



DIRECTIVE: O-1-22

SUBJECT: USE OF FORCE AND DEADLY FORCE

EFFECTIVE DATE: 02/02/2022

DISTRIBUTION: All Conservation Officers

REFERENCE: Directives O-2; E-1; M.S. 609.02, 609.06, 609.065, 609.066, 626.553, 626.8452, 626.8475, 629.32, 629.33, MN P.O.S.T. Board Model Policy – Revised 09/2020, MCOA Work Agreement

SPECIAL INSTRUCTIONS: Replaces O-1-20

This directive is for division use only and does not modify or supersede any law and should not apply to any criminal or civil proceeding except civil proceedings related to departmental administrative actions. This directive should not be viewed as creating a higher standard of safety or care in any evidentiary sense. Violations of this directive may form the basis for departmental administrative action.

I. PURPOSE

The purpose of this directive is to provide officers with direction in the proper use of force and deadly force. This directive will also provide officers with direction on firearm use, incident review and reporting requirements, and use of force training.

II. POLICY

It is the policy of the Department of Natural Resources (“DNR”) to ensure officers respect the sanctity of human life when making decisions regarding use of force. Sworn law enforcement officers have been granted the extraordinary authority to use force when necessary to accomplish lawful ends. Officers shall treat everyone with dignity and without prejudice and use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of others and the officer.

DIVISION OF ENFORCEMENT

DIRECTIVE: O-1-20

SUBJECT: Use of Force and Deadly Force

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

Officers should exercise special care when interacting with individuals with known physical, mental health, developmental, or intellectual disabilities as an individual's disability may affect the individual's ability to understand or comply with commands from peace officers.

The decision by an officer to use force or deadly force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using such force.

This policy is to be reviewed annually and any questions or concerns should be addressed to the immediate supervisor for clarification.

This policy applies to all licensed peace officers and part-time peace officers engaged in the discharge of official duties

III. DEFINITIONS

- A. **Authorized Device:** A device an officer has received permission from the agency to carry and use in the discharge of that officer's duties, and for which the officer has:
 - 1. obtained training in the technical, mechanical and physical aspects of the device; and
 - 2. developed a knowledge and understanding of the law, rules and regulations regarding the use of such a device.
- B. **Bodily Harm:** Physical pain or injury.
- C. **Chokeholds:** A method by which a person applies sufficient pressure to a person to make breathing difficult or impossible, and includes but is not limited to any pressure to the neck, throat, or windpipe that may prevent or hinder breathing, or reduce intake of air. Choke hold also means applying to a person's neck on either side of the windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the carotid arteries.

DIVISION OF ENFORCEMENT

DIRECTIVE: O-1-20

SUBJECT: Use of Force and Deadly Force

- D. **Deadly Force:** Force used by an officer that the officer knows, or reasonably should know, creates a substantial risk of causing death or great bodily harm. The intentional discharge of a firearm in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force.
- E. **De-Escalation:** Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.
- F. **Great Bodily Harm:** Bodily injury which creates a high probability of death, or which causes serious, permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.
- G. **Other Than Deadly Force:** Force used by an officer that does not have the purpose of causing, nor creates a substantial risk of causing, death or great bodily harm.
- H. **Resistance:** For purposes of this policy, resistance is defined as noncompliance to directions, commands or physical actions performed by an officer. Resistance may include, but is not limited to, verbal resistance, passive resistance, or physical resistance toward officers.

IV. GENERAL PROVISIONS

- A. Use of physical force should be discontinued when resistance ceases or when the incident is under control.
- B. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person. In these situations, only the amount of force necessary to control the situation shall be used.
- C. Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.

DIVISION OF ENFORCEMENT

DIRECTIVE: O-1-20

SUBJECT: Use of Force and Deadly Force

- D. All uses of force shall be documented and investigated pursuant to DNR's policies.

V. DUTY TO INTERCEDE

- A. Regardless of tenure or rank, an officer must intercede when:
 - 1. Present and observing another officer using force in violation of section 609.066, subdivision 2, or otherwise beyond that which is objectively reasonable under the circumstances; and
 - 2. Physically or verbally able to do so

VI. DE-ESCALATION

- A. An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with their training whenever possible and appropriate before resorting to force and to reduce the need for force.
- B. Whenever possible and when such delay will not compromise the safety of another or the officer and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, and shall allow an individual time and opportunity to submit to verbal commands before force is used.

