

MONTCLAIR POLICE DEPARTMENT

POLICY & PROCEDURES



SUBJECT: USE OF FORCE

EFFECTIVE DATE: October 21, 2020

NUMBER OF PAGES: 18

ACCREDITATION STANDARDS: 1.10.2a, 3.3.1, 3.3.2, 3.3.3, 3.3.4

BY THE ORDER OF:
Chief of Police Todd M. Conforti

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

POLICY It is the policy of the Montclair Police Department that officers hold the highest regard for the dignity and liberty of all persons and place minimal reliance upon the use of force and instead use de-escalation tactics to the extent possible under the circumstances. This department respects and values the sanctity of human life and the application of deadly force is a measure to be employed only in the most extreme circumstances.

Law enforcement 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. It is the policy of the State of New Jersey and the Montclair Police Department that officers will use only that force that is objectively reasonable and necessary when force is necessary to accomplish lawful objectives.

This policy reinforces the responsibility of employees to take those steps possible to prevent or stop the illegal or inappropriate use of force by other employees. 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 other agency employees do something illegal and before any official action is necessary.

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 must be made quickly and under difficult, often unpredictable and unique circumstances. 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. Use of force options:

1. 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 unholstering a weapon.
 2. Pointing a firearm at a subject is an element of constructive authority to be used only in appropriate situations.
2. 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.
3. Physical force involves contact with a subject beyond 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.
4. 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 or other impact weapon, canine physical contact with a subject, or chemical or natural agent spraying.
5. Enhanced mechanical force is an intermediate force option between mechanical force and deadly force requiring a greater level of justification than that pertaining to physical or mechanical force, but a lower level of justification than that required for the use of deadly force. Enhanced mechanical force is applied using less-lethal ammunition and/or a conducted energy device.
6. 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.

- B. Chokehold is a weaponless control technique designed to interfere with the normal breathing of another by manually constricting his/her windpipe. Chokeholds are prohibited except in extraordinary circumstances when deadly force is authorized.
- C. De-escalation is calmly communicating with an agitated person in order to understand, manage and resolve his/her concerns. Ultimately, these actions should help reduce the person's agitation and potential for future aggression or violence.
- D. Employee shall mean all employees of the Montclair Police Department regardless of sworn status, job title, or assignment.
- E. Excited delirium is a medical disorder generally characterized by observable behaviors, including extreme mental and physiological excitement, intense agitation, hyperthermia often resulting in nudity, hostility, exceptional strength, endurance without apparent fatigue, and unusual calmness after restraint accompanied by a risk of sudden death. Specific signs and characteristic symptoms may include, but are not limited to:
1. Constant or near constant physical activity;
 2. Irresponsiveness to police presence;
 3. Nakedness/inadequate clothing that may indicate self-cooling attempts;
 4. Elevated body temperature/hot to touch;
 5. Rapid breathing;
 6. Profuse sweating;
 7. Extreme aggression or violence;
 8. Making unintelligible, animal-like noises;
 9. Insensitivity to or extreme tolerance of pain;
 10. Excessive strength (out of proportion to the person's physique);
 11. Lack of fatigue despite heavy exertion;
 12. Screaming and incoherent talk;
 13. Paranoid or panicked demeanor;
 14. Attraction to bright lights/loud sounds/ glass or shiny objects.
- F. 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.

- G. Law enforcement officer (police officer) is any employee sworn to enforce the criminal laws of the State of New Jersey, who is certified by the Police Training Commission, and is currently employed by the Montclair Police Department and is authorized to carry a firearm under N.J.S.A. 2C: 39-6.
- H. Less-lethal ammunition (also referred to as less-lethal impact projectiles) means ammunition approved by the New Jersey Attorney General that is designed to stun, temporarily incapacitate or cause temporary discomfort to a person without penetrating the person's body (N.J.S.A. 2C: 3-11(f)).
- I. Positional asphyxia happens when a person can't get enough air to breathe due to the positioning of his/her body. This happens when a person is placed in a position where his/her mouth and nose is blocked or where his/her chest/torso may be unable to fully expand resulting in suffocation.
- J. 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.
- K. 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 (N.J.S.A. 2C: 29-2).
1. Active resistance refers to a person who uses or threatens to use physical force or violence against the law enforcement officer or another or uses any other means to create a substantial risk of causing physical injury to the public servant or another.
 2. Passive resistance refers to a person who doesn't obey a command to submit to an arrest (e.g., a person refuses a police command to exit a vehicle and grabs on to the steering wheel to prevent being removed by physical force, refuses to get on the ground, etc.)
- L. Serious bodily injury/harm 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.
- M. 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.
- N. Vascular restraint is a weaponless control technique designed to restrict a person's normal blood flow to the brain by constricting his/her carotid arteries with a chokehold or other manual pressure (e.g., sleeper hold, kneeling, manual pressure, scissors lock, etc.). Vascular restraints are prohibited except in extraordinary circumstances when deadly force is authorized.

