

	WEST ORANGE POLICE DEPARTMENT WRITTEN DIRECTIVE SYSTEM	1:8
	USE OF FORCE	
	Effective Date: 3-06-18	Supersedes: 1:8 (1-03-18)

1:8-1 PURPOSE

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

1:8-2 POLICY

Sworn law enforcement 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 policy. Equally important is the obligation to prepare individual officers in the best way possible to exercise that authority.

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.**

This policy reinforces the responsibility of officers to take those steps possible to prevent or stop the illegal or inappropriate use of force by other officers. Every law enforcement officer is expected and required to take appropriate action in any situation where that officer is clearly convinced that another officer is using force in violation of state law or this directive.

Officers have a legal, moral and ethical obligation to report all situations in which force is used illegally by anyone. This policy sends a clear message to officers that they share an obligation beyond the requirements of law. Officers are encouraged to do whatever they can to interrupt the flow of events before a fellow officer does something illegal and before any official action is necessary. Officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer 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. 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. It is not possible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, 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. Officers whose actions are consistent with the law and the provisions of this directive 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 directive may be subject to disciplinary action, up to and including criminal prosecution and/or termination.

1:8-3

DEFINITIONS

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. Examples include verbal commands, gestures, warnings, and un-holstering a weapon. Pointing a firearm at a subject is an element of constructive authority to be used only in appropriate situations.

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 a police vehicle, holding the subject's arm while transporting, handcuffing a subject and maneuvering or securing a subject for a frisk.

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. 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.

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. Examples include the use of a baton, PR-24 or other object, canine physical contact with a subject, or chemical or natural agent spraying.

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. 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.

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.

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.

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.

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.

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.

1:8-4 **AUTHORIZATION AND LIMITATIONS**

a. Use of Force

1. An officer may use physical force or mechanical force when the officer reasonably believes it is immediately necessary at the time:
 - To overcome resistance directed at the officer or others; or
 - To protect the officer or a third party from unlawful force; or
 - To protect property; or
 - To affect other lawful objectives, such as make an arrest.

b. Use of Deadly Force

1. An officer may use deadly force when the officer reasonably believes such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.
2. An officer may use deadly force to prevent the escape of a fleeing suspect:
 - 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
 - Who will pose an imminent danger of death or serious bodily harm should the escape succeed; and

- 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. An officer is 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. An officer 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 them.
4. Under current state statutes, the discharge of any projectile from a firearm is considered to be 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. An officer 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:

- There exists an imminent danger of death or serious bodily harm to the officer or another person; and
- No other means are available at that time to avert or eliminate the danger.

Officers shall not fire a weapon solely to disable moving vehicles.

d. Exhibiting a Firearm

An officer shall not unholster or exhibit a firearm except under any of the following circumstances:

- a. For maintenance of the firearm;
- b. To secure the firearm;
- c. During training exercises, practice or qualification with the firearm;
- d. When circumstances create a reasonable belief that it may be necessary for the officer to use the firearm;
- e. 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;
- f. When ordered by a supervisor or other lawful authority.
- g. The act of exhibiting any firearm with the intent to exert control or influence over another shall be considered constructive authority. Any use of constructive authority involving a firearm shall be documented on a Use of Force Report by each officer exercising such authority.

e. De-escalation Techniques

The legal standards regarding use of force have been strictly determined by statutory language and judicial decisions at the state and federal level. Most notable is the US Supreme Court decision *Graham v. Connor*, 490 U.S. 386 (1989), which defines the objectively reasonable standard of force used by law enforcement officers during encounters with the public. All employees of the West Orange Police Department will be judged according to these standards.

De-escalation is the utilization of verbal skills, communication, command presence and body positioning to influence a situation to create an outcome that is safe for officers, subjects and the public in general. The goal of de-escalation is to reduce the intensity of a conflict or potentially violent situation. De-escalation techniques can vary from only verbal to a mix of verbal and physical skills.

- a. Verbal De-escalation techniques include active listening, focusing on the subject's emotions, being non-judgmental, using positive self-talk and coming up with a plan. The ultimate goal of verbal de-escalation is utilizing time and communication to calm a subject down enough to create a non-violent conclusion to an event.
- b. Physical De-escalation techniques include the utilization of pressure holds, compliance techniques and creating distance and space. The ultimate goal of physical de-escalation is to secure a subject and neutralize a physical threat without the need to go to a higher level of

force, whenever possible. Proper physical conditioning and consistent defensive tactic training can be essential tools for all officers to be successful in protecting themselves and being competent to handle physical situations.

