

USE OF FORCE

Attorney General's Use of Force Policy

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Preface

The provisions of this revised policy are a product of the collective efforts and judgment of the New Jersey Use of Force Advisory Committee. Throughout the deliberation process, each member of the committee worked conscientiously to reach a consensus in this area of critical importance to law enforcement officers and the citizens of this state. The New Jersey Use of Force Advisory Committee realized that the law alone could not achieve the goal of properly guiding the use of force by the police. The letter of the law needed to be supplemented with clear policy guidance designed to prepare officers to react appropriately when confronted with a use of force situation.

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 law enforcement's obligation to prepare individual officers in the best way possible to exercise that authority.

In situations where law enforcement officers are justified in using force, the utmost restraint should be exercised. The use of force should never be considered routine. In determining to use force, the law enforcement officer shall be guided by the principle that the degree of force employed in any situation should be only that reasonably necessary. Law enforcement officers should exhaust all other reasonable means before resorting to the use of force. It is the policy of the State of New Jersey that law enforcement officers will use only that force which is objectively reasonable and necessary.

This policy reinforces the responsibility of law enforcement 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. Law enforcement officers are obligated to report all situations in which force is used illegally by anyone. This policy sends a clear message to law enforcement officers that they share an obligation beyond the requirements of

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the 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. Law enforcement 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 whether to utilize force when authorized in the conduct of official responsibilities is among the most critical decisions made by law enforcement officers. It is a decision which can be irrevocable. It is a decision which 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 decisionmaking 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 policy is intended to provide the best guidance and direction possible to police officers throughout this state when called upon to confront and address the most difficult of situations. Law enforcement 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.

Definitions

A. Constructive Authority

1. Constructive authority does not involve actual physical contact with the subject, but involves the use of the law enforcement officer's authority to exert control over a subject.
2. Examples include verbal commands, gestures, warnings, and unholstering a weapon.
3. Pointing a firearm at a subject is an element of constructive authority to be used only in appropriate situations.

B. Physical Contact

1. Physical contact involves routine or procedural contact with a subject necessary to effectively accomplish a legitimate law enforcement objective.
2. 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.

C. Physical Force

1. Physical force involves contact with a subject beyond that which is generally utilized to effect 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 law enforcement officer's authority, or to protect persons or property.
2. 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.

D. Mechanical Force

1. 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 law enforcement officer's authority.
2. Examples include the use of a baton or other object, canine physical contact with a subject, or chemical or natural agent spraying.

E. Deadly Force

1. Deadly force is force which a law enforcement officer uses with the purpose of causing, or which the officer knows to create a substantial risk of causing, death or serious bodily harm.
2. 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.
3. 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.

F. Reasonable Belief

1. Reasonable belief is an objective assessment based upon an evaluation of how a reasonable law enforcement officer with comparable training and experience would react to, or draw

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inferences from, the facts and circumstances confronting and known by the law enforcement officer at the scene.

G. Imminent Danger

1. Imminent danger describes threatened actions or outcomes that may occur during an encounter absent action by the law enforcement 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.
2. 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 law enforcement officer, but is carrying a weapon and running for cover.

H. Substantial Risk

1. Any discharge of a firearm entails some risk of an unintended outcome. A substantial risk exists when a law enforcement officer disregards a foreseeable likelihood that innocent persons will be endangered.
2. 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.

I. Law Enforcement Officer

1. 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*.

I. Authorization and Limitations

A. Use of Force

1. A law enforcement officer may use physical force or mechanical force when the officer reasonably believes it is immediately necessary at the time:

- a. to overcome resistance directed at the officer or others; *or*
- b. to protect the officer, or a third party, from unlawful force; *or*
- c. to protect property; *or*
- d. to effect other lawful objectives, such as to make an arrest.

B. Use of Deadly Force

- 1. A law enforcement 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. A law enforcement officer may use deadly force to prevent the escape of a fleeing suspect
 - a. whom the officer has probable cause to believe has committed an offense in which 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, a law enforcement officer should identify himself/herself and state his/her intention to shoot before using a firearm.

C. Restrictions On The Use of Deadly Force

- 1. A law enforcement officer is under no obligation to retreat or desist when resistance is encountered or threatened. However, a law enforcement officer shall not resort to the use of deadly force if the 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. A law enforcement officer shall not use deadly force to subdue

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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. Under current state statutes the discharge of any projectile from a firearm is considered to be deadly force, including less lethal means such as bean bag 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. A law enforcement officer shall not discharge a weapon as a signal for help or as a warning shot.
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 his or her 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 which necessitated the use of deadly force.
 - a. 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:
 - (1) there exists an imminent danger of death or serious bodily harm to the officer or another person; *and*
 - (2) no other means are available at that time to avert or eliminate the danger.
 - b. A law enforcement officer shall not fire a weapon solely to disable moving vehicles.

D. Exhibiting a Firearm

1. A law enforcement 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 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.

II. Training Requirements

- A. Every law enforcement agency is required to conduct and document semi-annual training for all officers on the lawful and appropriate use of force and deadly force. This training must be designed to reflect current standards established by statutory and case law, as well as statewide, county and individual agency policy. It should include but not necessarily be limited to the use of force in general, the use of physical and mechanical force, the use of deadly force, and the limitations that govern the use of force and deadly force.

III. Use of Force Reports

- A. In all instances when physical, mechanical or deadly force is used, each officer who has employed such force shall complete
 1. Any reports made necessary by the nature of the underlying incident; *and*
 2. Use of Force Report (Attachment A or agency required format)

IV. Notifications and Reporting

- A. Immediate Notifications

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1. County and municipal law enforcement agencies shall immediately notify the county prosecutor 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 a law enforcement officer.
2. County prosecutor's offices shall immediately notify the Division of Criminal Justice when a member of their agency uses physical, mechanical or deadly force which results in death or serious bodily injury, or when injury of any degree results from the use of a firearm by agency personnel.
3. State law enforcement agencies shall immediately notify the Division of Criminal Justice 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 a law enforcement officer.

B. Reporting

1. County prosecutors shall within 24 hours report to the Division of Criminal Justice all situations where the use of deadly force by a law enforcement officer results in death or serious bodily injury, or in situations where any injury results from the use of a firearm by a law enforcement officer.
2. For all situations involving the use of physical, mechanical or deadly force, county and municipal law enforcement agencies shall report at least annually to the county prosecutor in a manner established by the prosecutor.
3. For all situations involving the use of physical, mechanical or deadly force, state law enforcement agencies shall report at least annually to the Division of Criminal Justice in a manner established by the Director of the Division of Criminal Justice.

Attachment A
Model Use of Force Report

