

New Castle Police Department  
**105-6 - Use of Deadly Force and Firearms**

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**Effective:** 5/1/2001

**Review Date:** 06/24/2021

**Revised:** 06/24/2021

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**Summary:**

To establish clear guidelines for officers regarding the use of deadly physical force.

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**PURPOSE**

To establish clear guidelines for officers regarding the use of deadly physical force. Members of the Department have and continue to display commendable restraint in resorting to the use of deadly physical force. The irreversible consequences of such force places a responsibility on the Department to establish a policy that:

- A. Clearly guides personnel in its application.
- B. Maximizes officers' safety.
- C. Minimizes the possibility of injury to innocent persons.
- D. Eliminate the unnecessary loss of human life.

**BACKGROUND**

There is probably no more serious act that a law enforcement officer can engage in than the use of a firearm. The occasions for such use are life and death situations, which are invariably confusing and complex, affording precious little time for meditation or reflection. It is imperative then, that the officer, through training and the absorption of these guidelines, be able to respond quickly, confident that he or she is acting within the limits of Department policy. This shall serve to protect the public from unlawful and unreasonable use of force; while at the same time, it shall enable officers to act without hesitation in protecting themselves or another person. Perhaps as equally important, it minimizes the second-guessing to which the officer is subjected when no such guidelines exist.

Members should have a thorough knowledge of Article 35 of the New York State Penal Law, and should periodically review this body of law. Members should bear in mind that Article 35 of the Penal Law only authorizes the use of physical force/deadly physical force; it does not command its use. Members should also be aware that **DEPARTMENT POLICY IS MORE RESTRICTIVE THAN ARTICLE 35 IN THE USE OF PHYSICAL FORCE/DEADLY PHYSICAL FORCE.**

**POLICY**

In all cases, only the minimum amount of force necessary to effect lawful objectives, which is consistent with the accomplishment of the task in question, will be used and is authorized. The standard of objective reasonableness, established by the United States Supreme Court in *Graham v. Connor*, is used in this policy and is intended to provide officers with guideline for the use of force.

**Definitions**

**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.

**Objectively Reasonable** - An objective standard used to judge an officers 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 and the force used.

**PROCEDURE**

**1. An officer may discharge his or her firearm only under the following situations:**

- A. **Confrontation Situations** - To defend the officer or another from what the officer reasonably believes as an imminent threat of death or serious physical injury when there is no apparent practical alternative.

B. Apprehension & Pursuit Situations –

1. When an officer acting on personally known information, has reasonable cause to believe that an armed and dangerous subject has committed a felony which involved the use or attempted use, or threatened immediate use of deadly physical force against a person; **and**,
2. The officer reasonably believes the fleeing subject poses an imminent threat of serious injury or death to the officer or others if not immediately apprehended; **and**,
3. There is no other reasonable means to effect the arrest; **and**,
4. The discharge creates no foreseeable risk to innocent bystanders.
5. Where feasible, some warning should be given prior to the use of deadly physical force

C. Animals - To kill a dangerous animal or an animal so badly sick or injured that it should be destroyed to prevent further suffering. All other reasonable options should first be exhausted. In addition, before shooting the animal, the safety of the general public must always be considered. Members are also referred to and must conform with the Agriculture and Markets Law of the State of New York which addresses humane destruction and other dispositions of animals.

D. Firearms Practice - For target practice at an approved range, range site or location which does not infringe on the rights or safety of others.

**2. Considerations and Prohibitions:**

A. Juveniles - The provisions of this procedure are based on "DANGER", and are not intended to distinguish between adults and juveniles. Only to the extent that age, and the related factors of size and strength, influence that capacity to inflict deadly physical force or serious harm, are they to be considered.

B. Moving Vehicles - Officers are prohibited from discharging their firearms at or from a moving vehicle, motorcycle, or bicycle (collectively, "moving vehicle") unless officers reasonably believe deadly force is necessary to defend the officer or a third person from the use, or imminent use, of deadly force. For purposes of this policy, officers will not discharge their firearms at moving vehicles except under extreme circumstances. Such discharges will be rigorously scrutinized. Officers shall, as a rule, avoid tactics that could place them in a position where a vehicle could be used against them. When confronted with an oncoming, moving vehicle, officers must attempt to move out of its path and should generally avoid placing themselves in situations where the use of deadly force is more likely.

C. Warning Shots - No officer shall fire so-called "warning shots".

D. Drawing or displaying firearms - An officer shall unholster or display a firearm only if directed by a competent authority, or there is reason to believe such may be necessary for the safety of the officer or others.

E. Dry firing - "Dry firing", or snapping the action of a firearm is forbidden, except when authorized during firearms training, weapon cleaning or maintenance.

