

EAST LANSING POLICE DEPARTMENT

POLICY AND PROCEDURE

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CHIEF OF POLICE: _____

12.1 PURPOSE

The purpose of this procedure is to guide East Lansing Police Department personnel in the use of reasonable force when encountering resistance (non-deadly and deadly) during lawful arrests, or when performing lawful duties while protecting the public.

12.2 POLICY

The Department recognizes and respects the value of each human life. In vesting officers with the lawful authority to use force to protect the public welfare, it is the policy of the Department that officers shall only use an objectively reasonable amount of force to effectively bring an incident under control, while protecting the lives of Department personnel and others. This Policy will often use the word "officer" as common terminology. However, this Policy applies to all Department employees, where applicable, based upon their job duties.

The justification for the use of force shall be in accordance with laws of the United States of America, the State of Michigan, the terms of this Policy and Procedure, Department training standards, or other rules and regulations of the East Lansing Police Department.

In the event, that an employee of this Department observes an excessive use of force by another employee, it shall be their responsibility to immediately intervene to de-escalate and control the amount of force used. The employee shall immediately report any use of excessive force to a supervisor.

This Policy is for Department use only and represents administrative guidelines for an officer's decision-making process and not as a standard for civil or criminal litigation. It should not be construed as a creation of a higher legal standard of safety or care in an evidentiary sense with respect to civil suits or administrative claims. Violations of this Policy may form the basis for Departmental administrative sanctions.

12.3 DEFINITIONS

- A. IMMINENT – Impending or about to occur.
- B. USE OF FORCE: The attempt to gain physical control of an individual through actual physical contact with the subject when any resistance is present.
- C. NON-DEADLY FORCE: Any use of force other than that which is considered likely to cause death or serious bodily injury.
- D. DEADLY FORCE: Any force used by an officer that is likely to cause death or serious bodily injury. May be used in the defense of self, others, or in pursuit of a *violent* feeling felon (in accordance with TENNESSEE v. GARNER and the 4th Amendment).
- E. OBJECTIVE REASONABLENESS: Any use of force must be objectively reasonable to counter the subject's level of resistance under the circumstances at the time it is applied. The Objective Reasonableness Standard considers factors such as but not limited to: 1) Severity of the Crime, 2) Whether the suspect poses an immediate threat to the safety of officers or others, 3) Whether the suspect is actively resisting arrest or attempting to evade arrest by flight. Reasonableness is "...judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."
- F. LIFE THREATENING FELONIES: The East Lansing Police Department defines life threatening felonies to include but may not be limited to Murder (including lesser offenses), Kidnapping, Armed Robbery, Felonious Assault, Rape.
- G. SERIOUS BODILY INJURY: Serious bodily injury is that 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."
- H. PROBABLE CAUSE: "Police have probable cause to arrest an individual when the facts and circumstances within their knowledge and of which they have reasonably trustworthy information are sufficient to cause a person of reasonable caution to believe the person to be arrested is committing or has committed a crime." *Brinegar v. United States*, 338 U.S. 160 (1949).

12.4 APPLICABLE USE OF FORCE CASE LAW:

- A. 4TH AMENDMENT OF THE U.S. CONSTITUTION:
An arrest is a seizure that should only occur upon probable cause by an officer to believe that a crime has occurred; therefore, the Use of Deadly Force is a seizure.

The Use of Force must be objectively reasonable, based upon the totality of the

circumstances presented to the officer and judged upon an on-scene reasonable officer standard. "Reasonableness is "...judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Consideration of reasonableness allows that "...officers are often forced to make split-second judgements in circumstances that are tense, uncertain, and rapidly-evolving..." *Graham v. Connor*, 490 U.S. 386 (1989).

Furthermore, the Supreme Court of the United States has asserted that the standard for use of force is objective reasonableness, not, "minimum use of force" or "only that amount of force that is necessary."

B. TENNESSEE v. GARNER:

Officers may use deadly force against violent felony offenders where they pose a serious bodily threat or deadly threat to officers or civilians with a weapon, or whereby there is probable cause to believe they committed a crime involving the infliction of serious physical harm. The use of deadly force must be reasonably *necessary* to prevent the suspect's escape and alternative steps are not likely to lead to the safe control of the suspect. If feasible, some warning should be provided.

Tennessee v. Garner abolished using Deadly Force against non-violent felony offenders. An "officer's use of deadly force is limited to those situations where the officer has probable cause to believe that a felon poses a threat of serious physical harm to himself or others."

