



# Office of the Sheriff County of Madison

## POLICY AND PROCEDURE



£ NEW		İ REVISED		SUBJECT	
EFFECTIVE DATE 01/01/2018				Use of Objectively Reasonable Force	
CLASSIFICATION 20.1	SUPERSEDES LE-211, 211B, 211D, 211G CD 14-01-00, 14-01-02, 14-01-07, 20.6.1	DATED 05/13/2009	DISTRIBUTION LE/CD	PAGE 1 OF 12 PAGES	
RECOMMENDED FOR APPROVAL BY DIVISION HEAD			AUTHORIZED BY THE SHERIFF		
William Wilcox, Captain Timothy Flynn, Captain			Todd Hood, Sheriff		
REFERENCES					
Accreditation Standard 20.1					

### I. POLICY



The purpose of this policy is to establish procedures and guidelines governing the use of deadly physical force by sworn members of the Madison County Sheriff Office and to establish procedures for reporting, investigating and evaluating the use of such force.

It is the responsibility of each officer/deputy to be aware of the requirements of Article 35.00 of the New York State Penal Law and to guide their actions based upon that law, the US Supreme Court decision in Tennessee vs. Garner, and Departmental policy and training.

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*, which held that in order for an deputies use of force to be deemed objectively reasonable, that deputy/officer (s) must consider: the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the deputies or others; and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. Accordingly, deputy/officer (s) shall employ only that level of force that is objectively reasonable and necessary to achieve their lawful objectives.

The intentional discharge of a firearm will always be considered to be the use of deadly physical force. However, deadly physical force can be expanded to include the use of other weapons and force if the intent is to cause serious physical injury. This shall include, but is not limited to, impact weapons such as batons, flashlights, motor vehicles, and bare hands.



### II. DEFINITIONS

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- a. Objectively Reasonable - Is an objective standard used to judge a Sheriff's Deputy/Correction Officers actions. Under this standard a particular application of force must be judged through the perspective of a reasonable deputy/officer (s) 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 deputy/officer (s) at the time that the force was used.
- b. Physical Injury - Impairment of physical condition or substantial pain.
- c. Deadly Physical Force - Physical force which, under the circumstances in which it is used, is readily capable of producing death or serious physical injury.
- 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. Accidental Discharge of a Firearm - A firearm will be considered "accidentally discharged" for the following reasons only: mechanical failure and/or faulty ammunition.
- g. Unintentional Discharge of a Firearm - A firearm will be considered "unintentionally discharged" under the following conditions: when it is not an accidental discharge as described above, or when it is discharged without purpose or intent.
- h. "Should" and "Should not" - Indicates a generally required or expected action, absent a rational basis for failing to conform.

### **III. Guidelines**

1. Only approved equipment, firearms or impact weapons will be carried on duty and used when encountering resistance, except in extreme emergency situations when officers / deputies may use any justifiable resources at their disposal.
2. Drawing and Displaying Weapons – deputy/officer (s) are justified in removing firearms from holsters and/or gun mounts if he/she reasonably believes that the situation may pose an immediate threat of death or serious physical injury to themselves or another person.
3. Warning Shots - Warning shots are prohibited under any circumstances.
4. Moving Vehicles - Discharging a firearm at or from a moving vehicle is prohibited unless a deputy/officer reasonably believes that the occupants of the vehicle are using or about

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to use deadly physical force against the deputy/officer (s) or another person, and the deputy/officer reasonably believes there are no other reasonable means available to avert the deadly threat posed by the vehicle or its occupants.



- a) When confronted by an oncoming vehicle, an deputy/officer (s) should not position him or herself into the path of the vehicle, and should make every attempt to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.
  - b) Deputies/officers should not discharge their firearm at a vehicle when it is reasonable to believe that the vehicle may contain an innocent passenger or when it is reasonably apparent that doing so may cause the vehicle to careen out of control and injure an innocent bystander.
  - c) A deputy/officer (s) should not discharge his or her firearm at any part of a vehicle in an attempt to disable the vehicle.
5. Animals - deputy/officer (s) are justified in using firearms to destroy animals provided the specific criteria detailed in section XI of this article are met.
6. Juveniles - No distinction shall be made relative to the age of the intended target of deadly physical force.

**IV. NOTIFICATION REQUIRED:**

- A. Notification Required - deputy/officer (s) involved in the use of deadly physical force, on or off duty, shall immediately notify a supervisor.
- B. This requirement shall not apply to firearm discharges in the following instances:
  - a. Authorized training.
  - b. Target practice.
  - c. Hunting.
- C. If the deputy/officer is off-duty and outside of Madison County when deadly force is employed, he/she will notify the agency who has jurisdiction and will be responsible for investigation of the incident.



