

<b>MILLBURN POLICE DEPARTMENT</b>			
<b>WRITTEN DIRECTIVE SYSTEM</b>			
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<b>SUBJECT: USE OF FORCE</b>			
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<b>BY THE ORDER OF:</b>  Chief Brian Gilfedder			

**PURPOSE** The purpose of this directive is to maintain compliance with guidelines promulgated by the New Jersey Attorney General, Essex County Prosecutor, and existing statutory and case law.

**POLICY** It is the policy of the Millburn Police Department that officers hold the highest regard for the dignity and liberty of all persons and place minimal reliance upon the use of force. This department respects and values the sanctity of human life and the application of deadly force is a measure to be employed only in the most extreme circumstances.

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

This directive reinforces the responsibility of personnel to take those steps possible to prevent or stop the illegal or inappropriate use of force by other personnel. Officers are expected and required to take appropriate action in any situation where personnel are clearly convinced that other officers are using force in violation of state law or this directive. Officers have a legal, moral and ethical obligation to report all situations in which force is used illegally by anyone. Officers are encouraged to do whatever they can to interrupt the flow of events before other personnel do something illegal and before official action is necessary. Officers can serve each other and the public by simply saying or doing the right thing to prevent fellow personnel from resorting to force illegally or inappropriately.

Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision-making in the broad range of possible use of force situations. This directive is intended to provide the best guidance and direction possible to officers when called upon to confront and address the most difficult of situations.

**PROCEDURES**

## I. DEFINITIONS

### A. Use of force options:

1. Constructive authority does not involve actual physical contact with a subject, but involves the use of officers' authority to exert control over a subject.
  1. Examples include verbal commands, gestures, warnings, and unholstering a weapon.
  2. Pointing a firearm at a subject is an element of constructive authority to be used only in appropriate situations.
2. Physical contact involves routine or procedural contact with a subject necessary to effectively accomplish a legitimate law enforcement objective. Examples include, guiding a subject into an agency vehicle, holding the subject's arm while transporting, handcuffing a subject and maneuvering or securing a subject for a frisk.
3. Physical force involves contact with a subject beyond which is generally utilized to affect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject's physical resistance to the exertion of an officer's authority or to protect persons or property. 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.
4. Mechanical force involves the use of some device or substance, other than a firearm, to overcome a subject's resistance to the exertion of an officer's authority. Examples include the use of a baton or other impact weapon, canine physical contact with a subject, or chemical or natural agent spraying.
5. Deadly force is force, which officers use with the purpose of causing, or which an officer knows to create a substantial risk of causing, death or serious bodily harm. 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. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the purpose is limited to creating an apprehension that deadly force will be used, if necessary, does not constitute deadly force.

B. Chokehold is a weaponless control technique designed to interfere with the normal breathing of another by manually constricting his/her windpipe. Chokeholds are prohibited unless deadly force is authorized and necessary.

C. De-escalation is calmly communicating with an agitated person in order to understand, manage and resolve his/her concerns. Ultimately, these actions should help reduce the person's agitation and potential for future aggression or violence.

D. Excited delirium is a medical disorder generally characterized by observable behaviors, including extreme mental and physiological excitement, intense agitation, hyperthermia often resulting in nudity, hostility, exceptional strength, endurance

without apparent fatigue, and unusual calmness after restraint accompanied by a risk of sudden death. Specific signs and characteristic symptoms may include, but are not limited to:

1. Constant or near constant physical activity;
2. Irresponsiveness to police presence;
3. Nakedness/inadequate clothing that may indicate self-cooling attempts;
4. Elevated body temperature/hot to touch;
5. Rapid breathing;
6. Profuse sweating;
7. Extreme aggression or violence;
8. Making unintelligible, animal-like noises;
9. Insensitivity to or extreme tolerance of pain;
10. Excessive strength (out of proportion to the person's physique);
11. Lack of fatigue despite heavy exertion;
12. Screaming and incoherent talk;
13. Paranoid or panicked demeanor;
14. Attraction to bright lights/loud sounds/ glass or shiny objects.

