

# GENERAL ORDER

No. 06.02



<b>DEADLY FORCE</b>	
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ISSUING AUTHORITY: BRIAN G. OWENS, CHIEF OF POLICE	

## I. PURPOSE

This order is intended as a correspondent with Troy Police Department general order [06.01](#) 'Use of Physical Force' and its purpose is to establish policy governing the use of deadly physical force by sworn officers of the City of Troy Police Department and establish guidelines for the procedures for reporting, investigating, and evaluating the use of such force.

## II. POLICY

Police officers may use only a reasonable level of physical force that is necessary to perform their duties within the limits established by Article 35 of the New York State Penal Law and consistent with the training provided by the Troy Police Department. It is the Responsibility of each officer to be aware of the provisions established under Article 35 of the New York State Penal Law, and utilize said provisions in that law in conjunction with department policy and training to guide their actions.

Furthermore, any use of force by law enforcement officers must be consistent with the standard established by the United States Supreme Court in *Graham v. Connor* 490 U.S. 386 (1989), which held that in order for an officers use of force to be deemed objectively reasonable, that officer must consider: the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the officer(s) or others; and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. Accordingly, Officers shall employ only that level of force that is objectively reasonable and necessary to achieve their lawful objectives.

Since no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer is entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain or unreasonably risk physical injury before applying reasonable force to accomplish a legitimate law enforcement objective, and/or prevent injury to a member of the public or officer.

In the event that a Troy Police Officer's actions constitutes deadly force as defined herein, there will be two separate investigations commenced into an officer-involved incident(s); they are the *criminal investigation* and the *administrative investigation* commonly referred to as the "internal investigation".

The *criminal investigation* will determine what actually transpired and whether or not there is criminal liability involved. This investigation shall be conducted under the auspices of the Deputy Chief of Police in coordination with the Rensselaer County District Attorney. The Deputy Chief shall ensure the Chief of Police is at all times apprised of the progress of the investigation. At the conclusion of the criminal investigation, the Chief of Police shall meet and confer with the District Attorney and the Corporation Counsel regarding the conclusions generated by the investigation.

The *administrative investigation* will be conducted by the Inspectional Services Bureau Captain for the purpose of determining whether the incident falls within department policies and guidelines. The Inspectional Services Bureau captain shall report directly to the Chief of Police.

The intentional discharge of a firearm will always be considered to be the use of deadly force. Additionally, deadly force may be expanded to include the use of less-lethal weapons and force if the intent is to cause serious physical injury or death. This shall include, but not be limited to, impact weapons such as batons, motor vehicles, and bare hands.

### III. DEFINITIONS

- A. Reasonable Cause to Believe that a person has committed an offense:** Reasonable cause to believe that a person has committed an offense exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it. Except as otherwise provided in this chapter, such apparently reliable evidence may include or consist of hearsay.<sup>1</sup>
- B. Physical Injury:** Impairment of physical condition or substantial pain.<sup>2</sup>
- C. 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.<sup>3</sup>
- D. Physical Force:** Physical presence, action, or exercise of strength to compel another to act or refrain from certain behavior; force which does not amount to deadly physical force.
- E. Deadly Force:** Force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.<sup>4</sup>
- F. Less Lethal Weapons:** Weapons, devices, and munitions, that are explicitly designed and primarily employed to incapacitate targeted personnel or material immediately, while minimizing fatalities, permanent injury to personnel, and undesired damage to property in

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<sup>1</sup> NYS Criminal Procedure Law §70.10(2)

<sup>2</sup> NYS Penal Law §10 (9) (McKinney 2013)

<sup>3</sup> NYS Penal Law §10 (10) (McKinney 2013)

<sup>4</sup> NYS Penal Law §10 (11) (McKinney 2013)

the target area or environment. Less lethal weapons are intended to have reversible effects on personnel or material.

**G. Imminent:** The determination of whether a particular threat or danger in “imminent” is based on an assessment of all of the circumstances known to the Officer at the time. “Imminent” does not necessarily mean “Immediate” or “instantaneous”.

**H. 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 20/20 hindsight, and be based on the totality of the facts that are known to that officer at the time the force was used.<sup>5</sup>

**I. Excessive Force:** A use of force greater than that which a reasonable officer would use under the circumstances. A type or degree of force that is neither reasonable nor necessary, or utilizing any degree of force as summary punishment or vengeance.