II. AUTHORIZATION AND LIMITATIONS

A. Use of physical and/or mechanical force:

1. Officers may use physical force or mechanical force in the performance of their duties when they reasonably believe that the use of force is immediately necessary in the following situations:
 - a. To protect themselves or others against the use of unlawful force by another person and the officer's immediate intervention is necessary, or;
 - b. To prevent another from committing suicide or inflicting serious bodily harm upon oneself, or;
 - c. To prevent the commission or consummation of a crime or offense involving or threatening bodily harm, damage to or loss of property or a breach of the peace, or;
 - d. To prevent the escape of an arrested person from custody, or;
 - e. To effectuate the lawful arrest of any person for an offense or crime under the laws of the State of New Jersey. The use of physical or mechanical force to effectuate an arrest however is not justifiable unless;
 - 1) The arrest is lawful, and the officers make known the purpose of the arrest or reasonably believe that their identity and purpose are otherwise known by or cannot reasonably be made known to the person to be arrested; or
 - 2) When the arrest is made under a warrant and the warrant is valid or reasonably believed by the officer to be valid.
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 the officers' part shall cease.
3. When the officer reasonably believes that physical and/or mechanical force is immediately necessary, the officer should assess the totality of the circumstances and apply the minimum force necessary to overcome resistance when an individual is using or threatening to use force unlawfully and bring the situation under control in the safest manner possible.

B. ***Due to the potential for unintended serious injury or death, the use of chokeholds and other similar neck/vascular restraint techniques are not authorized unless deadly force is authorized and necessary.***

C. Use of mechanical force:

1. NOTE: mechanical force options could be ineffective for subjects exhibiting signs of excited delirium (see definitions, section I.E of this SOP) due to the subject's elevated threshold of pain. See this department's SOP on *Emotionally Disturbed Persons* for instructions on dealing with someone with signs of excited delirium.
 - a. If feasible, the officer should wait for backup and EMS assistance before attempting to control the subject.
 - b. Officers should consider a physical takedown using multiple officers as long as an adequate number of officers are available.
 - c. Reasonable steps should be taken to avoid injury, such as moving the subject from asphalt to a grassy area to reduce abrasions and contusions.
 - d. Officers should not attempt to control continued resistance or exertion by pinning the subject to the ground or against a solid object, using their body weight.
 - e. When restrained, officers should position the subject in a manner that will assist breathing, such as placement on his or her side, and avoid pressure to the chest, neck, or head (positional asphyxia).
2. Tactical batons:
 - a. Batons are defensive impact tools that may be used when the justification for the use of mechanical force exists.
 - b. Once resistance ceases, the use of the baton as a striking tool shall cease.
 - c. Only officers properly trained in its use can use a baton. 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.
3. Oleoresin capsicum (OC) spray (non-flammable only)
 - a. Only officers properly trained in its use can use OC.
 - b. OC is permitted in mechanical force situations where the use of such 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.