- E. Employee shall mean any employee of the Millburn Police Department, sworn and non-sworn, full time and part time.
- F. Imminent danger describes threatened actions or outcomes that may occur during an encounter absent action by the 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. 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 officer but, is carrying a weapon and running for cover.
- G. Law enforcement officer (officer) is 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 the Millburn Police Department and is authorized to carry a firearm under NJSA 2C: 39-6.
- H. Meaningful review is a formal documented process to determine whether policy, training, equipment or disciplinary issues need to be addressed.
- I. Positional asphyxia happens when a person can't get enough air to breathe due to the positioning of his/her body. This happens when a person is placed in a position where his/her mouth and nose is blocked or where his/her chest/torso may be unable to fully expand resulting in suffocation.

- J. Reasonable belief is an objective assessment based upon an evaluation of how a reasonable police officer with comparable training and experience would react to, or draw inferences from, the facts and circumstances confronting and known by the officer at the scene.
- K. Resisting arrest refers to the act of a person who purposely prevents a law enforcement officer from affecting an arrest, to include such things as threatening to use physical force or violence against the law enforcement officer or use of any other means to create a substantial risk of causing physical injury to a law enforcement officer when acting under the color of his/her official authority (N.J.S.A. 2C: 29-2).
1. Active resistance refers to a person who uses or threatens to use physical force or violence against the law enforcement officer or another or uses any other means to create a substantial risk of causing physical injury to the public servant or another.
  2. Passive resistance refers to a person who doesn't obey a command to submit to an arrest (e.g., a person refuses a police command to exit a vehicle and grabs on to the steering wheel to prevent being removed by physical force, refuses to get on the ground, etc.)
- L. Serious bodily injury means bodily injury, which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.
- M. Substantial risk: Any discharge of a firearm entails some risk of an unintended outcome. A substantial risk exists when an officer disregards a foreseeable likelihood that innocent persons will be endangered. 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.
- N. Vascular restraint is a weaponless control technique designed to restrict a person's normal blood flow to the brain by constricting his/her carotid arteries with a chokehold, kneeling, or other manual pressure. Vascular restraints are prohibited unless deadly force is authorized and necessary.

## II. AUTHORIZATION AND LIMITATIONS

- A. Use of physical and mechanical force:
1. Officers may use physical force or mechanical force in the performance of their duties when they reasonably believe that the use of force is immediately necessary in the following situations:
    - a. To protect themselves or others against the use of unlawful force by another person and the officer's immediate intervention is necessary, or;
    - b. To prevent another from committing suicide or inflicting serious bodily harm upon oneself, or;

- c. To prevent the commission or consummation of a crime or offense involving or threatening bodily harm, damage to or loss of property or a breach of the peace, or;
  - d. To prevent the escape of an arrested person from custody, or;
  - e. To effectuate the lawful arrest of any person for an offense or crime under the laws of the State of New Jersey. The use of less lethal force to effectuate an arrest however is not justifiable unless;
    - 1) The arrest is lawful, and the officers make known the purpose of the arrest or reasonably believe that their identity and purpose are otherwise known by or cannot reasonably be made known to the person to be arrested, and;
    - 2) When the arrest is made under a warrant and the warrant is valid or reasonably believed by the officer to be valid.
2. Once all resistance or physical force being used to resist or prevent officers from carrying out their duties has ceased, use of further force on the officers' part shall cease.
3. When the officer reasonably believes that physical or mechanical force is immediately necessary, the officer should assess the totality of the circumstances and apply the minimum force necessary to overcome resistance when an individual is using or threatening to use force unlawfully and bring the situation under control in the safest manner possible.
- B. Due to the potential for unintended serious injury or death, the use of chokeholds and other similar neck/vascular restraint techniques are not authorized unless deadly force is authorized and necessary.
- C. Use of mechanical force:
- 1. NOTE: mechanical force options may be ineffective for subjects exhibiting signs of excited delirium (see definitions, section I.C of this directive) due to the subject's elevated threshold of pain. See this department's directive on *Emotionally Disturbed Persons* for instructions on dealing with someone with signs of excited delirium.
    - a. If feasible, the officer should wait for backup and EMS assistance before attempting to control the subject.
    - b. Officers should consider a physical takedown using multiple officers as long as an adequate number of officers are available.
    - c. Reasonable steps should be taken to avoid injury, such as moving the subject from asphalt to a grassy area to reduce abrasions and contusions.
    - d. Officers should not attempt to control continued resistance or exertion by pinning the subject to the ground or against a solid object, using their body weight.