#### **IV. PROCEDURES**

A. Training – All officers are shall receive basic training in the use of force. Additionally, sworn members are required to attend annual refresher training in the use of deadly force, and successfully demonstrate proficiency and safe firearms handling techniques by completing a qualification course of fire with department firearms. All sworn members shall maintain familiarization with the provisions of Article 35 of the New York State Penal Law while employed with the Troy Police Department.

B. An Officer may use deadly force upon another person when it is objectively reasonable to:

- i. Protect him/her self or others from what is reasonably believed to be imminent threat of death or serious physical injury;
- ii. Prevent the escape of a fleeing felon who the Officer has probable cause to believe has committed a violent felony crime and is an imminent threat to human life should escape occur. Officers shall give verbal warning, if feasible, prior to the use of deadly force.
- iii. When feasible, some warning should be given prior to the use of deadly physical force unless that warning increases the jeopardy of the Officer or another.

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<sup>5</sup> Graham v Connor, 490 U.S. 396 (1989)

C. Elements of a Deadly Force response:

- i. *Capability*- When a person has the means or capability to cause serious physical injury or death to an Officer or another.
- ii. *Opportunity*- When a person is in a position to effectively resist an Officer's control, or to use force or violence upon the Officer or another. Examples which affect opportunity include, but are not limited to: relative distance to the Officer or others, and physical barriers between the subject and the Officers.
- iii. *Intent*- Based on all of the facts and circumstances confronting the Officer, the Officer reasonably believes that the subject poses imminent threat of serious physical injury to the Officer or another.

D. Deadly force should be used as a last resort option when all other lesser alternatives have been considered and/or exhausted (when feasible) prior to the use of deadly force- to include disengagement.

E. Safety Priorities: Factors that influence the decision-making process in a critical incident where lives are in the balance, shall be based on the totality of the circumstances known to Law Enforcement at that time, and the safety priorities model:

- 1) Hostage(s)
- 2) Innocent civilians
- 3) Police Officers
- 4) Suspect

No person's life is intrinsically more valuable than another; the Troy Police Department holds all life in the highest regard.

Any prioritization of the efforts of Law Enforcement to effectively resolve a critical incident should be based primarily on the person's ability to remove themselves from the dire situation they may be in. Suspects have the most ability to remove themselves or affect the outcome of the situation through surrender. Conversely, a hostage will have the highest priority, based not on any valuation of their life, but rather based on the fact that they are in the most peril with the least amount of control. When contemplating an action, Officers must evaluate who would benefit or suffer the most.<sup>6</sup>

F. *De-escalation*: Policing requires that at times an Officer must exercise control of a violent or resisting subject to effect an arrest, or to protect an Officer or others, from risk of imminent harm. Clearly, not every potential violent confrontation can be de-escalated, but Officers do have the ability to impact the direction and the outcome of many situations they handle based on their decision-making and the tactics they choose to employ.

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<sup>6</sup> National Tactical Officers Association Tactical Response and Operations Standard for Law Enforcement Agencies §2.3.3 (published April, 2018)

The subject(s) actions will dictate the Officers use of force. Force transition is the shift, escalation/de-escalation from the application from one type to another in conjunction with the ‘objective reasonableness’ standard described in section III, H herein.

In use of force incidents, the Officer will transition to differing degrees or types of force, including attempts to de-escalate. Force situations are dynamic and require an Officer to continually assess the subjects’ actions to ensure a proportionate response. Officers shall modify their level of control in relation to the amount of resistance offered by a subject.<sup>7</sup> The Officer need not progress through each level of force before reaching the final level of force.

When reasonable under the totality of the circumstances, Officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum, and communicate and coordinate a response. In their interaction with the subjects, Officers should use advisements, warnings, verbal persuasion, and other tactics and alternatives to higher levels of force. Officers should recognize that they may withdraw to a position that is tactically more secure or allows them greater distance in order to consider or deploy a greater variety of force options<sup>8</sup> when withdrawal does not increase the risk of innocent persons or themselves.

#### G. Drawing and Displaying Weapons -

1. The drawing or display of an officer’s weapon represents escalation toward the use of deadly physical force, increasing the risk of accidental discharge or weapon loss, and may contribute to fear or panic. Officers are justified in removing firearms from holsters and/or gun mounts if:
  - a. The member reasonably believes that the situation poses or may pose an immediate threat of death or serious physical injury to the officer or another person; and/or:
  - b. There is justification to use deadly physical force against a person.
2. Whenever an officer draws or displays a firearm in the presence of another person (other than in training) he/she shall articulate the reasons for his actions in Response to Resistance Report.