C. GRAHAM v. CONNOR:

Graham v. Connor is a foundational case involving a use of force. The court stated that the test of reasonableness is, "not capable of a precise definition or mechanical application." Graham vs. Connor asserts that the following must be considered prior to an application of force against an individual:

1. Severity of the Crime.
2. Whether the suspect poses an immediate threat to officers or the public.
3. Whether he/she is actively resisting arrest or attempting to evade arrest by flight.

12.5 USE OF DEADLY FORCE

A. Police officers are authorized to use deadly force only under the following circumstances:

1. An honest and reasonable belief that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.
2. An honest and reasonable belief that the use of deadly force is necessary to prevent the imminent sexual assault of himself or herself or another individual (e.g. Criminal Sexual Conduct with penetration).

B. Life Threatening Felony:

1. Firearms may be discharged to affect an arrest when an officer has probable cause to believe that a person has committed a life-threatening felony, and that person poses a significant danger to the community if escape should occur.
2. [REDACTED]
3. Before using a firearm, police officers should attempt to identify themselves, and "if feasible," state their intent to shoot, unless this increases the risk of harm; "**STOP POLICE**" would be sufficient.

C. Restrictions:

1. Warning shots are prohibited.
2. Under no circumstances can the discharge of a firearm be justified to affect a misdemeanor arrest or to apprehend a person fleeing from such a charge.
3. The refusal of a driver to stop a vehicle, chasing a stolen vehicle, and a police pursuit for a non-life-threatening felony, are not considered justification for discharging a firearm.

12.6 DISCHARGE OF A WEAPON

- A. Firearms shall not be used to dispose of injured animals without the permission of a Supervisor. However, there may be situations when circumstances do require immediate action. In these situations, officers may discharge a firearm when it is necessary to protect themselves, another person, or a Department canine from being attacked by an animal. Officers discharging a firearm at an animal shall ensure the safety of all persons and property.
- B. Officers firing a firearm, whether on-duty or off-duty, or whether accidentally or intentionally, shall report the circumstances to the Chief of Police through their immediate supervisor. This does not apply to the disposal of an injured animal while on-duty, the authorized firing at a range or to the discharge of firearms while hunting or for other lawful recreational purposes. An official investigation will be made on the firing of the firearm to determine the circumstances and this investigation will be forwarded to the Chief of Police.

12.7 USE OF NON-DEADLY FORCE

Police personnel shall not use more force than is reasonably necessary under the circumstances. Police personnel shall use force only in accordance with Federal and State laws and East Lansing Police policies and training. An officer is authorized to use non-deadly force under the following circumstances:

- A. In self-defense or defense of another person.
- B. To prevent a person from injuring himself/herself.
- C. To affect the arrest of persons physically or passively resisting lawful arrest, attempting to flee from lawful custody, or when necessary to prevent the escape or recapture of a person who has been arrested.
- D. To control, move, direct or arrest persons creating a public disturbance; in order to maintain public order; or rescue persons who are in danger.
- E. To control an arrested person who is either actively or passively refusing to comply with arrest, search, booking, custody or other lawful directives of an officer.
- F. To take a person into protective custody for a mental detainer, a court order, for incapacitation due to the consumption of drugs or alcohol, a suicide attempt, or for other types of emergency medical assistance. The officer may use the kind and degree of force which would be lawful if the officer was affecting an arrest for a misdemeanor without a warrant.

12.8 HEAD STABILIZATION

- A. Head Stabilization will only be used in the appropriate application of PPCT. "i.e. Counter pressure during use of pressure point application".
- B. Head Stabilization may be used if the offender is trying to use their head or mouth (i.e. Offending Appendage) as a, or in a assaultive nature against an officer. "Head butting / biting"

12.9 HIGH RISK STOPS

A police officer is authorized to place his/her firearm/weapon in the ready or shooting position when stopping a person or vehicle that the officer believes to have been involved in a felony, carrying a weapon, or poses a significant threat and danger to officers or a significant threat and danger to the community.

12.10 MEDICAL TREATMENT

- A. The East Lansing Fire Department shall be requested for medical evaluation and treatment in the following situations, when the scene is secure, and it is safe to do so:
- B. The injury is caused by a firearm.
- C. The injury is caused by any level of force or other weapon, and it appears the pain or discomfort is above and beyond what would normally be expected.

- D. The injured person requests medical treatment.
- E. When a taser (e.g. drive-stun or probe hit) has been discharged against an individual, the on-duty shift supervisor, arresting officer or JSO shall advise a licensed healthcare provider/paramedic. The individual shall not be lodged in a holding facility or jail until the individual has been transported and medically cleared by a licensed healthcare facility.
- F. Persons struck with launchable less-lethal projectiles (e.g. 40-mm or 12-gauge bean-bag) will be transported and medically cleared by a licensed healthcare facility. There may be times that these devices have been deployed and the target person flees; attempts will be made to apprehend this subject.
- G. When possible, photographs of use of force related injury(s) will be taken.