**V. OFFICER RESPONSIBILITIES:**

- A. Whenever an deputy/officer (s) employs the use of deadly physical force which results in death or physical injury to another person, he/she will be responsible for:

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1. Determining the existing danger level.
2. Immediately determining the physical condition of any injured person and render first aid when appropriate and safe to do so.
3. Notifying a supervisor.
4. Requesting assistance and any emergency medical services.
5. Notifying E911 of the incident and location.
6. Securing the incident scene, protecting all physical evidence, and identifying all potential witnesses.
7. Remaining at the scene (unless injured) until the arrival of appropriate command officers.
  - a. If the circumstances are such that the deputy/officer (s) continued presence at the scene may cause the development of a more hazardous situation (violent crowd), the ranking deputy/officer (s) on the scene may, at his/her discretion, direct the deputy/officer (s) to respond to another location.
8. Providing a public safety statement to an on scene supervisor.
9. Protecting their weapon for examination and submit it to an authorized member of the Crime Scene Unit.
  - a. Unless circumstances are such that it is impractical to do so, the involved deputy/officer (s) weapon will be secured and replaced with another issued weapon, when available.
10. Not discussing the incident with anyone except authorized personnel. Authorized personnel are as follows:
  - a) Authorized investigative personnel. \*\*\*
  - b) Attorneys
  - c) Qualified mental health professionals
  - d) Chaplains

B. Deputy/officer (s) involved in the use of deadly physical force will be allowed to confer with union representatives and attorneys prior to providing sworn statements.

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\*\*\*1. In accordance with the recommendations made by the IACP Police Psychological Services Section and consistent with established research, substantive personal interviews with the involved deputy/officer (s) should be delayed 48 to 72 hours in order to provide them with sufficient recovery time to help enhance recall.



C. Any deputy/officer (s) who, while in the performance of duty, becomes involved in an incident which results in serious physical injury or death to another person will be required to participate in one post-shooting debriefing with a qualified mental health professional prior to returning to duty. Services will be provided by a Department assigned psychologist or one chosen by the requesting deputy/officer (s). These counseling services will be separate and independent from any Departmental investigation of the incident. All information exchanged between the involved deputy/officer and the psychologist will be protected, privileged communication. Any participation beyond the initial session is encouraged, but will be at the deputy/officer (s) discretion.

D. In all cases when any person has been injured or killed as a result of a traumatic police incident, the involved deputy/officer (s) and his/her family will have available to them the services of the Department's chaplain. This provides the deputy/officer (s) and his/her family with a source of professional consultation to aid them in dealing with the potential moral and ethical after effects of a traumatic incident. The chaplain's services will not be related to any part of the Department's investigation of the incident. The information discussed will not be divulged to the Department, as these consultation sessions are protected, privileged communication.

#### **VI. ASSISTING OFFICER RESPONSIBILITIES:**

A. Whenever a deputy/officer (s) employs the use of deadly physical force which results in death or physical injury to another person, the first responding deputy/officer (s) on the scene will be responsible for the following:

1. Ensure that there are no further safety threats.
2. Secure and separate suspects.
3. Relay critical information to the dispatcher.
4. Request emergency medical services and provide first aid as needed.
5. Secure the scene.
6. Locate witnesses.
7. Prepare reports as required.

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**VII. SUPERVISOR RESPONSIBILITIES:**



A. Whenever an deputy/officer (s) employs the use of deadly physical force which results in death or physical injury to another person, the first supervisor on the scene will be responsible for the following:

1. Determine the existing danger level.
2. Ensure that the injured are receiving medical attention.
3. Assume control and maintain the integrity of the scene until properly relieved.
4. Obtain a brief overview of the incident and relaying obtained pertinent public safety information immediately via radio to responding units as appropriate, and provide the completed SIR to the first arriving CID supervisor on scene.
5. Assign an uninvolved deputy/officer (s) to accompany the involved deputy/officer (s) until relieved by authorized investigative personnel.
6. Ensure that the following notifications have been made by E911:
  - a. Sheriff
  - b. Undersheriff
  - c. Captain
  - d. Criminal Investigation Division.
7. Once relieved from the scene, ensure that all applicable statements and reports are completed by all deputy/officer (s) assigned to the incident.

