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|  | SUBJECT<br><b>Necessary Force (20.1)<br/>Review of Firearms Use (21.1)</b>   | GENERAL ORDER NUMBER<br><b>220.10</b> |
|                                                                                   | DCJS STANDARDS<br><b>20.1, 21.1</b>                                          | EFFECTIVE DATE<br><b>1/5/18</b>       |
|                                                                                   | IACLEA STANDARDS<br>Daniel M. Vasile, Chief of Police <i>Daniel M Vasile</i> | REVISION DATE<br><b>1/27/2021</b>     |

**A. Policy:** It is the policy of the University Police Department at SUNY Brockport that officers hold the highest regard for the sanctity of human life, dignity, and liberty of all individuals without prejudice to anyone. Force is sometimes necessary to enforce the law and protect the public welfare; however, officers shall use only that level of force that is proportional to the threat being faced and which is objectively reasonable to control an incident, to effect an arrest, prevent an escape, or to protect themselves or others from personal harm or death.

The degree of force used by the officer should be within the limits established by Article 35 of the New York State Penal Law and consistent with the policies and training provided by either the University Police Department, Municipal Police Training Council of DCJS, or the Public Safety Training Council (Monroe Community College) in Rochester. While Article 35 authorizes force, it does not command it, and members are accountable and responsible for any distinctive policy restrictions herein. If circumstances dictate, the officer may bypass lower levels of force and immediately respond with a higher level. It is the responsibility of each officer to be knowledgeable of those requirements and understand that any and all actions will need to be documented in accordance with the procedures listed below.

The University Police Department requires all incidents involving use of force and/or discharge of a firearm (other than in training or recreational purposes) be properly investigated and documented. The Chief of Police, through the internal process described in Section J, below, will review all documentation and the disposition of any incident wherein (1) an officer discharges a firearm other than in training or recreation, or (2) an officer takes an action that results in, or is alleged to have resulted in, injury or death of another person. Through this process, the Department will ensure that all rules and regulations of the Department, as well as Article 35 of the New York State Penal Law, are followed and that documentation is maintained in the event of future litigation, that any training needs are identified and implemented, and the adequacy of currently issued equipment.

## **B. Definitions:**

**1. Objectively Reasonable:** An objective standard used to judge an officer's actions. Under this standard, a particular application of force must be judged through the perspective of a reasonable officer facing the same set of

circumstances, without the benefit of hindsight, and be based on the totality of the facts that are known to that officer at the time that the force was used.

**2. Deadly Physical Force:** Physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

**3. Non-Deadly Force:** The use of force, including force considered to be “less-lethal,” which is applied to effect an arrest or protect the officer or others from attack, physical resistance, harm, or death, but is not intended or expected to cause death.

**4. Physical Injury:** Impairment of physical condition or substantial pain.

**5. Serious Physical Injury:** Physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

**6. Brandish:** to point a use-of-force implement in the direction of a person so as to indicate the deployment of such item is imminent.

**C. Types of Force Definitions:** The types of force required to be reported are the following:

**1. Display a chemical agent:** To point a chemical agent at a subject.

**2. Use/Deploy a chemical agent:** The operation of the chemical agent against a person in a manner capable of causing physical injury.

**3. Brandishes/Uses/Discharges a firearm:** The operation of a firearm against a person in a manner capable of causing physical injury.

**4. Brandishes/Uses/Deploys an impact weapon or electronic control weapon:** The operation of an impact weapon or electronic control weapon against a person in a manner capable of causing physical injury.

**5. Serious bodily injury:** Bodily injury that creates or causes

a. a substantial risk of death; or

b. unconsciousness; or

c. serious and protracted disfigurement; or

d. protracted loss or impairment of the function of any bodily member, organ or mental faculty.

**D. Determining the Objective Reasonableness of Force:** When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event. Factors that may be used in determining the reasonableness of force include, but are not limited to, the following:

1. The severity of the crime or circumstance.
2. The level and immediacy of threat or resistance posed by the suspect.
3. The potential for injury to citizens, officers, and suspects.
4. The risk or attempt of the suspect to escape.
5. The knowledge, training, and experience of the officer.
6. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects.
7. Other environmental conditions or exigent circumstances.

**E. Duty to Intervene:**

1. Any officer present and observing another officer using force that they reasonably believe to be clearly beyond that which is objectively reasonable under the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.
2. An officer who observes another officer use force that exceeds the degree of force as described in #1, above, should promptly report these observations to a supervisor.

