TOWN OF SENECA FALLS POLICE DEPARTMENT

GENERAL ORDER

GENERAL ORDER #: 340	**RESCINDS:** 07/01/13, 06/22/15, 04/04/18, 03/14/19, 07/01/19, 10/02/19, 04/01/2021
SUBJECT: USE OF DEADLY PHYSICAL FORCE FIREARMS DISCHARGE REPORT	**NYS ACCREDITATION:** **20.1, 21.1, 33.1**
EFFECTIVE DATE: 04/01/2021 **BY ORDER OF:** Timothy A. Snyder, 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 Seneca Falls Police Department and to establish procedures for reporting, investigating and evaluating the use of such force. Sworn members should make every effort to adhere to the sanctity of life, valuing and preserving human life in all situations, when possible. [Revised: 07/01/2019]

II. **POLICY**: It is the policy of the Town of Seneca Falls Police Department to recognize the value of all human life and dignity without prejudice to anyone and to prevent the unnecessary loss of human life. Officers may use deadly physical force only when the use of deadly physical force is objectively reasonable and necessary to:

A. 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. Effect the arrest, or to prevent the escape from custody 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 by the offender.

C. It is the responsibility of each officer to be aware of the requirements of Article 35 of the New York State Penal Law and the standard of objective reasonableness, established by the United States Supreme Court in Graham v. Connor to guide his actions based upon that law, department policy and training. As the Supreme Court has recognized, this 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.”
[Revised: 10/02/2019]

D. The primary consideration in the employment of deadly physical force is justification. The f act that a police officer is justified in using deadly physical force does not allow reckless conduct by the police officer I f the use of deadly physical force may injure innocent persons whom he/she is not seeking to arrest or retain in custody.

E. The discharge o f a firearm will always be considered to be the use of deadly physical force, unless the projectile is an impact munition deployed from a dedicated platform.

F. Deadly physical force can be expanded to include the use of less-lethal weapons and force I f 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.

G. 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/her disposal.

III. DEFINITIONS: [Revised: 10/02/2019]

A. **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.

B. **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.

C. **PHYSICAL INJURY -** Impairment of physical condition or substantial pain.

D. **REASONABLE BELIEF** - T hose f acts and circumstances within the know ledge of the individual which would make a reasonable and prudent person tend to believe that the facts and circumstances are true.

E. **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.

F. **ACTIVELY POINTING** - The intentional targeting of a person with an Electronic Control Device (ECD), firearm, impact weapon, impact projectile or chemical agent. [Revised; 11/11/2019]

IV. GUIDELINES:

A. **TRAINING** - All officers shall receive instruction regarding the use of deadly force, be provided a copy of this order, and shall familiarize themselves with pertinent sections of Article 35 of the New York State Penal Law prior to receiving authorization to carry firearms or less lethal weapons.

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 f ear or panic. Officers are justified in removing firearms from holsters and/or gun mounts if:

   a. The member reasonably believes that the situation posess 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.

C. WARNING SHOTS - **<u>Warning shots are prohibited under any circumstances.</u>**

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 of the officer disables the operator the vehicle can be expected to continue uncontrolled creating a hazard to officer and the public.

E. ANIM ALS -Officers are just in using firearms to destroy an animal f or 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 as soon as practical whenever a firearm is discharged to destroy an animal.

F. 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 f or employing deadly physical force.

G. 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 to prevent the escape from custody a person whom the officer reasonably believes to have committed an offense listed in Article 35 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 by the offender.

H. RISK TO INNOCENT PERSONS - Officers are prohibited from discharging firearms when it appears likely that an innocent person in the immediate line of f ire may be injured.

I. DUTY TO INTERVENE - 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. [Revised: 07/01/2019]

v. <u>DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE</u>: [Revised: 10/02/2019]

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 circumstances.

2. The level and immediacy of threat or resistance posed by the suspect.

3. The potential for the 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. <u>PROCEDURE</u>:

A. When a member discharges a firearm, whether on or off duty, other than for training, leg al hunting, or target practice purposes, he/she will immediately notify his/her supervisor (or Lieutenant in his/her absence). The member will submit the required reports as directed, under the following guidelines:

1. If the discharge is directed at a person, whether or not the person is struck, or if as the result of any discharge a person is injured, the member will submit a Standard Incident Report, Subject Resistance Report and Firearms Discharge Report.

2. If the discharge is directed at a dog or other animal, the member will submit a Firearms Discharge Report in addition to any other report that may be necessary to appropriately document the incident (e.g. MV104A, NYS Incident Report).