- c. OC has been found to be ineffective in controlling persons who are under the influence of alcohol and/or narcotics, persons highly agitated or motivated and those who are mentally unbalanced. 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 attack 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 exposure to humans and animals may not be effective and may cause the subject to be even more aggressive.
- f. OC must not be handled by children or unauthorized individuals.
- g. OC has a recommended effective range of 3 to 12 feet. Due to splash-back and cross-contamination considerations, caution should be used while attempting to deploy OC on a subject that is closer than a distance of 3 feet.
- h. 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. The OC canister should be held in the upright vertical position while utilizing multiple short one-half to one-second bursts until it has been determined that the OC has been delivered to the target area.
- i. Noncompliance with an officer's verbal commands may be considered justification for deployment where force is otherwise authorized.
- j. OC shall not be used in the immediate vicinity of infants or the elderly unless absolutely necessary.
- k. 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).
- l. OC should not be used on large groups of people (e.g., demonstrators, crowds, etc.) unless coordinated through and approved by a supervisor.
- m. Further application of OC shall cease once subject compliance is achieved.
- n. As soon as practicable, all persons who have been exposed to OC shall be allowed to flush the affected area with cool water.

D. Use of less-lethal ammunition:

1. Less lethal ammunition shall be used consistent with the [Attorney General Guidelines Regarding Less Lethal Ammunition](#).
2. Only officers properly trained in its use can use less lethal ammunition. Requalification and proficiency demonstration must occur semiannually thereafter.
3. Less lethal ammunition shall only be loaded into and discharged from a firearm specifically dedicated to use and discharge less lethal ammunition. Dedicated less lethal firearms shall have orange stocks and be clearly labeled as '*Less Lethal*'. Less lethal ammunition shall not be loaded into or discharged from any firearm intended for use with standard lethal ammunition.
4. Authorization to use less-lethal ammunition:
 - a. Less-lethal ammunition may be directed against a person only when such force is reasonably necessary to prevent the person from causing death or serious bodily injury to him/herself, an officer, or any other person. Examples include:
 - 1) A person is armed, or appears to be armed, with a potentially deadly weapon and refuses to comply with an officer's order to disarm, but the danger to the officer is not yet imminent; or
 - 2) A person is threatening or actively engaging in suicidal or other self-destructive behavior and the use of less lethal ammunition is necessary to prevent that person from causing death or serious bodily injury to him/herself.
 - b. Officers shall not be required to exhaust the option of using less-lethal ammunition before using lethal ammunition in any circumstance where deadly force would be justified and authorized pursuant to this policy.
 - c. A threat to use less-lethal ammunition, by the production of a firearm dedicated for the use of less lethal ammunition or otherwise, so long as the officer's purpose is limited to creating an apprehension that less-lethal ammunition will be used if necessary, does not constitute the use of deadly force.
 - d. Less-lethal ammunition (e.g., bean-bag rounds) may be used to disperse certain nuisance wild animals, only with the approval of the road supervisor or watch commander and when its use poses no danger to the public or any property in the vicinity.

5. Restrictions on the use of less-lethal ammunition:
 - a. Less-lethal ammunition shall not be used to prevent the escape of a fleeing suspect except in circumstances where such force is reasonably necessary to prevent the person from causing death or serious bodily injury to an officer or another person should the escape succeed.
 - b. Less-lethal ammunition shall not be used in a crowd control situation except in circumstances where such force is reasonably necessary to prevent a person whom the less-lethal ammunition is directed from causing death or serious bodily injury to an officer or other person.
 - c. Less-lethal ammunition shall not be used to prevent a person from committing property damage.
6. Less lethal ammunition shall not be used at a lesser or greater distance than specified by the manufacturer or New Jersey Attorney General.
7. When it can be reasonably done, prior to deploying less lethal ammunition, the deploying officers shall notify officers nearby in order to minimize the potential for other officers to discharge their firearms.
8. Any weapon loaded with less lethal ammunition shall be handled with the same care as a firearm loaded with standard ammunition.

E. Use of deadly force:

1. Officers may use deadly force when they reasonably believe such action is immediately necessary to protect themselves or other persons 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.

F. Restrictions on the use of deadly force:

1. Officers shall not use deadly force to subdue persons whose actions are only destructive to property.

2. Officers shall not discharge a weapon as a signal for help or as a warning.
3. Deadly force shall not be used against persons whose conduct is injurious only to them.
4. 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 objective at no increased risk to themselves or another person.
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. In active shooter situations, officers shall not fire a weapon into buildings, doors, windows, or other openings when the person being fired upon is not clearly visible unless extraordinary circumstances necessitate officers to engage in directed fire in order to protect the lives of injured persons requiring immediate rescue and evacuation from an area in which a subject's continued actions pose an imminent threat of death or serious bodily harm.
8. Destroying an animal:
 - a. Only with authorized agency weapons; and
 - b. Where the animal presents an immediate threat to human life; or
 - c. Where an animal is so badly injured that humanity requires its relief.
 - 1) When feasible, the officer should first obtain authorization from the road supervisor or watch commander.
 - 2) Notify animal control to claim the carcass.