**VIII. COMMAND RESPONSIBILITIES:**

A. Whenever an deputy/officer (s) employs the use of deadly physical force which results in death or physical injury to another person, command officers will be responsible for the following:

1. Render command assistance and coordinate all activities at the scene.
2. Ensure that proper notifications have been made.
3. Brief the Sheriff and Undersheriff and coordinate all activities with them.
4. Ensure that the involved deputy/officer (s) make no statements to unauthorized personnel and that they are transported to CID as soon as practical.

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a. Ensure that a deputy/officer not involved in the incident has been assigned to accompany the involved deputy/officer (s).

5. Arrange for family notifications and transportation as necessary.

**IX. CRIMINAL INVESTIGATION DIVISION RESPONSIBILITIES:**

A. the Criminal Investigations Division will conduct investigations on:

1. All incidents when deadly physical force is used which results in death or physical injury to another person.
2. Cases involving the discharge of a firearm by police personnel.

B. The Criminal Investigations Division will not conduct investigations when:

1. Deadly Physical Force is used in the destruction of animals.

C. When directed to do so by a supervisor, detectives assigned to the Criminal Investigations Division will immediately respond to the scene and conduct a thorough investigation.



1. It is the responsibility of the Investigations Sergeant, Lieutenant or Captain:

- a. Obtain a briefing on the incident.
- b. Ensure that the involved deputy/officer (s) is transported to the LEB or PSB as soon as practical.
- c. Assign a detective to interview and obtain a statement from the involved deputies / officers (s) after they have been allowed to confer with union representatives and attorneys.
- d. Ensure that the crime scene is processed and all evidence collected.
- e. Assign detectives to conduct a complete investigation.
- f. Ensure that all-necessary reports and statements are completed.
- g. Approve all submitted reports.

2. It is the responsibility of the CID Lt. or Captain to:

- a. Coordinate with the Sheriff, Undersheriff, Captain.
- b. Assume command of the criminal investigation.



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c. Ensure that the involved deputy/officer (s) weapon is secured as evidence by Crime Scene Unit personnel and direct the Training unit officer to issue the involved deputies / officers (s) a replacement weapon.

d. Inform the Sheriff of the status of the investigation.

e. Establish and maintain a liaison with the District Attorney.

f. Assemble a panel of appropriate personnel from within the Department to prepare a detailed After Action Report for the purpose of identifying possible training and/or policy concerns.

1) The report should include a list of all physical evidence, investigative findings, observations, and tactical considerations relative to the incident.

2) The Final Action Report shall be completed no later than 90 days from the conclusion of the criminal investigation and will remain separate from all of the incident's criminal investigation documentation.

**X. RESPONSIBILITIES OF THE Sheriff, Undersheriff OR IN THEIR ABSENCE, THE Criminal Division Captain:**

A. The responsibilities of the Sheriff, Undersheriff are to:

1. Assume overall command of the entire investigation, delegating appropriate assignments to Division Personnel.

2. Be responsible for press coverage of the incident.



a. The name of the involved deputy/officer (s) will not be released for at least seventy-two (72) hours after the incident.

3. Place the involved deputy/officer (s) on administrative leave or duty without loss of pay or benefits for a minimum of seventy-two (72) hours.

4. At the conclusion of both the criminal and Departmental investigation, make a final determination on the action to be taken with respect to the involved deputy/officer (s).

a. Arrange for the involved deputy/officer (s) to undergo a debriefing with the Department's psychologist as soon as possible.



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5. Avail the services of the Department chaplain to the involved deputy/officer (s) and his/her family to aid them with the after-effects of the incident.

6. Review policies, training, equipment, etc. with Division Commanders for possible improvement.

**XI. DEADLY PHYSICAL FORCE ON ANIMALS:**

A. Deadly physical force may be employed against an animal when:

1. The animal is attacking or presenting an imminent danger of substantial harm to the deputy/officer (s) or another person.
2. When an animal is badly injured, diseased, threatening, or destructive.
  - a. The deputy/officer (s) should make an effort to obtain permission from the owner of the animal, if known, prior to employing the use of deadly force.



B. Whenever deadly physical force is used to dispatch an animal, the Deputy will contact E-911 and request that the Department of Public Works (DPW) respond to remove the animal unless it is being removed by the owner or their representative.

C. It shall be the responsibility of the involved deputy/officer (s) supervisor to:

1. Investigate the use of deadly physical force against animals.
2. Ensure that the incident is documented in a police report.