3. If the discharge is accidental and did not injure anyone, the member will submit a Firearms Discharge Report.

4. This requirement shall apply to all firearms discharges except for the following instances:

   a. Authorized training.

   b. Target practice.

   c. Hunting

5. All Firearms Discharge reports will be submitted to the department \

Firearms Instructors and then forwarded up the chain of command. (Revised: 03/14/2019)

B. OFFICER-INVOLVED INCIDENTS

1. Whenever deadly physical force is employed and results in serious physical/bodily injury or where a firearm was discharged at a suspect, the officer should do the following:

a. **Involved Officer's 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 911 Center of the incident and location.

iii. Request assistance as needed, notify a supervisor (or Lieutenant in his/her absence) and emergency medical services.

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 command staff. However, if the circumstances are such that an officers continued presence at the scene might cause a more hazardous situation to develop (violent crowd), the ranking

Commanding officer at the scene shall have the discretion to instruct the officer to respond to another, more appropriate location.

vii. Protect his/her weapon f or examination. viii. Brief supervisor/Lieutenant of the incident.

ix. When relieved by a superior officer, return to Headquarters or other designated location and cooperate with investigative personnel by providing basic details needed to further the investigation (who, what, why, where, when, how). This is separate from a detailed written statement. The involved officer must be accompanied by the Lieutenant or a designated supervisor or senior officer.

x. With-in 72 hours the officer shall prepare and submit all necessary departmental reports and be available f or the internal affairs investigation portion of the case. This may include an internal memorandum detailing the incident as well as a formal interview with the IA officer or his/her designee. This deadline shall be extended if the officer is unable to respond due to hospitalization or unconsciousness.[Revised:10/02/2019]

xi. With regards to the criminal investigation, the involved officer shall be afforded all rights that are consistent with the U.S. Constitution.

xii. Be allowed to communicate with family members, PBA representative, chaplain, attorney, or anyone else required.

xiii. 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) Lieutenant

c) Internal Affairs Officer

d) Supervisor of involved officer

f) Assigned investigative personnel

g) Department/PBA attorney

h) Privately retained attorney

i) Department/private psychologist

j) Chaplain

k) PBA representative

l) Physician

m) Immediate family

iv. Submit to counseling with a department-approved psychologist. The purpose of this debriefing will be to allow the officer to express his/her feelings and to deal with the moral, ethical, and/or psychological after-effects of the incident. The 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.

b. **Guard Officer's Responsibilities:**

i. Secure and preserve all evidence found on the suspect's person.

ii. Advise the Chief of Police (or Lieutenant in his absence) of the suspect's condition.

iii. Remain with the suspect at all times. Accompany him/her 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's Responsibilities (or, in his/her absence, the senior ranking officer):**

i. Respond immediately to the scene.

ii. Assume control and maintain integrity of the scene until properly relieved. iii. Notify the Chief of Police, Lieutenant and CID.

iv. Verify that all officers present at the time of the incident did not utilize their firearms by manually checking their magazine capacity against the remaining ammunition observed.

v. Request investigative/forensic personnel from the NYSP when directed to do so by the Chief of Police or Lieutenant.

vi. Direct and assig n incoming officers pending the arrival of command personnel.

vii. Secure names and addresses of all witnesses and make arraignments for their seclusion and subsequent statements.

viii. Isolate the involved officer from the scene as soon as possible. If the officer is injured, assig n a senior officer to accompany him/her at all times.

ix. Assig n an officer to guard and accompany the suspect at all times.

x. Perform other duties as assigned.

xi. Ensure that all officers present at the scene complete a report as to their actions and observations. These will be completed after the officers are relieved at the scene.

xii. Prepare a detailed report as to actions taken, observations and participation in the investigation.

d. **Lieutenant Responsibilities;**

i. Respond immediately to the scene.

ii. Contact NYS Police and request an investigative response.

iii. Coordinate with the Chief of Police at the scene. At the direction of the Chief of Police, act as a liaison with the NYSP.

iv. Ensure that the weapon(s) used by the officer(s) is/are treated as evidence. If the firearm used was the involved officer's duty weapon, issue a spare pistol as soon as possible.

v. Ensure that the involved officer makes no statements to unauthorized personnel.

vi. Remove the involved officer from the scene, and ensure that he/she is transported to Headquarters or another designated location as soon as possible. Designate a supervisory or senior officer to accompany the involved officer.

vii. When appropriate, make arrangements f or the involved officer to be taken for examination and required tests (e.g. blood, urine, etc.).

viii. Provide whatever support needed for the involved officer. When appropriate, ensure that the officer's rights are protected.

