unintended outcome. A substantial risk exists when officers disregard 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.

II. **Authorization and Limitations**

A. **Use of Less Lethal Force**

- 1. Officers may use physical force or mechanical force when they reasonably believe it is immediately necessary at the time:
 - a. To overcome resistance directed at themselves or others; or
 - b. To protect themselves, other officers or a third party from unlawful force; or
 - c. To protect property; or
 - d. To thwart the commission of a crime involving or threatening bodily harm; or
 - e. To effect other lawful objectives, including, but not limited to: making an arrest, preventing an escape, preventing a suicide or preventing someone from harming himself or herself, etc.
- 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 an officer's part shall cease.

B. **Use of Less Lethal Weapons (Mechanical Force)**

- 1. Authorized Batons

- a. Batons are defensive impact tools that may be used when the justification for the use of less lethal force exists.
 - b. Once resistance ceases, the use of the baton as a striking tool shall cease.
 - c. Batons shall only be used as instructed. Batons shall not be used to deliberately strike another with a degree of force intended to cause serious bodily injury or death unless the use of deadly force is justified.
 - d. Personnel must exercise special care in their use and avoid striking those potentially fatal areas of the body identified during training.
2. Oleoresin Capsicum (OC) Spray (non-flammable only)
- a. OC is permitted in less lethal force situations where the use of force is necessary and justified to apprehend or control an individual, and the use of the OC will facilitate the arrest with the minimum chance of injury to the officer, the arrestee, or innocent bystander.
 - b. OC must not be handled by children or unauthorized individuals.
 - c. OC has been found to be generally effective in controlling persons who are under the influence of alcohol and/or narcotics, persons highly agitated or motivated and those who are mentally unbalanced, but the effects of OC vary with different types of individuals. Therefore, officers must be continually alert to the possibility that other means may be necessary to subdue a resistive or noncompliant subject or attacker.
 - d. OC has been found to be effective against aggressive animal attacks and may also work well against attacking dogs. Caution must be used when repelling dogs trained to attack and/or those who are extremely motivated.
 - e. OC should be sprayed directly into the target's face with the spray being directed to the eyes, nose, and mouth from as close as safely possible. OC should always be used in the upright position with short one-half to one-second bursts.
 - f. Once resistance ceases, the further application of OC shall cease.
 - g. Noncompliance with an officer's verbal commands may be considered justification for deployment where force is otherwise authorized.
 - h. OC shall not be used in the immediate vicinity of infants or the elderly unless absolutely necessary.
 - i. All persons who have been exposed to OC will at the earliest practicable time, be allowed to flush the affected area with cold/cool water,

- j. OC shall not be used on the operator of a motor vehicle unless the motor vehicle is first disabled (e.g. removal of keys from the ignition).

C. Use of Deadly Force

1. Officers may use deadly force when they reasonably believe such action is immediately necessary to protect themselves 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 officers have 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.

D. Restrictions on the Use of Deadly Force

1. Officers are under no obligation to retreat or desist when resistance is encountered or threatened. However, officers shall not resort to the use of deadly force if they reasonably believe 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 themselves 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. Officers shall not discharge a weapon as a signal for help or as a warning.
5. 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 they reasonably believe:

- a. There exists an imminent danger of death or serious bodily harm to themselves or another person; and
 - b. No other means are available at that time to avert or eliminate the danger.
6. Officers shall not fire a weapon solely to disable moving vehicles.
 7. Officers shall normally not fire a weapon into buildings, doors, windows, or other openings when the person being fired upon is not clearly visible.

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.
 1. In any instance where deadly force is used, officers shall summon EMS and paramedics as soon as possible. While EMS and paramedics will not enter an area that is not tactically secure, they should still be summoned to a secure area near the scene to expedite treatment for the person once the scene is secure.
 2. If a baton is used, officers shall observe the affected subject(s) for obvious changes in condition or breathing and shall immediately summon medical assistance if the subject appears to be in need of medical aid.
 3. Following the use of OC, officers shall sit the subject upright and allow the subject to decontaminate as soon as practicable. Personnel shall monitor subjects who had been exposed to OC staying alert to any obvious changes in condition or breathing and shall immediately summon medical assistance if the subject appears to be in need of medical aid.

4. Decontamination procedures for exposure to OC consist of:
 - a. Once subjects have been secured, have ceased resisting, and are no longer a threat to officers, themselves, or others, every reasonable effort will be made to relieve discomfort.
 - b. Expose the subject(s) to fresh air as soon as possible and have them remain calm.
 - c. Have the subject flush affected areas with large amounts of fresh water.
 - d. Have subject remove contact lenses and contaminated outer clothing.
 - e. Do not apply salves, creams, oils, lotion, grease, or bandages to the exposed area. These remedies can trap the OC against the skin or mucus membranes and cause irritation.
 - f. Summon medical assistance if the subject has medical problems and/or continues to have difficulty after the decontamination procedures.
 - g. Officers shall be on constant alert for medical problem(s) or difficulty that the exposed subject may experience. Officers shall also monitor for positional asphyxiation.
 - h. If the affected area(s) remain inflamed or discomfort continues beyond 45 minutes, arrangements may be made for medical treatment if necessary.
- B. Any person requesting and/or deemed in need of medical attention shall be transported to an emergency medical treatment center or hospital. Personnel shall contact the local ambulance to request such transportation assistance.
 1. Personnel should not ordinarily transport the subject in an Englewood PD vehicle.
 2. The extent of the injury and the treatment offered/provided shall be documented in the body of the Investigation Report.
- C. Under no circumstances shall agency employees sign or endorse any medical authorization for any person under arrest or in custody. This does not include a Refusal of Medical Attention Form(RMA), however officers shall not sign an RMA if another suitable person is on scene and is willing to sign the form.
- D. If available, a supervisor shall respond to the scene of any use of force incident where, as the result of the application of force, an agency employee, bystander, or detainee/prisoner is injured, complains of injury or discomfort and requires medical attention. The supervisor or senior officer on scene shall also:
 1. Ensure that affected persons receive the necessary assistance, including medical attention;