**F. Use of Force:**

1. Officers may use only that level of force which is reasonably necessary to control an incident, to affect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of one's self or another.
2. Factors that should be used in determining the reasonableness of force include, but are not limited to: the severity of the crime or circumstance; the level and immediacy of threat or resistance posed by the suspect; the potential for injury to citizens, officers, and suspects; the risk or attempt of the suspect to escape; the knowledge, training, and experience of the officer; officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects; other environmental conditions or exigent circumstances.

3. Only issued or approved equipment will be carried on duty and used when applying physical force.
4. Officers shall use authorized less-than-lethal substances and devices such as self-defense spray, pursuant to department policy and training. The use of an active countermeasure, the baton, or self-defense spray shall be considered a use of force.
5. Use of restraining devices is mandatory on all prisoners unless, in the officer's judgment, unusual circumstances exist which make the use of restraining devices impossible or unnecessary (e.g. prisoner is very elderly, handicapped, etc.). The mere placing of handcuffs on a cooperative prisoner will not be construed to be a use of physical force. When the handcuffs become an appliance to exert force necessary to further subdue a prisoner or where the suspect physically resists the application of handcuffs, a use of physical force has occurred.
6. After physical force is used, an officer shall **immediately** evaluate the need for medical attention or treatment for that person upon whom the physical force was used and arrange for such treatment when that person has a visible injury, complains of injury or discomfort, or requests medical attention.
  - a. Serious or potentially life threatening incidents require immediate aid by medical professionals.
  - b. A supervisor shall immediately be advised of all injuries observed or reported.
  - c. If medical aid is not provided, heightened observation to detect obvious changes in physical condition should take place.
  - d. If chemical spray was utilized, the eyes and other affected areas should be flushed with water and an evaluation by medical professionals should be considered.

#### **G. Use of Deadly Physical Force:**

1. University Police officers will respond to any complaints involving armed individuals, robberies or other dangerous incidents that occur during their tours of duty.
2. University Police officers may use deadly physical force only as authorized by the provisions of Article 35 of the New York State Penal Law. Article 35.30 provides that an officer may use deadly physical force in order to protect the officer or another person from what is reasonably believed to be an immediate threat of death or other serious physical injury, or to prevent the escape of a

fleeing felon whom the officer has reasonable cause to believe will pose a significant threat to human life should escape occur.

**3.** Deadly physical force is not authorized against individuals who only pose a danger to themselves.

**4.** University Police officers are not required to retreat in lieu of the justifiable use of deadly physical force. However, deadly physical force must never be used if a less drastic means can be utilized without unreasonably endangering the officer or another person.

**5.** It is the University Police Department's policy that an officer is justified in the firing of their firearm in the following limited circumstances:

- a.** The defense of their own life; or
- b.** The defense of a fellow officer's life or the life of a third person; **or**
- c.** To prevent the actual commission of a violent felony (those stated in Articles 35.15, 35.20, and 35.30 of the New York State Penal Law) where human life is being jeopardized by the subject.

**6.** Firearms should not be discharged when it appears that a third party may be injured as a result.

**7.** Any officer, whose actions or use of force in an official capacity results in death or serious physical injury, shall be immediately assigned to administrative duties and shall not return to field assignments until an investigation has been satisfactorily completed and the officer has been determined to be fit for duty.

- a.** Due consideration shall be given to provide post-incident debriefing, counseling, or other necessary support for the officer involved.

#### **H. Prohibited Use of Force:**

**1.** The use of any force, up to and including lethal force, not reasonably necessary is expressly forbidden. Officers shall not unreasonably endanger themselves or the public in application of this policy.

**2.** Except for maintenance, end of shift storage or during training, police officers shall not draw or display their firearm unless circumstances create reasonable cause to believe it may be necessary to use the weapon in conformance with this policy.

**3.** The use of a chokehold or neck restraint is prohibited.

4. At no time shall officers utilize “hogtying” as a method to restrain an individual. Hogtying is defined as a four-position binding of a person’s wrists and ankles together behind the back.

5. The use of any restraints, techniques or instruments (as weapons) for which training has not been provided (e.g. flashlights or keys) are not authorized for use by members of this agency.