- e. When restrained, officers should position the subject in a manner that will assist breathing, such as placement on his or her side, and avoid pressure to the chest, neck, or head (positional asphyxia).
2. Tactical batons
- a. Batons are defensive impact tools that may be used when the justification for the use of less lethal force exists.
  - b. Once resistance ceases, the use of the baton as a striking weapon shall cease.
  - c. Batons shall only be used as instructed. Batons shall not be used to deliberately strike another with a degree of force intended to cause serious bodily injury or death unless the use of deadly force is justified.
  - d. Due to their potential as deadly force, officers must exercise special care in their use and avoid striking those potentially fatal areas of the body identified during training.
3. Oleoresin capsicum (OC) aerosol (non-flammable only):
- a. OC is permitted in less lethal force situations where the use of force is necessary and justified to apprehend or control an individual, and the use of the OC will facilitate the arrest with the minimum chance of injury to the officer, the arrestee, or innocent bystander.
  - b. OC must not be handled by children or unauthorized individuals.
  - c. Although OC is designed and intended to cause temporary incapacitation, it can cause serious injury, and in rare cases, death if it is not used in accordance with the manufacturer's instructions or departmental policy and training.
  - d. OC has been found to be generally effective in controlling persons who are under the influence of alcohol and/or narcotics, persons highly agitated or motivated and those who are mentally unbalanced, but the effects of OC vary with different types of individuals. Therefore, officers must be continually alert to the possibility that other means may be necessary to subdue a resistive or noncompliant subject or attacker.
  - e. OC has been found to be effective against aggressive animal attack and may also work well against attacking dogs. Caution must be used when repelling dogs trained to attack and/or those who are extremely motivated. OC exposure to humans may not be effective and may cause the subject to be even more aggressive.
  - f. OC should be sprayed directly into the target's face with the spray being directed to the eyes, nose, and mouth from as close as safely possible. OC should always be used in the upright position with short one-half to one-second bursts.

- g. Once resistance ceases, the further application of OC shall cease.
- h. Noncompliance with an officer's verbal commands may be considered justification for deployment where force is otherwise authorized.
- i. OC shall not be used in the immediate vicinity of infants or the elderly unless necessary.
- j. All persons who have been exposed to OC will at the earliest practicable time, be allowed to flush the affected area with cold/cool water,
- k. OC shall not be used on the operator of a motor vehicle unless the motor vehicle is first disabled (e.g. removal of keys from the ignition).

D. Use of deadly force:

- 1. Officers may use deadly force when the officer(s) reasonably believe such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.
- 2. Officers 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 that 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, officers should identify themselves and state their intention to shoot before using a firearm.

E. Restrictions on the use of deadly force:

- 1. Officers are under no obligation to retreat or desist when resistance is encountered or threatened. However, an officer shall not resort to the use of deadly force if an 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. Officers shall not use deadly force to subdue persons whose actions are only destructive to property.
- 3. Deadly force shall not be used against persons whose conduct is injurious only to them.
- 4. Officers shall not discharge a weapon as a signal for help or as a warning.

5. 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 their 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 that necessitated the use of deadly force. 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:
  - a. There exists an imminent danger of death or serious bodily harm to the officer or another person; and
  - b. No other means are available at that time to avert or eliminate the danger.
6. Officers shall not fire a weapon solely to disable moving vehicles.
7. In active shooter situations, officers shall not fire a weapon into buildings, doors, windows, or other openings when the person being fired upon is not clearly visible unless extraordinary circumstances necessitate officers to engage in suppression fire in order to protect the lives of injured persons requiring immediate rescue and evacuation from an area in which a subject's continued actions pose an imminent threat of death or serious bodily harm.