**XII. UNINTENTIONAL AND ACCIDENTAL DISCHARGES OF A FIREARM:**

- A. Whenever an deputy/officer (s) unintentionally or accidentally discharges a firearm, on or off duty, the deputy/officer (s) will immediately notify a supervisor.
- B. The notification and reporting procedures for the unintentional or accidental discharge of a firearm resulting in physical injury shall be the same as reporting the use of deadly physical force.
- C. Unintentional or accidental discharges of a firearm not resulting in physical injury, will be investigated by the Criminal Investigations Division and documented in applicable police reports or internal memos.
- D. The involved member's Command Officer will ensure that the Training Personnel is notified of the incident and that the deputy/officer (s) undergoes remedial training in firearm safety provided by the department as soon as possible.

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E. The deputy/officer (s) will not be assigned to any duties outside the LEB until such training has been received and successfully completed.

**XIII. REPORTING THE USE OF DEADLY PHYSICAL FORCE:**

A. Whenever deadly physical force is used, it will be documented in all applicable police reports, a Subject Resistance report (form LE 211i) and sworn statements when:

1. The use of such force results in the injury or death of a person.
2. The use of force involved the intentional discharge of a firearm, whether or not a person was struck or injured by the projectile.
3. A firearm is intentionally discharged for purposes other than training or recreation.



B. A Subject Resistance report (form LE 211i) will be done for each person that deadly physical force is used upon.

C. If more than one deputy/officer (s) are involved in the use of deadly physical force, a Use of Force entry describing such force used by each Deputy/Officer will be completed by a supervisor, as designated by the Commanding Officer of Criminal Investigations Division.

**XIV. INVESTIGATING THE USE OF DEADLY PHYSICAL FORCE:**

A. There will be a separate criminal investigation and Departmental investigation into deputy/officer (s) -involved incidents when deadly physical force has been used.

1. The criminal investigation will be conducted by the Criminal Investigations Division. Additional detectives from outside agencies trained use of force teams may be assigned to assist in the criminal investigation at the direction of the Sheriff or Undersheriff. The purpose of the criminal investigation is to determine what occurred and whether or not there is criminal liability involved.
2. The disposition of all cases logged will be compiled and analyzed annually.
  - a. Information for the annual analysis will be derived from incident report and final dispositions and used for the purpose of identifying patterns and trends.
  - b. The disposition of all logged cases and any recommendations will be reported to the Sheriff.

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B. The training personnel is responsible for the design and implementation of training programs relative to the use of deadly physical force. The training personnel will ensure that:

1. All deputy/officer (s) receive in-service training annually on the Department's "use of force" policies and procedures.
2. All deputy/officer (s) demonstrate proficiency with the weapon(s) they have been assigned and authorized to use.
3. All incidents involving deadly physical force and/or the discharging of a firearm shall be reviewed and evaluated for compliance with current training standards.

C. The training personnel will be responsible for the investigation and documentation of all unintentional or accidental firearm discharges that do not result in physical injury or death, which occur during training situations.

D. The Sheriff, or his/her designee, shall review all investigation and administrative reports regarding the use of deadly physical force to ensure that the force used was justified, necessary, reasonable, and in accordance with Department policy.

1. The Sheriff shall make the final determination of any action to be taken.



#### **XV. RETURN TO DUTY:**

A. Consideration should be given to deputy/officer (s) readiness to return to duty following a critical incident. Toward that end, upon completion of the criminal investigation and prior to returning to duty, deputy/officer (s) involved in the discharge of a firearm during the employment of deadly physical force should:

1. Debrief the incident with a use of force instructor, a firearms instructor, and other training instructors as appropriate.
2. Complete a course of reality-based training designed by use of force instructors, firearms instructors, and other training instructors as appropriate.
3. Complete a course of firearms requalification.

#### **XVI. MISCELLANEOUS:**

A. All personnel should be sensitive to the psychological trauma that is associated with these types of incidents. Behavior such as blaming, ridiculing, joking, teasing, and isolating the involved deputy/officer (s) will only increase the potential trauma and therefore will not be tolerated or permitted.

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B. Supervisors will ensure those involved deputy/officer (s) are treated in a dignified manner.

C. The procedures set forth in this section, where applicable, shall be used in the investigation of any in custody deaths.

**Policy Revision History**

NO	Section revised	Date Issued	
1			

<p><b>Policy is applicable to the following New York State Accreditation Standard(s):</b>  <b>20.1:</b> Necessary Force (<b>Critical Standard</b>); <b>21.1:</b> Review of Firearms Use; <b>21.2:</b> Review of Force Causing Injuries; <b>32.3</b> Firearms Training; <b>40.2:</b> Supervisor Responsibilities.</p>
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