



SUBJECT: <u>ADMINISTRATION</u>				
USE OF DEADLY PHYSICAL FORCE				
References: <u>NEW YORK STATE ACCREDITATION STANDARDS:</u>				
20.1 (Necessary Force),				
Special Instructions:				
1. This Policy supercedes all previous Policies and Procedures				
<u>Number:</u>	<u>Pages:</u>	<u>Effective Date:</u>	<u>Revised Date:</u>	<u>Issuing Authority:</u>
A - 20.220	10	07/15//2020		Chief of Police

- I. **PURPOSE:** The purpose of this order is to establish policy and guidelines governing the use of deadly physical force by sworn officers of the Town of Cicero Police Department and to establish procedures for reporting, investigating and evaluating the use of such force.
- II. **POLICY:** It is the policy of the Town of Cicero Police Department that officers will treat people with dignity, without prejudice to anyone, and recognize the value of human life.

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness. The amount of force that is used by the officers shall be the amount of force that is objectively reasonable under the circumstances for the officer involved to effect an arrest, prevent an escape, or in defense of themselves or others. 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 guidelines for the use of force, including deadly physical force.

As the Supreme Court has recognized, this reasonableness inquiry embodies “allowance for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation.

This policy is written in recognition of the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires a careful balancing of all interests.

It is the policy of the Town of Cicero Police Department to conspicuously post General Orders A-20.100 Use of Physical Force, A-22.220 Use of Deadly Physical Force, GO-T-32.100 Impact and Aerosol Weapons, GO- T-32.200, and SO- FSS-15-002 Electronic Control Device (EDC) Policies on the department’s website, for public review. [07/27/2020]

- A. Officers may use deadly physical force only when the use of deadly physical force is reasonable and necessary to:
 - 1. Prevent or terminate deadly physical force from being used against the officer or a third person, pursuant to Article 35 of the New York State Penal Law.
- B. Affect the arrest, or of preventing or attempting to prevent the escape from custody of a person whom the officer reasonably believes to have committed an offense, and the use

of deadly physical force is necessary to defend the officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force. It is the responsibility of each officer to be aware of the requirements of Article 35 of the New York State Penal Law and to guide his actions based upon that law, department policy and training.

- C. The primary consideration in the employment of deadly physical force is justification. The fact that a police officer is justified in using deadly physical force does not allow reckless conduct by the police officer if the use of deadly physical force may injure innocent persons whom he is not seeking to arrest or retain in custody.
- D. The discharge of a firearm will always be considered to be the use of deadly physical force.
- E. Deadly physical force can be expanded to include the use of non-lethal weapons and force if the intent is to cause serious physical injury. This shall include, but is not limited to impact weapons, chemical agents, flashlights, motor vehicles and bare hands.
- F. Only issued or approved firearms or impact weapons will be carried on duty and used when encountering resistance, except in extreme emergency situations when an officer may use any justifiable resource at his disposal.

III. **DEFINITIONS:**

- A. **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 that the force was used.
- B. **DEADLY PHYSICAL FORCE** - Physical force, which, under the circumstances in which it is used, is readily capable of producing death or other serious physical injury.
- C. **PHYSICAL INJURY** – Impairment of physical condition or substantial pain
- D. **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.
- E. **REASONABLE BELIEF** - Those facts and circumstances within the knowledge of the individual, which would make a reasonable and prudent person, tend to believe that the facts and circumstances are true.
- F. **PUBLIC SAFETY STATEMENT** – A Public Safety Statement is a compelled statement in which a supervisor orders the involved member to answer up to twelve standard questions directly related to the use of deadly physical force. Supervisors must be of a higher rank than the involved member and shall have access to the Public Safety Statement form. The questions are brief and very specific and should be asked at the scene as soon as safe and practical to do so. The supervisor is not permitted to deviate from the questions and shall write the answers directly on the form.

IV. **DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE:**

- A. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.

B. Factors that may be used in determining the reasonableness of force include, but are not limited to:

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.

VI. DUTY TO INTERVENE

A. Any officer present and observing another officer using force that he/she reasonably believes 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.

VII. USE OF DEADLY PHYSICAL FORCE:

A. Deadly physical force may be used by an officer to protect themselves or another person from what the officer reasonably believes is an imminent threat of serious physical injury or death.

B. Deadly physical force may be used to stop a fleeing suspect where:

1. The officer has probable cause to believe the suspect has committed a felony involving the infliction or threat of serious physical injury or death; and,
2. The officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officer or to others.
3. Where feasible, some warning should be given prior to the use of deadly physical force.