### **III. EXHIBITING A FIREARM**

- A. Officers shall not unholster or exhibit a firearm except under any of the following circumstances:
  1. For maintenance of the firearm;
  2. To secure the firearm;
  3. During training exercises, practice or qualification with the firearm;
  4. When circumstances create a reasonable belief that it may be necessary for the officer to use the firearm;
  5. When circumstances create a reasonable belief that the 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;
  6. When ordered by a supervisor or other lawful authority.

### **IV. AFTER ACTION REQUIREMENTS**

- A. Following the use of force, officers shall immediately evaluate the need for medical attention or treatment for the person upon whom the force was used and provide first aid to the extent of their training except where the application of first aid will expose the officer to immediate danger.

1. In any instance where deadly force is used, officers shall summon EMS and paramedics as soon as possible. While EMS and paramedics will not be permitted to enter an area that is not tactically secure, they should still be summoned to a secure area near the scene to expedite treatment for the person(s) once the scene is secure.
2. Be alert for signs of potential excited delirium (see definitions, section I.C of this directive).
  - a. Officers should check the subject's pulse and respiration on a continuous basis until transferred to EMS personnel. Officers shall ensure the airway is unrestricted and be prepared to administer CPR or an automated external defibrillator (AED) if the subject becomes unconscious.
  - b. Whenever possible, an officer should accompany the subject to the hospital for security purposes and to provide assistance as necessary.
3. If a baton is used, officers shall observe the affected subject(s) for obvious changes in condition or breathing and shall immediately summon medical assistance if the subject appears to be in need of medical aid.
4. Following the use of OC, officers shall sit the subject upright and decontaminate the subject as soon as practicable. Personnel shall monitor subjects who had been exposed to OC staying alert to any obvious changes in condition or breathing and shall immediately summon medical assistance if the subject appears to be in need of medical aid.
5. Decontamination procedures for exposure to OC consist of:
  - a. Once subjects have been secured, have ceased resisting, and are no longer a threat to officers, themselves, or others, every reasonable effort will be made to relieve discomfort.
  - b. Expose the subject(s) to fresh air as soon as possible and have them remain calm.
  - c. Have the subject flush affected areas with large amounts of fresh water.
  - d. Have subject remove contact lenses and contaminated outer clothing; have the subject wash these items prior to reuse.
  - e. Do not apply salves, creams, oils, lotion, grease, or bandages to the exposed area. These remedies can trap the OC against the skin or mucus membranes and cause irritation.
  - f. Summon medical assistance if the subject has medical problems and/or continues to have difficulty after the decontamination procedures.
  - g. Officers shall be on constant alert for medical problem(s) or difficulty that the exposed subject may experience. Officers shall also monitor for positional asphyxiation.

- h. If the affected area(s) remain inflamed or discomfort continues beyond 45 minutes, arrangements may be made for medical treatment if necessary.
- B. Any person requesting and/or deemed in need of medical attention shall be transported (in accordance with department transportation procedures) to the nearest available emergency medical treatment center or hospital. The extent of the injury and the treatment offered/provided shall be documented in the body of the investigative report.
- C. Under no circumstances shall department personnel sign or endorse any medical authorization for any person under arrest or in custody. Persons shall use their own medical insurance or the medical facility/hospital shall seek remuneration from the appropriate indigent care funds.
- D. In addition to providing the appropriate medical aid, officers shall also:
  - 1. Promptly notify the watch supervisor of the incident.
  - 2. Attempt to locate and identify all witnesses.
- E. Unless unavailable, the watch supervisor should immediately respond to the scene of any incident where force had been used and, as the result of the application of force, an officer, bystander, or detainee/prisoner is injured or complains of injury, and requires medical attention. The supervisor shall also:
  - 1. Ensure that affected persons receive the necessary assistance, including medical attention;
  - 2. Ensure that the need for medical treatment for any bystander or detainee/prisoner is evaluated and provided where necessary; and
- F. Any employee whose action(s) or use of force in an official capacity results in death or serious bodily injury to any person shall be promptly removed from line-duty assignment(s) pending a meaningful review.
  - 1. The meaningful review shall normally be conducted by the watch commander or designee and shall determine whether policy, training, equipment or disciplinary issues should be addressed.
  - 2. In some instances, the Chief of Police may assign the meaningful review to another unit/person at their discretion.
  - 3. Employees should be afforded the appropriate level of critical incident stress debriefing or counseling consistent with department policy.
  - 4. The Chief of Police may cause the employee to undergo a psychiatric/psychological evaluation and/or counseling by a mental health professional.
  - 5. The employee may be assigned to administrative duties or placed on administrative leave as soon as practicable following the incident pending a complete investigation and review of the incident.