H. Deadly Force is not limited to the use of firearms. When reasonable and necessary, examples of alternative methods are, but are not limited to: Baton (strikes to the head, neck, sternum, spine, groin, or kidneys), vehicle ramming, less-lethal munitions when the stand-off distance from Officer to subject is closer than recommended and/or impact is directed toward the vital areas of the subject’s body.<sup>9</sup>

- i. Only issued firearms or impact weapons will be carried on duty and used when encountering resistance, except in emergency situations when an officer may use any justifiable resource at his disposal.

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<sup>7</sup> Cops.usdoj.gov “Use of Force” PDF, §VII (retrieved 2019-07-10)

<sup>8</sup> Cops.usdoj.gov “Use of Force” PDF, §VIII (retrieved 2019-07-10)

<sup>9</sup> Cops.usdoj.gov “Use of Force” PDF, §VI(C) (retrieved 2019-07-10)

- ii. The carrying or use of any instrument as a weapon not specifically authorized or issued by the Troy Police Department is prohibited. Examples of unauthorized weapons include, but are not limited to, the following:
  - a. Blackjack
  - b. Weighted gloves
  - c. Stun guns
  - d. Brass knuckles
  - e. Steel toe shoes or boots

- I. Deadly Force can also result from a force option being improperly applied.<sup>10</sup>
- J. Officers are justified in using firearms to destroy an animal for self-defense, to prevent substantial harm to the officer or another, or when the animal is so badly injured it must be humanely euthanized. Any discharge of a firearm to destroy an animal required completion of an incident report and a Troy Police Response to Resistance Report.
  - i. Officers that euthanize any animal shall make effort to consider the aspect of safety to others, and any unintended damage to property. When time permits, members of the public should be warned and directed to a safe location.
  - ii. When time permits, the Patrol Supervisor shall be notified prior to the discharge of the Officers firearm, or notified as soon as practical after.
- K. The Officer involved in the use of deadly force, on or off-duty, shall notify the on-duty commanding officer immediately. If the member is off-duty and outside the City of Troy N.Y. when the use of deadly force occurred, the member shall notify the law enforcement agency with jurisdiction for investigation of the incident first, and then the on duty Troy Police Department commanding officer via the chain of command by notifying the Desk Sergeant.
- L. Reporting – refer to General Order 06.01 Use of Physical Force or its revised equivalent as well as other provisions contained herein.
- M. In addition to these guidelines, members are referred to other Troy Police Department policies [06.01](#), [06.03](#) and [06.04](#) (or revised equivalent)

## **V. PROHIBITED USES OF DEADLY FORCE**

- A. Warning Shots - Warning shots are prohibited under any circumstances.
- B. Risk to Innocent Persons – Officers are prohibited from discharging firearms when it appears likely that an innocent person may be injured.
- C. Moving Vehicles – Discharging a firearm at a moving vehicle is prohibited unless the officer reasonably believes that the occupant(s) of the vehicle is using or about to use deadly physical force against the officer or another person, and other available options are not immediately available.

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<sup>10</sup> Cops.usdoj.gov “Use of Force” PDF, §VI(C) (retrieved 2019-07-10)

Officers should avoid positioning themselves in a tactically inferior location when working near a motor vehicle and the potential for harm exists, and should note that a motor vehicle presents a formidable shield against most firearms, and if the officer disables the operator, the vehicle can be expected to continue uncontrolled creating a hazard to officers and the public.

## **VI. RESPONSIBILITIES**

### **A. Involved Officer:**

In addition to the mandates contained within this order and provisions of other applicable Federal, State, and Local laws and related policies of the Troy Police Department, whenever deadly force is utilized and results in the death or physical injury, these responsibilities shall apply:

1. Transmit your location, situation, and request for immediate assistance to the Communications Center.
2. Determine the physical condition of any injured persons and render first aid when appropriate and safe to do so.
3. Limit additional communications to emergency conditions.
4. Secure the incident scene, act to protect all physical evidence, including your firearm, and to identify all potential witnesses.
5. Remain at the scene until relieved by the patrol sergeant.
6. Brief patrol sergeant of the incident.
7. When directed by the patrol sergeant, return to the Central Police Station.
  - Do not remove any clothing, equipment, or alter your appearance in any manner until approved to do so by the Chief of Police or a designee.
8. Prepare necessary reports pertaining to the incident and cooperate with investigative personnel during the investigation as directed.
9. Report as directed for department functions, such as interviews.
10. Submit to counseling with a department-approved mental health professional as directed, but within seven (7) calendar days of the incident.
  - The purpose of this debriefing will be to allow the officer to express his/her feelings and to deal with the moral, ethical, and/or psychological after-effects of the incident. The content of this debriefing shall remain confidential. A fitness for duty report will be provided to the Chief of Police.