VII. USE OF OTHER THAN DEADLY FORCE

- A. It is the policy of this agency to accord officers discretion in the use of less than lethal force to the extent permitted by Minnesota Statute and the constitutions of the United States and Minnesota.
- B. When de-escalation techniques are not effective or appropriate, an officer may consider the use of other than deadly force to control a non-compliant or actively resistant individual. An officer is authorized to use agency-approved other than deadly force techniques and issued equipment in the following circumstances:
 - 1. effecting a lawful arrest; or
 - 2. the execution of legal process; or
 - 3. enforcing an order of the court; or
 - 4. executing any other duty imposed upon the public officer by law; or
 - 5. defense of self or another.

DIVISION OF ENFORCEMENT

DIRECTIVE: O-1-20

SUBJECT: Use of Force and Deadly Force

- C. In determining what force is reasonable under the circumstances, an officer should consider:
1. the severity of the crime at issue;
 2. whether the suspect poses an immediate threat to the safety of the officer or others;
 3. whether the suspect is actively resisting arrest or attempting to evade arrest by flight; and
 4. other relevant information the officer reasonably believes to be true at the time.
- D. Protracted force encounters jeopardize the safety of the public, law enforcement personnel and the person being arrested or captured. Accordingly, an officer should use discretion to determine reasonable force options to bring a subject under control. This policy should not be construed to require officers to first attempt using types and degrees of force that reasonably appear to be inadequate to accomplish the intended objective.
- E. An officer may announce their intention to use reasonable force.
- F. Officers should continually evaluate, as a situation progresses, whether control can be achieved or maintained by de-escalating to force techniques with lower propensities for causing pain or injury.
- G. Officers shall be trained in the use of issued chemical agents by the training section. Officers shall ensure that a subject that has been sprayed with chemical agent receives care.
- H. Officers may elect to carry a division issued baton. All officers shall receive training in the use of the baton and other impact weapons. When the baton is utilized, officers shall avoid intentionally targeting body areas likely to result in great bodily harm unless deadly force is authorized. These areas include the head, neck, throat, ribs, and groin.
- I. An officer may utilize other items as an impact weapon in lieu of a baton when the need for force is immediate and the baton is not available.
- J. Officers may elect to carry a Conducted Electrical Weapon (CEW), but shall not do so until trained in its use.

DIVISION OF ENFORCEMENT

DIRECTIVE: O-1-20

SUBJECT: Use of Force and Deadly Force

1. The officer shall attend a training course taught by a division certified instructor and shall recertify following division training protocols prior to carrying a CEW.
2. Conditions for using a CEW:
 - a. In the defense of an officer or another person from assault.
 - b. To affect an arrest of a subject or to take into custody when resistance is encountered or implied (non-compliance to an officer's orders) which may result in bodily harm to the officer, the subject being arrested, or others when resistance cannot be overcome without force.
3. CEW shall not be used on compliant or clearly passive resistant subjects.
4. Probe Removal & Medical Attention:
 - a. Officers should wear protective gloves and may remove probes if they are not embedded in the head, face, neck, groin area, or a female's breast. Medical personnel shall remove probes embedded in the head, face, neck, groin area, or a female's breast or if there is extensive bleeding and/or broken barbs.
Photographs should be taken of probe sites when possible.
 - b. Upon removal, probes shall be inspected to insure that they are intact and that the needle and barb are attached.
 - c. Officers removing probes shall treat them as a biohazard. The probes and discharged cartridge shall be stored as evidence and disposed of according to biohazard protocol after the case clears court.
 - d. Officers shall inspect the impacted area for bleeding and treat as necessary.
 - e. Individuals who have been subjected to a CEW deployment shall be brought to the emergency room under the following conditions:
 - i. if the individual obviously requires additional medical attention
 - ii. appears to be in a drug-induced state of unusual pain tolerances
 - iii. is exhibiting bizarre or unusual behavior
 - iv. appears to be suffering from drug overdose