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. For the purpose of euthanizing an injured animal;
 7. 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 be permitted to 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(s) once the scene is secure.
 2. Be alert for signs of potential excited delirium (see definitions, section I.E of this SOP).
 - a. Officers should check the subject's pulse and respiration on a continuous basis until transferred to EMS personnel. Officers shall ensure the airway is unrestricted and be prepared to administer CPR or an automated external defibrillator (AED) if the subject becomes unconscious.
 - b. Whenever possible, an officer should accompany the subject to the hospital for security purposes and to provide assistance as necessary.
 3. 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.

4. Following the use of OC, officers shall sit the subject upright and decontaminate the subject 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.
5. 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; have the subject wash these items prior to reuse.
 - 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 appropriate emergency medical facility. The extent of the injury and the treatment offered/provided shall be documented in the body of the incident report.
- C. Under no circumstances shall agency employees sign or endorse any medical authorization for any person under arrest or in custody indicating that the Township of Montclair is the responsible billing party.
- D. The road supervisor shall respond to the scene of any use of force incident where, as the result of the application of force, agency employees, bystanders, or detainees/prisoners are injured, complain of injury or discomfort, and/or require medical attention. The road supervisor or his/her designee shall also:
 1. Ensure that affected persons receive the necessary assistance, including medical attention;

2. When necessary, especially in a deadly force incident, notify the appropriate support staff, e.g., internal affairs commander, detectives and/or Essex County Prosecutor's Office. When an injury or complaint of pain exists, supervisors should attempt to 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 an administrative review.
1. The administrative review shall normally be conducted by the office of professional standards and shall determine whether policy, training, equipment or disciplinary issues should be addressed. The office of professional standards shall forward the use of force report, incident report and the subsequent administrative review to the Chief of Police.
 2. The Chief of Police may assign the administrative review to another unit/person at his/her discretion.
 3. Employees should be afforded the appropriate level of critical incident stress debriefing or counseling according to agency policy.
 4. The employee 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.
 5. The Chief of Police or designee may require the employee to undergo a psychiatric/psychological evaluation and/or counseling by a mental health professional.

V. 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. N.J.S.A. 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. N.J.S.A. 2C: 29-2a (2) – a person is guilty of a crime of the fourth degree, if he by flight purposely prevents or attempts to prevent a law enforcement officer from effectuating an arrest.
 3. N.J.S.A. 2C: 29-2a (3) – a person is guilty of a crime of the third degree (1) subject 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.

VI. NOTIFICATION AND INVESTIGATION REQUIREMENTS

- A. Immediately notify the Chief of Police, Office of Professional Standards, and the Essex County Sheriff's Office when the use of any 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. The Essex County Sheriff's Office will notify the Essex County Prosecutor's Office Critical Incident Response Team, who will then contact the ECPO Professional Standards Bureau
 2. Such notification must occur at the time of the incident while the scene remains under police control.
- B. The Essex County Prosecutor's Office Critical Incident Response Team or the New Jersey Division of Criminal Justice will conduct the investigation into the use of force in accordance with the *New Jersey Attorney General's Directive 2019-4* whenever an incident occurs that involves a member of this department that has employed force that results in serious bodily injury or death. The Essex County Prosecutor's Office is responsible for the necessary notifications to the Division of Criminal Justice Office of Public Integrity and Accountability.
1. The Critical Incident Response Team or the Division of Criminal Justice is responsible for all phases of the investigation including photography, evidence gathering.
 2. Only officers working under the direct supervision of the ECPO CIRT may participate in the investigation or share or receive information about any aspect of the investigation, except as authorized and approved by the supervising assistant prosecutor.
 3. The internal affairs supervisor shall only investigate any administrative matters surrounding the incident. If an employee's actions are of a criminal nature, the administrative internal investigation must cease.
 4. Copies of any reports associated with such application of force shall not be distributed to anyone unless authorized by the Essex County Prosecutor's Office or the New Jersey Division of Criminal Justice.
- C. Prior to the arrival of investigative staff from the Critical Incident Response Team and/or the Division of Criminal Justice, the watch supervisor or his/her designees shall complete the following tasks as soon as possible but, not necessarily in the order listed:
1. Identify any remaining threats and take necessary action;
 2. Ensure that emergency medical services have been dispatched and appropriate medical aid is rendered to injured parties;
 3. Secure the scene pending the arrival of the Critical Incident Response Team, and/or the Division of Criminal Justice personnel. The scene will be relinquished to the Critical Incident Response Team and/or the Division of Criminal Justice, upon their arrival.