- a. This reassignment is not considered a disciplinary action.
- b. If any weapon(s) had been taken, the weapon(s) will be reissued once the Essex County Prosecutor and/or the Attorney General adjudicate the case.
- c. Reissuing of duty weapons should be completed as soon as practicable after the incident has been cleared.

**V. ARRESTS REQUIRING THE USE OF FORCE**

- A. Whenever a person being arrested resists the officer's action and force is used, one of the following charges (whichever is applicable) shall be made against the subject. This charge is in addition to the charges that precipitated the arrest.
  - 1. NJSA 2C: 29-2a(1) – a person is guilty of a disorderly persons offense if he purposely prevents a law enforcement officer from affecting a lawful arrest; or
  - 2. NJSA 2C: 29-2a (2) – a person is guilty of a crime of the fourth degree, if by flight, he purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest.
  - 3. NJSA 2C: 29-2a (3) – a person is guilty of a third degree crime if the subject used, or threatened to use, physical force or violence against the law enforcement officer or another; or, (2) subject used any other means to create a substantial risk of causing physical injury to the public servant or another.

**VI. NOTIFICATION AND INVESTIGATION REQUIREMENTS**

- A. Immediately notify the Chief of Police, internal affairs supervisor, and the Essex County Sheriff's Office when the use of any force results in death or serious bodily injury, or when an injury of any degree results from the use of a firearm by agency personnel.
  - 1. The Essex County Sheriff's Office will notify the Essex County Prosecutor's Office Critical Incident Response Team, who will then contact the ECPO Professional Standards Bureau
  - 2. Such notification must occur at the time of the incident while the scene remains under police control.
- B. The Essex County Prosecutor's Office Critical Incident Response Team or the New Jersey Division of Criminal Justice will conduct the investigation into the use of force in accordance with the *New Jersey Attorney General's Directive 2019-4* whenever an incident occurs that involves a member of this department that has employed force that results in serious bodily injury or death. The Essex County Prosecutor's Office is responsible for the necessary notifications to the Division of Criminal Justice Office of Public Integrity and Accountability.

1. The Critical Incident Response Team or the Division of Criminal Justice is responsible for all phases of the investigation including photography, evidence gathering.
  2. Only officers working under the direct supervision of the ECPO CIRT may participate in the investigation or share or receive information about any aspect of the investigation, except as authorized and approved by the supervising assistant prosecutor.
  3. The internal affairs supervisor shall only investigate any administrative matters surrounding the incident. If an employee's actions are of a criminal nature, the administrative internal investigation must cease.
  4. Copies of any reports associated with such application of force shall not be distributed to anyone unless authorized by the Essex County Prosecutor's Office or the New Jersey Division of Criminal Justice.
- C. Prior to the arrival of investigative staff from the Critical Incident Response Team and/or the Division of Criminal Justice, the watch supervisor or his/her designees shall complete the following tasks as soon as possible but, not necessarily in the order listed:
1. Identify any remaining threats and take necessary action;
  2. Ensure that emergency medical services have been dispatched and appropriate medical aid is rendered to injured parties;
  3. Secure the scene pending the arrival of the Critical Incident Response Team, and/or the Division of Criminal Justice personnel. The scene will be relinquished to the Critical Incident Response Team and/or the Division of Criminal Justice, upon their arrival.
  4. Ensure that an inner perimeter is established to secure the scene(s). Direct that an outer perimeter be established to prevent all from entering except those who have a specific function to perform.
  5. Maintain a scene log documenting who enters and leaves. The scene log will be relinquished to the Critical Incident Response Team and/or the Division of Criminal Justice personnel or their designees upon their arrival.
  6. Secure any suspect(s) at the scene(s), unless the suspects are injured and require immediate medical care.
  7. Locate and secure in place (if no danger or threat exists) all weapons, ammunition and expended cartridges used by the suspect(s) and/or involved officer(s).
  8. Providing there is no immediate danger to anyone, preserve the involved officers' firearms in their original state at the time of the incident (i.e. not to be unloaded and/or rendered safe or reloaded).
  9. If vehicles are involved in the incident and there is no immediate danger to anyone, the vehicles shall not be moved or altered from their location at the time of the incident (e.g., emergency lights, MVR, etc.) until directed to do so