VIII. GUIDELINES:

A. TRAINING

1. All officers shall receive annual instruction regarding the use of deadly force, and demonstrate their understanding on the proper application of deadly physical force.
2. Training topics will include the Cicero Police Department's use of physical force and use of deadly physical force general orders, Article 35 of the New York State Penal

Law, conflict prevention, conflict resolution, and de-escalation techniques and strategies.

3. This policy is not intended to be a substitute for proper training in the use of deadly force. Comprehensive training is the key to real-world application of the concepts discussed within this policy.

B. 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 possess 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 another police officer, he shall articulate the reasons for his actions in a police report.
3. Actively pointing a firearm at an individual shall be considered a Subject – Use of Force and a Subject Management – Use of Force report shall be completed consistent with this directive.

C. WARNING SHOTS - Warning shots are prohibited under any circumstances.

D. MOVING VEHICLES - Discharging a firearm at a moving vehicle is prohibited unless the officer reasonably believes that the occupants of the vehicle are using or about to use deadly physical force against the officer or another person, and all other options have been exhausted. Officers 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.

E. CHOKE HOLDS – The use of choke holds or neck compressions on a suspect is prohibited unless the officer reasonably believes that the suspect is using or about to use deadly physical force against the officer or another person, and all other options have been exhausted.

F. ANIMALS -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 that humanity requires its relief from further suffering. A supervisor shall be notified no later than six hours or as soon as practical whenever a firearm is discharged to destroy an animal. A Cicero Police Department Report of Discharge of Firearm form must be completed no later than forty eight hours of time of firearm discharge.

G. JUVENILES - No distinction shall be made relative to the age of the intended target of deadly physical force. Self-defense and imminent threat shall be the only procedural guidelines for employing deadly physical force.

H. FLEEING FELONS - Officers may use deadly physical force against fleeing felons only when the use of deadly physical force is necessary to effect the arrest, or of preventing or attempting to prevent the escape from custody of a person whom the officer reasonably believes to have committed an offense listed in Article35 of the New York

State Penal Law and the use of deadly physical force is necessary to defend the officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force.

- I. **RISK TO INNOCENT PERSONS** - Officers are prohibited from discharging firearms when it appears likely that an innocent person may be injured

IX. PROCEDURE:

- J. Officers involved in the use of deadly physical force, on or off-duty, shall immediately notify a supervisor and the Chief of Police. If the member is off-duty and outside the Town of Cicero when the use of deadly force occurred, the member shall also notify the agency with jurisdiction for investigation of the incident.

- 1. This requirement shall apply to all firearms discharges except for the following instances:
 - a. Authorized training.
 - b. Target practice.
 - c. Hunting.

K. OFFICER-INVOLVED INCIDENTS

- 1. Whenever deadly physical force is employed and results in the death or physical injury the following responsibilities shall apply:
 - i. The Town of Cicero Police Dept. recognizes the ten principles outlined in the Memorandum of Understanding between the Onondaga County District Attorney's Office and Town of Cicero Police Department signed and dated on May 7, 2019
 - ii. The Memorandum of Understanding shall be attached to General Order 20.2200 as an addendum.
- 2.
 - a. Involved Officer Responsibilities:
 - i. Immediately determine the physical condition of any injured person and render first aid when appropriate and safe to do so.
 - ii. Notify the Control Center of the incident and location.
 - iii. Request assistance as needed; notify emergency medical services, a supervisor and the Chief of Police.
 - iv. Limit further communications regarding the incident to telephones if possible.
 - v. Secure the incident scene and act to protect all physical evidence and to identify all potential witnesses.
 - vi. Remain at the scene (unless injured) until the arrival of the appropriate superior officer. However, if the circumstances are such that his continued

presence at the scene might cause a more hazardous situation to develop (violent crowd), the ranking officer at the scene shall have the discretion to instruct the officer to respond to another, more appropriate location.

- vii. Protect his weapon for examination.
 - viii. Provide a Public Safety Statement to a supervisor concerning the incident. This statement shall serve to give the supervisor a good indication of what occurred and provide investigative direction.
 - ix. When relieved by a superior officer and if the below stated waiting period is satisfied, return to headquarters and prepare a written report of the incident. The involved officer must be accompanied by a designated supervisor or senior officer.
 - x. Cooperate with investigative personnel and be prepared for an extensive interview pertaining to the incident. Depending on the circumstances, and considering how the officer is reacting to such a traumatic incident, the Chief of Police may elect to allow 48-72 hours of rest to provide them with sufficient time to help enhance recall.
 - xi. Be allowed to communicate with family members, PBA representative, chaplain, attorney or anyone else required.
 - xii. Refrain from discussing the incident with unauthorized personnel. Advise the Chief of Police of any discussions with authorized personnel, outside the department. Authorized personnel are as follows:
 - a) Chief of Police
 - b) Internal Affairs Officer
 - c) Supervisor
 - d) Assigned investigative personnel
 - e) Department/PBA attorney
 - f) Privately retained attorney
 - g) Department/private psychologist
 - h) PBA representative
 - i) Physician
 - j) Immediate family
 - k) Employee Assistance Personnel
 - xiii. Be available for evidence gathering to include the officer's clothing.
- b. Submit to Critical Incident Debriefing a department-approved professional. The purpose of this debriefing will be to allow the officer to express his feelings and to deal with the moral, ethical, and/or psychological after-effects of the incident. The debriefing shall not be related to any department investigation and nothing discussed in the briefing will be reported to the department. The debriefing will