F. Firing shots for alarm - Firearms shall not be discharged to summons assistance except where the officer's safety, or that of another is endangered, and there is no reasonable alternative. Extreme care must be exercised in such situations to prevent injury to another person.

G. Choke holds and Carotid holds - Choke holds, Carotid holds, and similar compressions of the neck represent the potential use of deadly physical force, and shall never be used unless an officer or another person is in imminent danger of death or serious physical injury, and all other reasonable measures to reasonably repel the attack have been exhausted.

**3. The responsibility for the unholstering and/or use of a firearm shall be borne by the officer who unholsters or fires the weapon.**

**4. Procedure to be followed when force/deadly physical force is used:**

A. Notification -

1. Whenever a Department member uses any type of force, regardless whether the use of same causes injury to a person, or at **ANYTIME** discharges his firearm other than in that instance cited in subsection 1(D) of this section, he or she shall immediately verbally notify his or her on-duty supervisor. If there is no supervisor on duty at the time, the desk officer is to notify one of the Division Commanders as soon as possible. The Division Commander may respond to the incident, or he or she may assign a supervisor to respond and supervise the investigation.

2. The member who used such force shall complete the appropriate written reports as soon as possible thereafter. A notation regarding the use of that force/deadly physical force shall be recorded on the respective blotter event entry, and a Department Use of Force/ Firearms Report shall be submitted.
3. If the member who used such force is injured and incapable of filing said reports as required, his immediate supervisor/officer in charge is responsible for filing a preliminary Department Use of Force / Firearms Report. Said report shall be as complete as possible pending further Departmental investigation.
4. New York State Executive Law Section 70-b established the Office of Special Investigation (OSI) within the Office of the New York State Attorney General (OAG), effective April 1, 2021. The (OSI) must investigate any death of a civilian caused by a police officer or peace officer, or where there is a question as to whether the death was caused by a police officer or peace officer. If such an incident occurs, immediately contact (OSI) at (855) OSI-NYAG / (855 )674-6924). [Office of Special Investigations Law Enforcement Guidelines](#) .

B. Investigation by a Supervisor

**5. Procedure to be followed for investigation by a supervisor:**

- A. The supervisor shall review all Department Use of Force / Firearms Reports concerning the use of any force, and it should contain, but is not limited to the following:
  1. Was a crime actually committed, and if so, what type?
  2. Were alternative measures available?
  3. Did the subject resist, and if so, what was the nature and the extent of the resistance?
  4. Was the subject armed with visible means of inflicting death or serious physical injury?
  5. Was the officer in uniform, or did he or she make his or her presence known, and by what authority?
  6. The complete name, addresses (residence and work), DOB, and phone numbers (residence and work), of **ANY AND ALL** possible witnesses and/or victims.
  7. The extent and treatment of injuries to **anyone** involved. Whenever possible, photographs should be taken of any and all alleged injuries.
  8. If able to offer a professional assessment from the facts available, was the utilization of force found to be necessary in the case in question?
- B. After reviewing the Department Use of Force / Firearms Report, the supervisor shall forward the completed form to the Patrol Division Commander.

**6. Replacement of Firearm:**

- A. If the use of force by an officer involved the officer's Department issued handgun, and there is no reason to the contrary, such as the authorized destruction of an animal, his or her Department issued handgun is to be exchanged with the spare Department issued handgun kept in the Department Armory.
- B. The firearm that was used in an incident in question is to be held for investigative purposes. The weapon should be taken in an "as is" condition from the officer, and no attempt should be made to unload the gun. Same should be turned over to a supervisor and treated as any loaded firearm is treated. If for any reason the gun must be made safe, a note should be taken of its condition. (Was there a round in the chamber, number of rounds remaining in the magazine or cylinder, type of ammunition found in the gun, or anything unusual such as any visible, obvious damage).

**7. Loading and Unloading Firearms at Headquarters:**

- A. Loading and unloading of handguns at headquarters will be accomplished at the loading/unloading port located in the garage of police headquarters. Whenever a handgun is loaded or unloaded for any reason, it is to be done while the muzzle of the gun is pointed into the designated port opening, straight down and centered. This structure contains enough of the proper material to stop any round in case of an unintentional discharge while loading or unloading.
- B. Rifles will be loaded/unloaded outside of the building while being pointed up in a vertical position.

**8. Firearms Discharge Review Board**

- A. The Chief of Police shall cause the Firearms Discharge Review Board to convene whenever necessary. Actual Board members shall be named in a special Personnel Order issued by the Chief of Police. The Board shall be comprised of:

1. Chief of Police
2. One Lieutenant
3. One Sergeant
4. One Detective
5. One Police Officer

B. The Board shall carefully evaluate every situation placed before it, and will submit in writing to the Chief of Police and the Town Board, citing policy compliance or non-compliance as the case may be, and recommendations for training, policy revisions, changes in equipment, or any other recommended course of action.