4. Ensure that an inner perimeter is established to secure the scene(s). Direct that an outer perimeter be established to prevent all from entering except those who have a specific function to perform.
 5. Maintain a scene log documenting who enters and leaves. The scene log will be relinquished to the Critical Incident Response Team and/or the Division of Criminal Justice personnel or their designees upon their arrival.
 6. Secure any suspect(s) at the scene(s), unless the suspects are injured and require immediate medical care.
 7. Locate and secure in place (if no danger or threat exists) all weapons, ammunition and expended cartridges used by the suspect(s) and/or involved officer(s).
 8. Providing there is no immediate danger to anyone, preserve the involved officers' firearms in their original state at the time of the incident (i.e. not to be unloaded and/or rendered safe or reloaded).
 9. If vehicles are involved in the incident and there is no immediate danger to anyone, the vehicles shall not be moved or altered from their location at the time of the incident (e.g., emergency lights, MVR, etc.) until directed to do so by the Critical Incident Response Team and/or the Division of Criminal Justice. No equipment and/or property shall be removed without authorization from the Essex County Prosecutor's Office and/or the Division of Criminal Justice.
 10. Ensure that all potential witnesses have been identified and separated and ask that they remain on-scene to provide a statement. If witnesses wish to leave, obtain their contact information for future communications.
 11. All law enforcement officers involved in the incident shall be identified and their names and agency documented. Involved officers shall remain separated at the scene, as circumstances warrant.
 12. Locate and secure in place as evidence any clothing or other personal items that may have been discarded or removed from the suspect(s) and/or officer(s) by medical personnel.
- D. Upon the arrival of investigative personnel from the Critical Incident Response Team and/or the Division of Criminal Justice, agency personnel will assist as directed with certain non-investigatory tasks including but, not limited to:
1. Preserve the scene by closing roadways and conducting detours whenever feasible;
 2. As necessary, arrange and provide through the fire department and/or DPW sufficient nighttime illumination and/or other heavy machinery or equipment at the scene;
 3. Make death notifications only as directed by the Critical Incident Response Team and/or the Division of Criminal Justice in compliance with NJ Attorney General's Guidelines.

4. Arrange for the towing of vehicles with contracted towers as required. Only flatbed towing should be utilized. Towed vehicle(s) must be removed to a secure area.
 - a. Towing operators **MUST** be advised **NOT** to place debris from the roadway into the passenger compartment of the vehicle(s) involved in the incident.
 - b. Towing operators **MUST** be advised to wear gloves when touching any part of the vehicle(s) involved. All vehicles being towed will be escorted by a member of the Critical Incident Response Team to maintain the evidence chain-of-custody.
 5. Complete and file the *NJTR-1 Crash Investigation Report*, if applicable.
- E. No employee of this agency shall directly or indirectly (i.e., through another person) shall share information learned in the course of the use of force investigation including but, not limited to police video recordings or information learned from reviewing such videos, with any principal(s) or other law enforcement or civilian witness without prior expressed authorization from the supervising assistant prosecutor or Division of Criminal Justice.
1. No officer who is a witness to the use of force incident, including a principal(s), receive any such information from any sworn or civilian employee of a law enforcement agency without first obtaining authorization from the assistant prosecutor or assistant/deputy attorney general supervising the investigation, or his/her designee.
 2. Any dissemination or receipt of investigative information without prior authorization as required by this section shall be reported promptly to the assistant prosecutor or assistant/deputy attorney general supervising the investigation, or his/her designee, who shall investigate the circumstances.
- F. All police firearm discharges not resulting in death or serious bodily injury shall be immediately reported to the Essex County Prosecutor's Office by the next business day. This requirement extends to unintentional discharges in all on duty and off duty incidents but, does not extend to recreation, training, and/or qualification discharges.