De-escalation techniques could be the difference between controlling a situation and avoiding a deadly force event. Officers should employ techniques whenever possible. All law enforcement officers should recognize that circumstances can and do change from instant to instant, and it is imperative for officers to re-evaluate whether and what kind of force is justifiable and necessary.

Officers should always consider the possibility that any subject providing verbal or physical opposition may be suffering from mental illness, developmental disabilities or an emotionally disturbing malady. De-escalation techniques should always be considered as a safe alternative to handling such a person whenever it is safe and feasible to do so. Officers shall follow the mandates of *Directive 7:9-3 Emotionally Disturbed Persons*.

1:8-5 TRAINING REQUIREMENTS

This department will conduct and document semi-annual training for all officers on the lawful and appropriate use of force and deadly force. This training will be designed to reflect current standards established by statutory and case law, as well as state, county and departmental policy 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, verbal and physical de-escalation techniques, and the limitations that govern the use of force and deadly force.

This training will be conducted as part of this agency's firearms qualification program.

1:8-6 USE OF FORCE REPORTS

- a. In all instances in which physical, mechanical, deadly force or the use of a firearm to exercise constructive authority occurs, then each officer who has employed such force shall complete and submit:
 - Any investigative document, if made necessary by the nature of the underlying incident (Incident report, etc.); and
 - A Use of Force Report (Addendum A).
- b. The attending 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, or tactics; or apply discipline shall be forwarded through the normal chain of command.

- c. The Use of Force report shall be forwarded to the Central Records Bureau, where it shall be stored in a file separate from the incident. Copies of the Use of Force Report shall be forwarded to the Office of the Chief of Police, Office of Administration and the Office of Internal Affairs at the beginning of the next business day. The Office of Internal Affairs shall review these reports to notice any trends or issues that need to be studied, analyzed, and/or addressed.
- d. The Staff Services Commander is responsible for completing the annual use of force analysis report and submitting it to the Chief of Police. This analysis should be completed by February 15th of the prevailing year.
- e. 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 underlying incident.
- f. The Records Bureau supervisor shall be responsible for completing the annual Use of Force Summary Report in a manner prescribed by the Essex County Prosecutor.

1:8-7 SUPPLEMENTAL

- a. If the use of force results in an injury to any party, prompt emergency medical attention shall be offered and/or provided. The extent of the injury and the treatment offered/provided shall be documented in the body of the investigative report.
- b. The attending supervisor shall ensure that the Essex County Prosecutor's Office and the Internal Affairs Commander are immediately notified when the use of physical, mechanical or deadly force results in death or serious bodily injury, or when injury of any degree results from the use of a firearm by an officer. This notification should be noted on the investigative document and as a Time-Stamp entry in the CAD record of the incident.
- c. Employees whose actions or use of force results in a death or serious injury to any other person shall be removed from an operational assignment pending administrative review of the facts and circumstances of the incident. The employee shall be offered critical incident stress debriefing in accordance with Directive 3:17 Critical Incident Stress Management.

1:8-8 USE OF FORCE REVIEW

- a. All incidents of uses of force which qualify as Physical Force, Mechanical Force or Deadly Force are subject to command review. The tour commander, or bureau commander in the event of a non-patrol incident, shall normally ensure that the command review is completed. The review shall ordinarily involve a review of all documents, available evidence and an interview of any available persons who may have information regarding the incident.

- b. The purpose of the command review is to determine if the actions taken during the incident comply with statutory law, current criminal procedure, Attorney General's Guidelines, Prosecutor's Guidelines and this directive. Further purposes are to identify training needs and to determine if modifications to this directive are required or recommended.
- c. The tour commander or bureau commander should submit their review and subsequent recommendations through an agency document on QED to their division commander through to the Deputy Chief of Operations for final review. Division commanders are required to endorse the investigation or return it to the tour commander or bureau commander for further investigation.
- d. Although there is no strict time limitation for the submission of the command review, the final report should be completed without undue delay. Depending on the scope of the review, three to five working days should be considered adequate to complete the investigation.
- e. As part of the command review, an investigation shall be conducted when a suspect or citizen is injured during any incident. The investigation shall determine whether the injury could have been prevented.

A copy of the report shall be made available to the county prosecutor. In every case where the injury could have been prevented, the report shall set forth the actions taken by the agency to address the cause or causes of the incident (e.g. remedial training, revision of department policy, disciplinary action, etc.).

- f. The Chief of Police or Deputy Chief of Operations may cause further review of the incident.