remain protected by the privileged physician-patient relationship. Guard Officer Responsibilities:

- i. Secure and preserve all evidence found on the suspect's person.
 - ii. Advise the Chief of Police of the suspect's condition.
 - iii. Remain with the suspect at all times. Accompany him in the ambulance and through all stages of medical treatment until properly relieved.
 - iv. Obtain clothing from the suspect at the hospital. Secure the names of all attendants removing clothing or treating the suspect. Preserve all items as evidence.
 - v. Request that toxicology tests be performed; e.g. blood/urine, etc. Secure the names of persons to whom requests are made.
 - vi. Maintain a list of all medications administered and by whom.
 - vii. Secure the names of all persons involved with the suspect and their extent of involvement.
 - viii. If suspect is deceased, advise all medical personnel and the medical examiner that all personal items must be preserved as evidence.
 - ix. Do not discuss the incident with unauthorized personnel.
- c. Supervisor Responsibilities:
- i. Respond immediately to the scene.
 - ii. Assume control and maintain integrity of the scene until properly relieved.
 - iii. As soon as practical, relieve the involved officer of the weapon used. If a firearm, maintain it in the exact condition found, treating same as evidence. Except in cases of obvious criminal involvement, the relieving member may replace the involved officer's weapon with his own; spare weapons are also available in the department armory.
 - iv. Obtain from the involved member a brief overview of the incident with Garrity advisement, via the Public Safety Statement. (During a criminal investigation, advise the involved officer of his/her Miranda warnings)
 - v. Notify the Chief of Police.
 - vi. Request investigative/forensic personnel as directed.
 - vii. Direct and assign incoming officers.
 - viii. Secure names and addresses of all witnesses and make arrangements for their seclusion and subsequent statements.
 - ix. Assign a support member to accompany the involved officer.
 - x. Assign an officer to guard and accompany the suspect at all times.
 - xi. Perform other duties as assigned.

- xii. Ensure that all officers present at the scene complete statements and reports as to their actions and observations. These will be completed after the officers are relieved at the scene.
 - xiii. Prepare a detailed report as to actions taken observations, and participation in the investigation.
 - xiv. Ensure that the involved officer makes no statements to unauthorized personnel.
 - xv. When appropriate, make arrangements for the involved officer to be taken for examination and required tests (e.g. blood, urine, etc.).
 - xvi. Provide whatever support needed for the involved officer. When appropriate, ensure that the officer's rights are protected.
 - xvii. Make arrangements for the involved officer to contact family members and anyone else requested or, if unable to do so, make those contacts for him.
 - xviii. Ensure adequate patrol coverage.
 - xix. Arrange for the involved officer to undergo a debriefing with the department psychologist as soon as possible, but within 24 hours of the incident.
 - xx. Avail the services of the department EAP member to the involved officer and his family to aid them with the after-effects of the incident.
- d. Chief of Police Responsibilities:
- i. The Chief will immediately be notified of any officer-involved incident.
 - ii. Assume overall command of the entire investigation, delegating appropriate assignments to a supervisor.
 - iii. Be responsible for press coverage of the incident.
 - iv. Report the incident to the Town of Cicero Supervisor/Board.
 - v. Notify the Town Attorney.
 - vi. Notify Police Chaplain
 - vii. Place the involved officer on administrative leave or duty for a minimum of 72 hours.
 - viii. Keep the involved officer apprised of the status of the investigation.
 - ix. Coordinate the release of information with District Attorney prior to releasing information to the media. The names of involved members shall not be released for at least seventy two (72) hours.
 - x. Establish and maintain a liaison with the District Attorney.
 - xi. Follow the ten principles outlines in the memorandum of understanding between the Onondaga District Attorney's Office and Town of Cicero Police Department dated May 7, 2019. MOU attached in addendum.
 - xii. At the conclusion of both the criminal and/or departmental investigation, make the final determination of action to be taken.

xiii. Review policies, training and equipment for needed revisions.