ix. Make arrangements for the involved officer to contact family members and anyone else requested or, if unable to do so, make those contacts f or him/her.

x. Insure adequate patrol coverage (e.g. call-ins, etc.).

xi. Arrange for the involved officer to undergo a debriefing with the department psychologist as soon as possible, but within 24 hours of the incident.

xii. Avail the services of a chaplain to the involved officer and his family to aid them with the after-effects of the incident. The chaplain services shall not be related to any department investigation of the incident and will remain protected by the privileged relationship.

xiii. Arrange for a debrief of all involved department personnel with applicable critical incident stress management professionals.

xiv. Prepare a written report for the Chief of Police detailing his actions during the incident, and the subsequent internal investigation.

xv. Assig n personnel to identify witnesses and to take any statements that cannot be held f or responding NYSP investigators.

v. Ensure that the crime scene is secured and held for NYSP personnel.

vi. Ensure that all-necessary reports are completed.

e. **<u>Internal Affairs (Lieutenant or assign Investigator) Responsibilities</u>:**

i. Respond to the scene immediately.

ii. Conduct a separate but concurrent investigation to determine if the incident falls within department policy.

iii. Inform the Chief of Police of the status of the investigation.

iv. Prepare a full report to the Chief of Police regarding his investigation and conclusion.

f. **Chief of Police (or in his absence, the Lieutenant) Responsibilities:**

i. The Chief will immediately be notified of any officer-involved incident.

ii. Delegate a department liaison to the NYSP.

iii. Be responsible f or press coverage of the incident. iv. Notify the Town Attorney.

v. Place the involved officer on administrative leave or duty.

vi. Keep the involved officer, his/her Lieutenant and Supervisor apprised of the status of the investigation.

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

viii. Present the case to the District Attorney for review.

ix. At the conclusion of both the criminal and/or departmental investigation, make the final determination of action to be taken.

x. Revie w policies, training, equipment, etc., with Command Staff f or possible improvement.

xi. Report the incident to the Town of Seneca Falls Public Safety Committee.

C. USE OF FORCE REPORT

1. In addition to documenting the incident in their police report, officers shall prepare a "Subjects Resistance Report" whenever deadly physical force is used, including when:

   a. A firearm is discharged f or purposes other than training or recreation whether or not a person was struck or injured by the projectile to include:
      i. Destruction of a dangerous animal.
      ii. Any accidental discharge.

   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. W hen a "Subjects Resistance 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. T he type of ammunition used.

   c. T he number of rounds discharged.

d. Notation 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 "Subjects Resistance Report" describing the force used by that officer.

4. If the officer is incapacitated, a supervisor shall prepare the “Subjects Resistance Report” based upon the supervisor's investigation of the incident.

5. A superior officer shall review the “Subjects Resistance Report” for completeness and accuracy.

6. All “Subjects Resistance Reports, following initial supervisory review shall be directed to:

   i. The officer’s supervisor f or review.

   ii. The Lieutenant for review.

   iii. And the Chief of Police f or findings.

D. HUMANE ANIM AL DESTRUCTION

1. In addition to documenting the incident in an Incident report, offers shall prepare a “Humane Animal Destruction Report” whenever a firearm is discharged for purpose other than training or recreation to facilitate the destruction of a dangerous. (Revised: 04/03/2018)

E. INVESTIGATING THE USE OF DEADLY PHYSIC AL FORCE

1. There will be two separate but concurrent investigations into officer involved incidents. They are the criminal investigation, and the departmental internal investigation.

2. The NYSP will conduct the criminal investigation. The Lieutenant will be designated as the departmental liaison with NYSP. The Chief of Police will assig n Internal Affairs Officer to conduct the departmental investigation. Internal Affairs Officer shall report directly to the Chief of Police/Lieutenant.

3. The criminal investigation will determine what actually transpired and whether or not there is criminal liability involved.

4. The departmental investigation will determine whether the incident falls within department policies and guidelines.
5. The departmental investigation shall be conducted in accordance with General Order #310, "Internal Affairs".

   a. In conducting the departmental investigation, the Internal Affairs Officer shall continuously inform the Chief of Police of the status of the investigation.

6. The Internal Affairs Officer shall prepare a full report to the Chief of Police regarding his investigation and conclusion.

F. OFFICER-INVOLVED Incidents Involving Death – [Revised: 03/30/2021]

The office of special Investigations Will Investigate Incidents Involving the Death of Persons Caused by a Police Officer or Peace Officer

New York State Executive Law Section 70-b mandates the establishment of an Office of Special Investigation (OSI) within the Office of the New York State Attorney General (OAG, effective April 1, 2021. This legislation represents the codification – and the expansion – of the role currently performed by the Special Investigations and Prosecutions Unit (SIPU) since Executive Order 147 became effective on July 8, 2015.