6. Shooting warning shots is prohibited.

**I. Command/Supervising Officers Duties and Responsibilities:** If on duty, the commanding/supervising officer shall:

1. Respond to the scene of the incident immediately. In the absence of a commanding/supervising officer, it will be incumbent upon the officer to determine the seriousness of the incident or injury and, based upon these facts, it will be the officer’s decision to notify the Chief of Police. Any injury resulting in a transport to the hospital shall require notification of the Chief of Police.

2. Ensure that employees receive any necessary assistance, including medical treatment. They shall also ensure that any injuries to employees are properly documented in an RMS Blotter Report.

3. Ensure that either the (1) College at Brockport Employee On-the-Job Accident and Injury Report or (2) State University of New York Report of Accident or Injury (Other than a Motor Vehicle Accident) Form is completed. The injury will also need to be reported to the New York State Accident Reporting System (888-800-0029).

4. Ensure that medical treatment (if required) is provided for the subject.

5. Determine other actions that need to occur and assign or handle (including photos, measurements and diagrams). NOTE: A photograph showing either (1) no injuries or (2) the injuries sustained may be appropriate, providing the subject agrees/consents to have their photograph taken.

6. Ensure that a thorough investigation is conducted and all required/necessary reports are prepared and submitted. In the event that an officer is unable to complete reports due to injury, the commanding/supervising officer will prepare or cause them to be prepared and submitted to the Chief of Police.

**J. Chief of Police Responsibilities:** The responsibilities of the Chief of Police will be as follows:

1. Review the documentation and reports submitted.

2. Investigate the circumstances as necessary and/or appropriate.

3. Conduct necessary follow up, including any administration actions warranted by the outcome of the investigation.
4. Add any additional narrative (as deemed necessary) to the RMS Blotter and/or Use of Force Report.

**K. Use of Force (Non-Deadly or Deadly) Reporting Process:** In any case involving the use of any type of force (non-deadly or deadly), the following procedures will apply:

1. Officers will report to their immediate supervisor any use of force by any officer.
2. Officers will complete both an RMS Blotter and RMS Use of Force Report. If more than one officer is involved in the incident, each officer shall include their narrative and observations in the Use of Force Report. All RMS Use of Force Reports will be electronically sent to the Chief of Police before the end of the supervisor's (if on duty) shift or officer's shift (if no supervisor on duty).
3. An RMS Use of Force Report or other appropriate/required reports as indicated will be completed when any of the incidents listed below occurs:
  - a. The use of an active countermeasure, pressure point control, the expandable baton, aerosol restraint or other restraints.
  - b. The mere placing of handcuffs on a prisoner/detainee will not require completion of a Use of Force Report. However, if the handcuffs become an appliance to exert pressure necessary to further control a prisoner or where the suspect physically resists the application of handcuffs, an RMS Use of Force Report must be completed.
  - c. Any officer encountering resistance pursuant to their duties or any off-duty member encountering resistance pursuant to their duty as a University Police Officer will immediately notify their supervisor and will complete an RMS Blotter and Use of Force Report.
  - d. In the case of off-duty incidents, the employee shall immediately, if outside the College, notify the police agency within that jurisdiction and complete the appropriate report(s).
  - e. Force situations where persons being taken into custody subsequently refuse medical treatment will be transported or seen by Monroe Ambulance. Refusal of medical treatment will be witnessed by hospital or ambulance personnel and noted in the RMS Use of Force Report. Subject's acceptance or refusal of medical care will also be noted in the RMS Use of Force Report.

#### **M. Submission and Review Process – Use of Force Report:**

- 1.** Each officer who is required to complete a Use of Force Report will forward the completed report to the shift supervisor prior to the end of their shift.
- 2.** The shift lieutenant who was on duty at the time of the incident will review the report for accuracy and completeness, record their comments and recommendations prior to the end of their shift, and forward the report to the Chief of Police.
- 3.** The Chief of Police will review the incident, document their findings on the Use of Force Report, and determine whether any further follow-up actions are recommended or required.

#### **N. Firearms Usage Guidelines/Procedures:** The following guidelines/procedures will be used with respect to use of firearms.