by the Critical Incident Response Team and/or the Division of Criminal Justice. No equipment and/or property shall be removed without authorization from the Essex County Prosecutor's Office and/or the Division of Criminal Justice.

10. Ensure that all potential witnesses have been identified and separated and ask that they remain on-scene to provide a statement. If witnesses wish to leave, obtain their contact information for future communications.
  11. All law enforcement officers involved in the incident shall be identified and their names and agency documented and kept separated at the scene, as circumstances warrant.
  12. Locate and secure in place as evidence any clothing or other personal items that may have been discarded or removed from the suspect(s) and/or officer(s) by medical personnel.
- D. Upon the arrival of investigative personnel from the Critical Incident Response Team and/or the Division of Criminal Justice, agency personnel will assist as directed with certain non-investigatory tasks including but, not limited to:
1. Preserve the scene by closing roadways and conducting detours whenever feasible;
  2. As necessary, arrange and provide through the fire department and/or DPW sufficient nighttime illumination and/or other heavy machinery or equipment at the scene;
  3. Make death notifications only as directed by the Critical Incident Response Team and/or the Division of Criminal Justice in compliance with NJ Attorney General's Guidelines.
  4. Arrange for the towing of vehicles with contracted towers as required. Only flatbed towing should be utilized. Towed vehicle(s) must be removed to a secure area.
    - a. Towing operators **MUST** be advised **NOT** to place debris from the roadway into the passenger compartment of the vehicle(s) involved in the incident.
    - b. Towing operators **MUST** be advised to wear gloves when touching any part of the vehicle(s) involved. All vehicles being towed will be escorted by a member of the Critical Incident Response Team to maintain the evidence chain-of-custody.
  5. Complete and file the *NJTR-1 Crash Investigation Report*, if applicable.
- E. No employee of this agency shall directly or indirectly (i.e., through another person) share information learned in the course of the use of force investigation including but, not limited to police video recordings or information learned from reviewing such videos, with any principal(s) or other law enforcement or civilian witness without prior expressed authorization from the supervising assistant prosecutor or Division of Criminal Justice.

1. No officer who is a witness to the use of force incident, including a principal(s), receive any such information from any sworn or civilian employee of a law enforcement agency without first obtaining authorization from the assistant prosecutor or assistant/deputy attorney general supervising the investigation, or his/her designee.
  2. Any dissemination or receipt of investigative information without prior authorization as required by this section shall be reported promptly to the assistant prosecutor or assistant/deputy attorney general supervising the investigation, or his/her designee, who shall investigate the circumstances.
- F. All police firearms discharges not resulting in death or serious bodily injury shall be immediately reported to the Essex County Prosecutor's Office by the next business day. This requirement extends to unintentional discharges in all on duty and off duty incidents but, does not extend to recreation, training, and/or qualification discharges.