VII. REPORTING REQUIREMENTS

- A. In all instances when physical, mechanical, enhanced mechanical (less lethal ammunition), or deadly force is used, whether on or off duty, each employee who employed such force shall complete and submit:
1. An electronic *Use of Force Report* (through the [DCJ reporting portal](#)). The reporting guide is available on DMS);
 2. Any incident report or supplemental report made necessary by the nature of the underlying incident; except:
 - a. In accordance with *New Jersey Attorney General's Supplemental Directive Amending Attorney General's Directive 2019-4*,

supervisors shall not require officers deploying force, which results in death or serious bodily injury, to submit incident reports. Officers are still required to submit *Use of Force* reports.

- b. Only the Essex County Prosecutor's Office or the Division of Criminal Justice can order such incident reports.
 - c. Officers not directly involved in the application of such force, but who may have indirect involvement (e.g., secondary responders, assisting responders, witnesses, etc.) may be required to submit incident or supplementary reports upon approval of the lead investigating agency (i.e., Essex County Prosecutor's Office or Division of Criminal Justice).
- 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 incident report made necessary by the nature of the precipitating incident.
- C. A firearms discharge report is required:
1. In all instances whenever an employee discharges a firearm, for other than training, qualification, and/or recreational purposes;
 2. In all cases whenever an employee unintentionally discharges a firearm, regardless of the reason;
 3. Destruction of an aggressive animal threatening human life requires an electronic *Use of Force Report* in addition to a firearms discharge report.
- D. Notwithstanding subsection VII.A above, an incident report is required 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 who is not in police custody (e.g., directing someone across the street and he/she is struck by a vehicle, etc.).
- E. The shift commander (or bureau commander in non-patrol application of force) must review the *Use of Force Report* through the [DCJ reporting portal](#). The reviewing supervisor or his/her designee shall print a copy of the use of force report and include it with the case file.
1. The shift commander (or bureau commander in non-patrol application of force) shall review these reports for accuracy and completeness and shall promptly address any issues as they may pertain to policy changes, training, weapons or equipment, or discipline).
 2. 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 thoroughly documented and forwarded through the chain of command. This is in addition to the required entry into Blue Team.
- F. The Office of Professional Standards shall also review these reports to determine whether:

1. The relevant directive was clearly understandable and effective to cover the situation;
 2. Department equipment is adequate;
 3. Department training is currently adequate;
 4. Departmental rules, policy or procedures were followed.
- G. The Office of Professional Standards is responsible for completing the annual use of force summary report and submitting it to the Essex County Prosecutor's Office. A copy shall be forwarded to the Chief of Police or his/her designee.
- H. Use of force reports are subject to discovery. In indictable cases, these reports should be forwarded to CJP 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.
- I. Use of force reports may be subject to disclosure under the *Open Public Records Act* or the common law right of access. Upon receiving an OPRA or common law right of access request for use of force reports, the Chief of Police or his/her designee shall consult with an assistant prosecutor before fulfilling such a request.
- J. All use of force reports and related investigation reports shall be retained as required by the New Jersey Division of Revenue and Enterprise Services, Bureau of Records Management (BRM) records retention schedules.

VIII. TRAINING

- A. All department personnel authorized to carry agency deadly force and mechanical force weapons shall be issued copies of, and be instructed in, this policy prior to being authorized to carry a weapon. This issuance and instruction shall be documented and can be accomplished electronically.
- B. Use of force training shall be conducted concurrent with the semiannual firearms training and qualification sessions. This training must reflect current standards established by statutory and case law, as well as state, county and departmental policies, SOPs, 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 departmental orders. This instruction may be delivered electronically.
- C. The Office of Professional Standards is responsible for submitting all use of force training summary reports to the Essex County Prosecutor's Office.