B. Patrol Sergeant:

1. Respond immediately to the scene.
2. Initiate Incident Command. Request all resources necessary to maintain integrity of the scene until properly relieved by investigative personnel.
3. Debrief the involved officer and ensure the provision of emergency treatment if required.
4. As soon as possible, assign a senior officer to transport the involved officer to Central Station and remain with the involved officer at all times until relieved by a superior officer.
  - If the officer involved requires emergency medical treatment at a hospital, assign Officer(s) to accompany and remain with the officer at all times until relieved by a superior officer. An Evidence Technician must also be assigned to respond to the hospital to process the injured officer's clothing, equipment, and other evidentiary items.
5. Notify the ranking officer on duty. If acting as the Officer-In-Charge, direct the Desk Sergeant to immediately notify the Chief of Police & Duty Chief.
6. Request investigative/forensic personnel.
7. Direct and assign responding officers pending the arrival of Investigations Bureau personnel.
8. Complete a supplemental report of your activities and ensure that all officers present at the scene complete statements and reports as to their actions and observations. These reports will be completed immediately after the officers are relieved at the scene.
9. Properly review all reports for thoroughness and clarity.

C. Officer(s) Assigned to Involved Officer:

1. Transport the officer to Central Station and report to the Desk Sergeant.
  - a. While en-route to Central Station or hospital, provide the officer with the opportunity to contact (aural means only- via cellular device recommended) immediate family members, significant others, clergy, PBA representatives, or legal counsel. Advise the officer to limit any conversations to their well-being and not the facts of the incident, and to arrange for the delivery of a change of clothes.
  - b. If the officer is unable to do so, offer to make such contacts, or contact the Desk Sergeant to ascertain whom the officer has identified on their

Emergency Contact Form. No one other than the escorting officer or members identified on the Emergency Contact is authorized to cause any notifications to be made without prior approval of the Chief of Police or Duty Chief.

- c. Accompany the officer to the room as directed by the Desk Sergeant.
  - d. Ensure that no one other than those requested by the officer speak to, or otherwise, interact with the officer.
2. Inform the Desk Sergeant of requests made by the officer, or those in their company.

D. Officer(s) Assigned to Guard the Suspect:

1. Maintain custody & control of the suspect at all times, including medical transport and treatment until ordered relieved by the Officer in Charge (OIC).
2. Prevent any contact with the suspect or their possessions unless authorized by the ranking officer at the scene.
3. Secure the names of all persons involved with the suspect and their extent of involvement.
4. Promptly inform the OIC of any changes in the suspect's medical condition. If suspect is deceased, advise all medical personnel and the medical examiner that all personal items must be preserved as evidence.
5. Do not discuss the incident with anyone unless authorized to do so by the OIC.

E. Desk Sergeant:

1. Cause immediate notification to be made to the Chief of Police and Duty Chief. Ensure that the involved officer receives prompt medical services, if needed, and privacy upon arrival at Central Station.
  - a. As media reports of the incident evolve, large numbers of TPD members may respond to Central Station. Direct all members not to attempt to contact the involved officer (unless specifically requested) and to report to Line-Up to await further instructions.
2. Arrange for requests from the officer involved, such as contacting family members, clergy, etc.
3. Direct an Evidence Technician to Central Station and standby until otherwise directed by the Chief of Police or his designee.
4. Contact the Press Information Officer & on-call District Attorney.

5. Enlist the aid of an assistant desk officer.

F. Patrol Captain:

1. Respond immediately to the scene.
2. Relieve the patrol sergeant and assume duties and responsibilities as Incident Commander (IC) until such duties are assumed by the Investigations Bureau captain.
3. Upon relief, return to Central Station and;
  - i. Provide support to the Assistant Chief of Police.