- 1.** Officers may use a firearm
  - a.** To defend the officer or another from what the officer reasonably perceives as an imminent threat of death or serious physical injury when there is no apparent practical alternative.
  - b.** In the case of an animal either attacking or presenting a serious danger to any person.
  - c.** To take down wildlife that are destructive, injured or threatening.
- 2.** Officers are justified in removing firearms from holsters and/or gun mounts and pointing the firearm if
  - a.** There is justification to use a firearm against a person or an animal.
  - b.** The officer reasonably believes that a person or a situation poses or may pose an immediate threat of death or serious physical injury either to themselves or another person.
- 3.** Discharge of a firearm from or at a moving vehicle is prohibited unless the officer reasonably believes that the occupant(s) of the vehicle are using or are about to use deadly physical force against the member or another person. Under all circumstances, warning shots are prohibited.
- 4.** When an officer discharges a firearm in any situation other than training, legal hunting, or target practice purposes, they will immediately notify their supervisor. If the discharge of a weapon is directed at a person (whether or not the person is struck) or as the result of any discharge, a person is injured or deadly force is used, the officer will:

**a.** Advise command staff immediately. The command staff officer will notify the Chief of Police and both will respond to the scene (whether the incident is on or off duty).

**b.** Submit an RMS Blotter and RMS Use of Force Report. The RMS Use of Force Report (under "INCIDENT INFORMATION") includes a section to be completed with respect to firearms discharge. In addition to completing the information, the narrative section below that information that should be fully and accurately completed as to the specifics of the incident.

**5.** The command staff officer will ensure the following:

**a.** The officer receives medical assistance, if needed.

**b.** The officer is afforded privacy from inquiries from the public and University Police Department personnel not involved in the actual investigation of the incident.

**c.** The officer is offered crisis counseling.

**d.** Initiate and coordinate a preliminary investigation of the circumstances surrounding the incident (unless otherwise directed by established authority) and promptly report the results of the preliminary investigation to the Chief of Police.

**e.** Have a supervisor or Evidence Custodian ensure that the instrument used, including any firearm, ammunition and related leather goods are secured in the same condition as they were immediately following the last discharge, unless directed to do something different by the Chief of Police. Treat the instrument as evidence in accordance with General Order 107.10.

**f.** In the case of an accidental discharge, not resulting in damage or injury, until said firearm is examined by an armorer and found to be functioning properly. The armorer will replace the weapon and equipment as directed by the Chief of University Police.

**6.** If a weapon discharge is accidental and did not injure anyone, the officer will:

**a.** Submit an RMS Blotter and RMS Use of Force Report. The RMS Use of Force Report (under "INCIDENT INFORMATION") includes a section to be completed with respect to firearms discharge. In addition to completing the information, the narrative section below that information that should be fully and accurately completed as to the specifics of the incident.

**b.** The officer's on duty commanding officer will respond to the scene or be notified and respond as appropriate.

c. Reports will be forwarded to the Chief of Police.

7. If a weapon discharge is directed at a dog or other animal, the officer will:

a. Submit an RMS Blotter Report (suspected rabid animal or dispatch of injured deer).

b. Notify Monroe County Channel 2 that they will be discharging their weapon in the event they receive any emergency calls relating to the incident.

**O. Assignment to Administrative Duty:**

1. When an officer is involved in a shooting or use of a countermeasure that results in serious physical injury or death, the Chief of Police or designee will assign that member to administrative duty. The assignment to administrative duty makes no statement as to the guilt or innocence of the officer involved.

2. The administrative duty will not place the officer in a position where the potential for resistance incidents may occur due to the nature of the assignment.

3. Administrative duty assignment will be made in the best interest of the University Police Department and the officer, pending department and legal review (i.e., Grand Jury) and disposition of the incident.

4. When an officer is assigned to administrative duty, they will:

a. Refrain from routine exercise of police arrest and intervention

**P. Training Requirements:** In accordance with General Order 33.10 In-Service Training, all sworn personnel are required to successfully complete annual training which must include:

1. Firearms training and practical qualification sessions.

2. Training on issued less-lethal weapons.

3. Review of policies and statutes related to the appropriate and lawful use of force and deadly physical force.

4. Additional training topics will include conflict prevention, conflict resolution and negotiation, and de-escalation techniques and strategies including, but not limited to, interacting with persons presenting in an agitated condition as well as duty to intervene and prohibited conduct.

**Q. Online Reporting to DCJS:** All Use of Force Reports are to be submitted to DCJS by the named officer filing the report using the online reporting tool at the link below:

<http://www.surveygizmo.com/s3/5075589/nys-use-of-force-reporting>

A copy of the acknowledgment received upon submission of the online report will be incorporated/made a part of the RMS Report. The reporting officer should also include the day, date, and time of filing the online report in their narrative.