The legislation requires OSI to "investigate and, if warranted, prosecute and alleged criminal offenses committed by a person, whether or not formally on duty, who is a police officer…peace officer…concerning any incident in which the death of a person, whether in custody or not, is caused by an act or omission of such police officer or peace officer or in which the attorney general determines there is a question as to whether the death was in fact caused by an act or omission of such police officer or peace officer." OSI will investigate every incident in which a police officer caused or may reasonably have caused the death of a person, whether the person is armed or unarmed, and whether the officer is on duty or not. The law further obligates OSI to investigate every incident in which certain state, county, or local peace officers caused or may reasonably have caused the death of a person or an incarcerated inmate.

1. Whenever deadly physical force is employed and results in the death of a person, the officer should do the following:

a. **First Responders Should:** [Revised: 03/30/2021]

i. Provide immediate medical assistance

ii. Address any ongoing threat to public safety

iii. Preserve and/or secure any evidence (vehicles should not be moved unless absolutely necessary)

iv. Identify, and if at all possible, hold witnesses for Office of the Attorney General personnel

b. **On Scene Guidelines**: [Revised: 03/30/2021]

i. Ensure supervisor is on scene or en-route to take command of incident

ii. Establish an appropriate crime scene (an expanded crime scene can always be scaled down if necessary)

iii. Document everything – observations by responding officers, original 911 calls, anyone who entered crime scene, who responded (EMS and/or fire personnel)

iv. Determine if Body Cameras were used, if so, lock down all relevant videos.

v. Take photographs of involved officers at scene

vi. Obtain any possible information about deceased

vii. Ensure no evidence is released without permission of Office of the Attorney General personnel

viii. Ensure no evidence is tampered with, and if evidence has been moved or manipulated in any fashion, document by whom and why

ix. If incident involved a firearm or taser, ensure firearm and/or taser is secured

x. Notify Office of the Attorney General if any search warrants are needed

xi. Obtain signed consent forms for any seized evidence, where applicable

xii. Identify, and where possible, retrieve and safeguard potential electronic evidence (cell phones, EZ pass, GPS, etc)

xiii. If there are any questions as to what steps should be taken, please contact the responding Detective and/or Assistant Attorney General for guidance

c. **When Calling the Hotline, Provide:** [Revised: 03/30/2021]

i. Name, rank/title and contact information of caller

ii. The agency, rank, name, and contact information for supervisor

iii. Date/time of incident

iv. Type of incident

v. Location of incident

vi. Brief details of incident

vii. **Office of Special Investigations NY Attorney General Hotline Number: (855) 674-6924**

G. EVALU ATING THE USE OF DEADLY PHYSIC AL FORCE [Revised: [10/02/2019]

1. The Chief of Police shall review the investigations to ensure that the use of deadly physical force was justified, necessary, reasonable, 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 Resistance 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.

H. ADMINISTR ATIVE LEAVE/DUTIES

1. The officer shall be relieved of regular duty and assigned to administrative leave or duties at Police Headquarters until the investigation has been completed. Assignment to 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 the officer shall remain available at all times for official departmental interviews and statements, and shall be subject to recall to duty at any time.

3. Upon returning to duty, the officer may be assigned to administrative duty f or a period of time as deemed appropriate by the officer, his psychologist, and the Chief of Police.

I. 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. The Internal Affairs Officer shall cause an annual analysis of all use of force incidents to be completed. The analysis should identify [Revised: 07/01/2019]

    a. Date and time of incidents.

    b. Types of encounters resulting in the use of force.

    c. Trends or patterns resulting in injury to any person including employees.

    d. Impact of findings on policies, practices, equipment and training.

J. Confidential Trauma Counseling will be provided in all cases of employee-involved shootings as follows:

i. On-scene and/or at a medical facility as soon as possible

ii. Immediate follow-up

iii. Six-month follow-up

iv. One-year follow-up

v. Other counseling as may be requested by the employee or directed by the Chief of Police.

K. RETENTION OF RECORDS

a T he original Firearms Discharge Report will be retained by the Records Section.

b. The Lieutenant will retain a copy of the Firearms Discharge Report f or administrative tracking. (Revised: 04/04/2018)

L. POSTING THE USE OF FORCE POLICY

1. This Use of Force policy shall be conspicuously posted on the department's public website in accordance with Executive Law Section 837-t (Currently 72 hours after amendments). [Revised: 11/11/2019]