G. Detective Captain:

1. If necessary, respond to the scene and coordinate OIC responsibilities with the patrol captain until such time as assuming responsibilities as Incident Commander.
2. Confer with the Chief of Police & Deputy Chief of Police regarding the assignment of principal case investigators. Assign remaining investigative personnel as required.
3. Ensure that the crime scene is properly processed and all evidence collected.
4. Ensure that the investigator assigned to the incident has properly directed the Evidence Technicians regarding evidence collection and necessary evidentiary tests.
5. Ensure that all necessary reports and statements are properly completed.
6. Provide timely updates to the Deputy Chief of Police.

H. Inspectional Services Bureau:

1. Initiate an administrative investigation to determine if the incident falls within department policy.
2. If the involved officer's issued firearm and cell phone are taken for examination, provide the involved members with replacements equipment at the time of removal or as soon as practical.
3. Ensure that the Chief of Police remains apprised of the status of the investigation.
4. Submit a report to the Chief of Police upon conclusion of the investigation.

5. Report, or cause to be reported, any Troy Police Department use of force incident to the Division of Criminal Justice Services within the required timeframe as required by New York State Executive Law § 837-t.

I. Chief of Police:

1. The Chief of Police shall be immediately notified of any officer-involved Incident.
2. Assume overall command of the investigation.
3. Direct the Evidence Technician at Central Station to accompany him and meet with the involved officer(s). The purpose of this meeting is to attempt to reduce some of the officer's anxiety by assuring the involved member that their well-being is paramount, they have the support of the department, and informing the officer of what can be expected.
  - i. Upon initial contact with the involved officer, inform the member that anyone of their choosing may be present during the meeting, but suggest that someone close to the officer, a PBA representative and/or attorney is present.
  - ii. Inform the officer that two simultaneous but separate investigations will be undertaken. At this time, the investigation focusing on the legal justification of the shooting requires the officer to submit to photographing his appearance, and preserving his dress and firearm as evidence.
  - iii. Explain to the officer that these functions are standard investigative protocols and do not indicate guilt on the part of the officer or a lack of your support.
  - iv. Inform the officer that it is their best interest to refrain from viewing social media or other venues that may incorrectly portray incident events and cause further anguish. Tactfully direct the officer that they are prohibited from publicly discussing the incident in any manner whatsoever without authority of the Chief of Police.
  - v. Inform the officer that at the conclusion of this evidence gathering process, an incident report is required. Upon submission of the report the officer is free to go. Offer transport services to the officer and family or other relevant parties.
  - vi. Inform the officer that he is Administrative Leave for the next seventy-two hours and shall remain free for interviews with Investigations Bureau personnel during this period, but only after twenty-four hours have elapsed. Also, the member must be available at all times for subsequent interviews with department mental health professional, the Inspectional Services Bureau captain, and other administrative needs.
  - vii. Inform the officer that you or a designee will contact the officer at regular intervals to check on the officer's well-being and keep them apprised of the process of the investigation.

- viii. Offer to assign a department member of their election to their service, or to contact you or your designee if they have any needs, questions, or concerns.
- 4. Assign officers to safeguard the involved officer's residence and family until such time as it is determined that a threat does not exist.

## **VI. LEAVE FROM DUTY AND ASSIGNMENTS**

All personnel should be sensitive to the psychological trauma that is associated with these types of incidents; behaviors such as blaming, ridiculing, teasing, and isolating the involved officer will only increase the potential trauma and therefore will not be tolerated. Supervisors shall ensure that the officer is treated in a dignified manner.

- A. Within seven calendar days of the incident, the involved officer shall meet with the department psychologist. If additional meetings are required or requested, any such meetings shall be mutually arranged between the officer and mental health professional.
  - i. The issue of solitary or joint counseling sessions (family, significant others) shall be a mutual determination between the officer and the mental health professional.
  - ii. The determination of the periods between counseling sessions shall be at the discretion of the mental health professional.
- B. An officer's fitness for duty shall not be question simply by virtue of involvement in a critical incident. However, this type of examination may be requested based upon objective concerns that cause concern regarding an officer's ability to perform their duties.
  - i. If an officer is required to submit to a fitness for duty examination, such examination shall not be performed by the mental health professional that had provided the counseling services.
- C. Officers involved in the death or serious physical injury of another shall not be given light duty or administrative assignments. Rather, upon return to duty they shall resume the duties of their bid position.
- D. Personnel adversely affected by the incident to the point where they are unable to discharge their duties shall be brought to the attention of the Duty Chief immediately.