2. When necessary, notify the appropriate support staff, e.g. Detective Bureau, Bergen County Prosecutor's Office, and/or Bergen County Sheriff's Office who should respond to the scene and cause the appropriate level of investigative and support services including, but not limited to: photographs, measurements, diagrams, statements, etc. When an injury or complaint of pain exists, supervisors or senior officers should obtain photographic documentation to the extent possible.
- 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 removed from line-duty assignment pending a meaningful review.
1. The meaningful review shall normally be conducted by the appropriate division commander (Patrol or Criminal Investigations) and shall determine whether policy, training, equipment or disciplinary issues should be addressed.
 2. The Chief of Police may assign the meaningful review to another unit/person at their discretion.
 3. The officer may be assigned to administrative duties or placed on administrative leave as soon as practicable following the incident pending a complete investigation and review of the incident.
 - a. This reassignment is not considered a disciplinary action.
 - b. If any weapon(s) had been taken, the weapon(s) will be reissued once the Bergen County Prosecutor's Office or the Attorney General adjudicates the case. Reissuing of duty weapons should be completed as soon as practicable after the incident has been cleared.
 - c. If an officer's sidearm is taken and there is no underlying reason to not rearm the officer, issue a spare sidearm without delay.
 - d. If the officer is disarmed and is not permitted to carry a duty sidearm, the officer is prohibited from carrying an off duty handgun.
 4. Employees should be afforded the appropriate level of critical incident stress debriefing or counseling in comportment with agency policy.

V. Notification and Investigation Requirements

- A. The Chief of Police and the Bergen 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 agency personnel.
1. When a Prosecutor's detective or investigator, Assistant Prosecutor, or the Prosecutor is involved in the use of force incident, the Division of Criminal Justice (DCJ) will be the lead-investigating agency.
 2. If the DCJ 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.

3. 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 Bergen County Prosecutor's Office will generally conduct the subsequent investigation unless otherwise directed by the Attorney General.
 4. 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 employees that involves death or serious bodily injury, or when an injury of any degree results from the use of a firearm by personnel.

VI. 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) should be made against the subject. This charge is in addition to the charges that precipitated the arrest.
1. NJSA 2C: 29-2a(1) – 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 (2) – a person is guilty of a crime of the fourth degree, if by flight, he purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest.
 3. NJSA 2C: 29-2a (3) – a person is guilty of a crime of the third degree if he 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.

VII. Reporting Requirements

- A. In all instances when physical, mechanical or deadly force is used, whether on or off duty (while acting in the capacity of a law enforcement officer) each employee who had employed such force shall complete and submit
1. Any investigative document made necessary by the nature of the underlying incident (i.e., Investigation Report); and
 2. A Use of Force Report.
- B. In all instances where constructive authority results in the pointing of a firearm at another person, the facts and circumstances shall be reported on the investigative document made necessary by the nature of the precipitating incident.
- C. An Investigation Report is also required:

1. In all instances whenever an employee discharges a firearm, for other than training or recreational purposes;
 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 tour commander or direct supervisor shall review the Use of Force report 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, tactics, or apply discipline shall be thoroughly documented and forwarded through the chain of command.
- E. The appropriate division commander (Patrol or Criminal Investigations) shall also review these reports to determine whether:
1. The relevant policy was clearly understandable and effective to cover the situation;
 2. Department equipment is adequate;
 3. Department training is currently adequate;
 4. Departmental rules, orders, policy or procedures were adhered to.
- F. Use of Force reports are subject to discovery and access through OPRA. In indictable cases, these reports should be forwarded to County Intake with the complaints, police reports, and other case documents. In non-indictable cases, the use of force reports should be made a part of the case file and included in the discovery package provided in municipal court.
- G. All use of force reports shall be retained as required by the appropriate schedule of the New Jersey Department of Archives and Records Management.
- H. The Chief of Police or his or her designee is responsible for completing the annual Use of Force Summary Report and submitting it to the Prosecutor's Office. A copy shall be forwarded to the Chief of Police.

VIII. Training

- A. All officers authorized to carry agency lethal and less lethal weapons shall be issued copies of, and be instructed in, this policy prior to being authorized to carry a weapon. The issuance and instruction shall be documented and maintained. This issuance and instruction can be accomplished electronically.
- B. Use of force training must be provided semiannually and can be conducted concurrently with the semiannual firearms training and qualification sessions. This training must reflect current standards established by statutory and case law, as well as State and County 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 agency policies. This instruction can be accomplished electronically.

IX. Conducted Energy Device (CED)

- A. All information regarding CED and enhanced mechanical force shall be governed by the departmental policy on CED use that was published via Power DMS on 01/20/2014.