L. SUBJECT MANAGEMENT - USE OF FORCE REPORT

1. In addition to documenting the incident in their police report, officers shall prepare a "Subject Management Report" – Use of Force whenever deadly physical force is used, including when:
 - a. A firearm is discharged for purposes other than training or recreation whether or not a person was struck or injured by the projectile to include:
 - i. Any accidental discharge.
 - ii. Dispatch of animals, Officers shall prepare a Discharge of Duty Weapon form.
 - b. Any action that results in, or is alleged to have resulted in, injury or death of another person.
 - c. Deadly force is applied through the use of lethal or less lethal weapons.
2. When a "Subject Management – Use of Force Report" is prepared as a result of a firearms discharge, the reporting officer shall include:
 - a. The make, model, serial number and caliber of the firearm used.
 - b. The type of ammunition used.
 - c. The number of rounds discharged.
 - d. Documentation of any weapon or ammunition malfunctions.
 - e. Number of bystanders present, if any, and their proximity to the discharge.
3. If more than one officer is involved in the use of deadly physical force, each officer shall complete the "Subject Management – Use of Force Report" describing the force used by that officer.
4. Any officer present and observing another officer using force that is 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. An officer who observes another member use force that exceeds the degree of force permitted by law and/or policy shall immediately report those observations to a supervisor.
5. If the officer is incapacitated, a supervisor shall prepare the Subject Management report based upon the supervisor's investigation of the incident.
6. A superior officer shall review the "Subject Management – Use of Force Report" for completeness and accuracy.
7. All Subject Management – Use of Force reports, following initial supervisory review shall be directed to the Senior Sergeant for review then Chief of Police for final review.

M. INVESTIGATING THE USE OF DEADLY PHYSICAL FORCE

1. There will be two separate, but combined investigations into officer-involved incidents. They are the criminal investigation, when applicable, and the departmental investigation.

2. The criminal investigation will determine what actually transpired and whether or not there is criminal liability for the officer or the agency.
3. Criminal investigations will be conducted by an outside agency selected by the Chief of Police and in consensus with the District Attorney's Office. The Chief will act as liaison with the outside agency.
4. The selected outside agency shall prepare a full report to the Chief of Police regarding their investigation and conclusions.
5. In order to re-gain the confidence of the community following any deadly force incident, and to remove any suggestion of impropriety, the Chief of Police, will conduct or cause to be conducted a departmental investigation. When necessary, the Chief may utilize resources from an outside agency but shall maintain case responsibility.
6. The departmental investigation will determine whether the incident falls within department policies and guidelines.
7. Investigations involving the use of deadly force where there is a loss of human life will include involvement and assistance from the District Attorney's Office and the ten principles outlines in the Memorandum, of Understanding dated May 7, 2019 shall be followed.
8. All reports involving such investigations shall be forwarded to the District Attorney and presented to a Grand Jury.

N. EVALUATING THE USE OF DEADLY PHYSICAL FORCE

1. The Chief of Police shall review the investigations to ensure that the use of deadly physical force was justified, necessary, reasonably objective, not reckless and in accordance with department policy.
2. Upon the conclusion of any criminal investigation or departmental investigation, the Chief of Police will make a final determination of action to be taken.
3. If the Subject Management – Use of Force report was submitted as the result of a firearms discharge and the ensuing investigation supports that the discharge was negligent or inappropriate, the officer involved shall be required to undergo remedial training in the Use of Force and rectification in the use of firearms.

O. ADMINISTRATIVE LEAVE/DUTIES

1. The officer shall be relieved of regular duty and assigned to administrative leave for at least 72 hours or as directed by the Chief of Police. Assignment to an administrative relief or duties shall be non-disciplinary and is intended to serve two purposes:
 - a. To address the personal and emotional needs of an officer involved in the use of deadly physical force, which results in injury or death.
 - b. To assure the community that verification of all the facts surrounding such incidents are fully and professionally explored.
2. While on administrative leave and following any assigned rest period, officer shall remain available for official departmental interviews and statements.

3. Upon returning to duty, the officer may be assigned to administrative duty for a period of time as deemed appropriate by the officer, his psychologist, and the Chief of Police. The requalification of firearms will be directed by the Chief of Police.

P. MISCELLANEOUS

1. All personnel should be sensitive to the psychological trauma that is associated with these types of incidents. Behavior such as blaming, ridiculing, teasing, and isolating the involved officer will only increase the potential trauma and therefore shall not be tolerated.
2. Supervisors shall ensure that the officer is treated in a dignified manner. A fellow officer should accompany him during the initial phases of the inquiry.
3. It is mandatory that a supervisor be notified as soon as practical but not later than within six hours of the discharge of a firearm and to file a complete Subject Management – Use of Force report within forty eight hours of discharging their firearm.

[Original: 07/15/2020]