DIVISION OF ENFORCEMENT
DIRECTIVE: O-1-20
SUBJECT: Use of Force and Deadly Force

- v. is displaying any other obvious signs or symptoms consistent with excited delirium

VIII. USE OF CERTAIN TYPES OF FORCE

- A. Except in cases where deadly force is authorized as articulated in MN STAT. 609.066 to protect the peace officer or another from death or great bodily harm, officers are prohibited from using:
 - 1. Chokeholds
 - 2. Tying all of a person's limbs together behind a person's back to render the person immobile, or;
 - 3. Securing a person in any way that results in transporting the person face down in a vehicle.
- B. Less than lethal measures must be considered by the officer prior to applying these measures.

IX. USE OF DEADLY FORCE

- A. An officer is authorized to use deadly force if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary. Use of deadly force is justified when one or both of the following apply;
 - 1. To protect the peace officer or another from death or great bodily harm, provided that the threat:
 - a. can be articulated with specificity;
 - b. is reasonably likely to occur absent action by the law enforcement officer; and
 - c. must be addressed through the use of deadly force without unreasonable delay; or
 - 2. To effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony and the officer reasonably

DIVISION OF ENFORCEMENT

DIRECTIVE: O-1-20

SUBJECT: Use of Force and Deadly Force

believes that the person will cause death or great bodily harm to another person under the threat criteria in section IX: A, subpart 1, items (a) to (c), unless immediately apprehended.

- B. An officer shall not use deadly force against a person based on the danger the person poses to self if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that the person does not pose a threat of death or great bodily harm to the peace officer or to another under the threat criteria in section IX: A, subpart 1, items (a) to (c).
- C. Where feasible, the officer shall identify themselves as a law enforcement officer and warn of his or her intent to use deadly force.
- D. Officers involved in, or witnessing, an incident in which deadly force was used or the use of force resulted in great bodily harm, are responsible for ensuring that:
 - 1. No further threat to safety exists.
 - 2. Aid is rendered to any injured person(s) when it is reasonable to do so.
 - 3. They follow the procedure and protocol of Directive O-02.

X. FIREARMS

- A. Officers may only discharge firearms:
 - 1. When the use of deadly force is authorized,
 - 2. Officers shall not fire at or from a moving vehicle unless the use of deadly force is authorized,
 - 3. To dispatch an animal when authorized under department guidelines including predatory and nuisance animals, dogs chasing deer, injured animals, and animals that pose a threat to public safety,
 - 4. During firearms training, practice, or competitive events, or
 - 5. With supervisory approval, while posing as a hunter for enforcement purposes or other authorized wildlife management purposes.
- B. Officers shall not fire warning shots.
- C. Officers shall not draw or display firearms except when circumstances create a reasonable belief that it may be necessary to use the firearm in conformance

DIVISION OF ENFORCEMENT

DIRECTIVE: O-1-20

SUBJECT: Use of Force and Deadly Force

with this directive, or for inspection, maintenance, storage, or training purposes.

- D. Officers are responsible to ensure that proper safeguards are taken to prevent loss, theft, or unauthorized use of division-approved firearms

XI. INCIDENT REVIEW AND REPORTING REQUIREMENTS

- A. An officer who observes another officer use force that exceeds the degree of force permitted by law has the duty to report the incident in writing within 24 hours to the chief law enforcement officer of the agency that employs the reporting officer.
- B. An officer who points a firearm or CEW at a suspect, or who utilizes any level of force shall complete a Response to Resistance (RTR) report in RMS within 48 hours or as directed by a supervisor, and shall also prepare a detailed report of the event except as provided in section XI: D.
- C. Handcuffing without physical resistance does not require an RTR report but shall be documented in an incident report.
- D. An officer involved in an incident in which deadly force was used or the use of force resulted in great bodily harm, shall create a RMS event with summary within 48 hours, or as directed by a supervisor, of the incident and follow the protocol of Directive O-2.
- E. Supervisors may waive these reporting requirements or extend the deadlines for reporting if:
 - 1. The officer is unable to prepare the reports,
 - 2. The officer needs time to recover from the incident before preparing reports, or
 - 3. Detailed statements will otherwise be taken from the officer as part of an investigation or review of the incident.
- F. A supervisor waiving the reporting deadlines is responsible for personally completing and submitting the required reports based on the available information within 48 hours of the incident.
- G. Firearm discharges other than those allowed in section X: A, subpart 3 or 4 of this directive shall be entered into the division's RMS and shall be reported to the Bureau of Criminal Apprehension (BCA) by the Training and Recruitment Manager in accordance with the provisions of Minn. Stat. Sec. 626.553.