## VII. REPORTING REQUIREMENTS

- A. In all instances when physical, mechanical or deadly force is used, whether on or off duty, personnel who had employed such force shall complete and submit
1. A *Use of Force Report*; and
  2. Any incident report and/or supplementary report made necessary by the nature of the underlying incident; except:
    - a. In accordance with *New Jersey Attorney General's Supplemental Directive Amending Attorney General's Directive 2006-5*, officers deploying force, which results in death or serious bodily injury, being investigated by the Essex County Prosecutor's Office or Division of Criminal Justice are not required to submit incident or supplementary reports. Officers are still required to submit *Use of Force* reports.
    - b. Such officers' statements to the Essex County Prosecutor's Office or Division of Criminal Justice will suffice as their report of the incident.
    - c. Officers not directly involved in the application of such force, but who may have indirect involvement (e.g., secondary responders, assisting responders, witnesses, etc.) may be required to submit incident or supplementary reports upon approval of the lead investigating agency (i.e., Essex County Prosecutor's Office or Division of Criminal Justice).
- B. In all instances where constructive authority results in the pointing of a firearm at another person, the facts and circumstances shall be reported on the incident report or supplementary report made necessary by the nature of the precipitating field incident.
- C. A written report is also required:
1. In all instances whenever an employee discharges a firearm, for other than training or recreational purposes (on or off duty). Employees shall first make a verbal report to the watch supervisor immediately, or as soon as practicable.

2. In all cases whenever an employee unintentionally discharges a firearm, regardless of the reason;
  3. In all instances where an employee takes an official action that results in, or is alleged to have resulted in, death or injury to another person.
- D. The watch supervisor shall review these reports for accuracy and completeness and shall promptly address any issues as they may pertain to policy changes, training, weapons or equipment, or discipline (i.e., meaningful review). Recommendations to modify policy, apply remedial training beyond what can be performed by the supervisor, change weapons, equipment, or tactics, or apply discipline shall be thoroughly documented and forwarded through the chain of command.
  - E. The watch commander shall also review each incident and promptly address any issues as they may pertain to policy changes, training, weapons or equipment, or discipline (i.e., meaningful review). Recommendations to modify policy, apply remedial training beyond what can be performed by the watch commander, change weapons, equipment, or tactics, or apply discipline shall be thoroughly documented and forwarded to the Chief of Police.
  - F. If a ranking officer uses force (sergeant, lieutenant, captain) the next highest rank shall conduct the meaningful review. If the Chief of Police uses force the internal affairs supervisor shall conduct the review or can refer the matter to the Essex County Prosecutor's Office..
  - G. Use of force incidents may be reviewed by the Internal Affairs Unit to determine whether:
    - a. Departmental rules, policy or procedures were adhered to;
    - b. The relevant directive was clearly understandable and effective to cover the situation;
    - c. Department equipment is adequate;
    - d. Department training is currently adequate.
    - e. The Internal Affairs Unit shall initiate the appropriate early warning record.
  - H. All findings of violations of directives or training inadequacies shall be reported to the Chief of Police for resolution and/or corrective action.
  - I. Use of force reports are subject to discovery. In indictable cases, all reports should be forwarded to county intake with the complaints, police reports, and other case documents. In non-indictable cases, the use of force reports should be made a part of the case file and included in the discovery package provided in municipal court.
  - J. Use of force reports (not investigative reports) may also be subject to public release under OPRA. Upon receiving an OPRA request for any use of force reports, the records bureau supervisor shall notify the Chief of Police, who may direct notification to the Essex County Prosecutor's Office for a determination.

- K. All use of force reports and related investigation reports shall be retained as required by the New Jersey Division of Revenue and Enterprise Services, Bureau of Records Management (BRM) records retention schedules.
- L. The Office of Professional Standards is responsible for completing the annual Use of Force Summary Report in a manner prescribed by the Essex County Prosecutor.

**VIII. TRAINING**

- A. All department personnel authorized to carry department lethal and less lethal weapons shall be issued copies of, and be instructed in, this directive prior to being authorized to carry a weapon. The issuance and instruction may be accomplished electronically.
- B. Weapons instructors are responsible for conducting use of force training and the semiannual firearms training and qualification sessions. This training must reflect current standards established by statutory and case law, as well as state, county and departmental policies, directives, and guidelines. The training program will include the use of force in general, the use of physical and mechanical force, the use of deadly force, decision making skills; the limitations that govern the use of force and deadly force; and all applicable aspects of departmental directives.
- C. All use of force training shall be documented each time it is provided listing all personnel being trained. This training and documentation may be accomplished electronically.