DIVISION OF ENFORCEMENT

DIRECTIVE: O-1-20

SUBJECT: Use of Force and Deadly Force

- H. The Training and Recruitment Manager shall evaluate all incidents involving use of force and indicate on the RTR report whether, in the supervisor's training and experience, the officer's actions complied with division directives. The Director may request the investigation of any use of force incident.
- I. All reports, other than Peace Officer Standards and Training (POST) required notifications, shall be sent through the chain of command to the Director through the Training and Recruitment Manager. The Training and Recruitment Manager shall file the required RTR Reports with the Commissioner of Public Safety as required under Minn. Stat. Sec. 626.553.
- J. All RTR incidents resulting in injury to an officer or another person shall be reviewed in conformance with Directive O-2.

XII. USE OF FORCE TRAINING

A. Officer Training

Before being authorized to carry a firearm all officers shall receive training and instruction with regard to the proper use of deadly force and to the agency's policies and State statutes with regard to such force. Such training and instruction shall continue on an annual basis.

Before carrying an authorized device all officers shall receive training and instruction in the use of the device including training as it relates to its use in deadly force and/or other than deadly force situations. Such training and instruction shall continue on an annual basis.

Officers will carry and use only authorized devices unless circumstances exist which pose an immediate threat to the safety of the public or the officer requiring the use of a device or object that has not been authorized to counter such a threat.

With agency approval officers may modify, alter or cause to be altered an authorized device in their possession or control.

At least annually, officers shall be trained in use of force and related legal updates, including:

1. the use of chemical agents
2. CEWs
3. impact weapons

DIVISION OF ENFORCEMENT
DIRECTIVE: O-1-20
SUBJECT: Use of Force and Deadly Force

4. firearms
5. practical and legal aspects of use of force by peace officers
6. defensive tactics
7. deadly force issues
8. train and qualify with their division authorized handgun, and long guns
9. Techniques for the use of, and reinforce the importance of, de-escalation
10. Simulate actual shooting situations and conditions and enhance officer's discretion and judgement in using other than deadly force in accordance with this policy

The Training and Recruitment Manager shall maintain accurate records for all officers' use of force training. Scores shall be recorded as pass or fail.

B. Curriculum

1. The Training and Recruitment Manager shall develop and maintain use of force training curriculum.

C. Instructors

1. Training will be conducted by Enforcement Division certified use of force instructors.

D. Qualification Standards

1. The Training and Recruitment Manager shall establish defensive tactics qualification standards and firearms qualifications requirements.
2. Participation in all use of force training is mandatory unless prior approval is granted by the Training and Recruitment Manager.

E. Non-Qualifying Officers

1. Officers who do not qualify on a prescribed qualification course shall receive further instruction.
2. The Training and Recruitment Manager will approve the type of training to be conducted. The supervising firearms instructor, in consultation with firearms instructors and the participant will:
 - a. Review factors which may have contributed or caused a participant's non-qualifying score, including a check of the participant's firearm.
 - b. Document any subsequent attempts to qualify and the results of those attempts.

DIVISION OF ENFORCEMENT

DIRECTIVE: O-1-20

SUBJECT: Use of Force and Deadly Force

3. If after this training and subsequent attempts to qualify, the officer still does not qualify, the Training and Recruitment Manager shall report this information to the Director who will then determine what action is appropriate. If an officer does not qualify, all targets that the participant used during the initial and subsequent qualification attempts (those conducted following training) are to be kept on file until the officer qualifies. These targets are to be signed by both the non-qualifying officer and the firearms instructor.
- F. The chief law enforcement officer shall maintain records of the agency's compliance with use of force training requirements.

By Authority of:

Rodmen Smith

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COL Rodmen Smith
Division Director
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