12.11 DOCUMENTING THE USE OF FORCE

- A. A detailed Department incident report shall be initiated whenever any use of force is used against an individual that rises above the level of cooperative handcuffing (e.g. non-compliant subject; detainment with no arrest). When documenting a use of force, officers shall include in the Department incident reporting system, the appropriate file class and "Use of Force" title in the report subject heading.
 - 1. It shall be the responsibility of the reporting officer to document the type of resistance encountered and the type of force used to overcome the resistance. In addition, the reporting officer shall document the officers present at the scene. Officers involved in documentation of the incident should provide detailed information that add to the totality of the circumstances.
 - 2. In the event any additional officers use actual physical force against an individual, it shall be that officer's responsibility to document their own "Use of Force" actions in a Supplemental Report.
- B. Removing a handgun, Taser or PCA out of a holster, and displaying it against an individual shall automatically be considered a "Use of Force" and a Department Incident Report shall be completed. However, a slung rifle does not require a Use of Force Incident Report if it is not pointed or held in the Low-Ready position toward an individual.
- C. Euthanizing an injured animal with a firearm requires an Incident Report (General – Non-Criminal; File Class 9909) to aid in tracking firearm discharges by on-duty ELPD personnel. This type of report does not need a Use of Force tab completed.
- D. Utilizing force to counter an aggressive animal in defense of self, another, or a Department canine will require a Use of Force Report (Use of Force; applicable File Class).

E. Immediate Required Reporting of Non-Deadly Force

1. When an officer uses any force in response to the resistance of an individual, it shall be reported to the duty supervisor immediately once the situation is under control.
2. If an injury occurs during the course of controlling the subject's resistance, the supervisor shall be notified as soon as possible. The officers on scene should call for medical attention if it is clear that medical attention is needed, or the supervisor may evaluate and determine if a medic should be called once they arrive on scene or are made aware of the injury / incident.
3. The Supervisor receiving the report of force shall do the following prior to going off-duty:
 - a. Assure proper documentation is completed prior to anyone involved going off-duty.
 - b. Review reports and videos related to the use of force if available.
 - c. Email Police Administration (Captain and above) the report number, if videos exist and a synopsis of the situation.
 - d. Refer to Section 12.11(D) for further instructions if it appears Excessive Force may have been used.
4. Police Administration will review the incident as soon as possible. If there are any issues the Chief of Police will decide what course of action should follow.

12.12 SUPERVISOR'S RESPONSIBILITIES

- A. Refer to Sub-Section 12.10 (E)
- B. Whenever a supervisor observes an incident, reviews a report, or reviews a video (MVR or BWC) relating to the Use of Force, it shall be the supervisor's responsibility to determine whether the degree of force used was justified.
- C. The justification for the use of force shall be in accordance with laws of the United States of America, the State of Michigan, the terms of this Policy and Procedure, Department training standards, or other rules and regulations of the East Lansing Police Department.
- D. In the event a determination is made that the amount of force used was excessive, the supervisor shall document the incident in a written letter to Police Administration. The Administration and Use of Force Team Supervisor will review the information and notify the Chief of Police if it appears that the amount of force

used was excessive. The Chief of Police shall determine if the incident should be investigated.

12.13 NECESSITY THAT OFFICERS BE ARMED

- A. All officers shall be armed while on duty (e.g. training, court). The Chief of Police may authorize exceptions.
- B. When wearing their assigned uniform, officers shall be armed with their primary handgun by carrying it in a Department approved holster.
- C. Officers assigned to patrol duties will have their assigned long gun accessible to them while on patrol. Those who have purchased long guns on the Officer Purchase Program (OPP) are expected to be and shall be in compliance with it.

12.14 DEPARTMENT ISSUED/AUTHORIZED USE OF FORCE WEAPONS

- A. Department issued weapons will be issued to officers by the Use of Force staff. Upon leaving employment with the Department all officers shall turn their Department issued weapons into a member of the Use of Force Staff. (SEE APPENDIX A)
- B. While on duty, officers shall carry only weapons and ammunition authorized by the Department.
- C. Authorized weapons are those weapons with which the officer has received departmental training on the weapon's proper and safe usage and the officer has qualified with.
- D. Authorized non-Department-issued weapons may be carried by officers of this department while on-duty if the weapon was purchased through the Officer Purchase Program, or upon the approval of the Chief of Police or his/her designee.

SECONDARY/BACK-UP FIREARMS:

- E. [REDACTED].
- F. [REDACTED].
- G. [REDACTED].
- H. [REDACTED].
- I. [REDACTED].

J. [REDACTED].

12.15 AUTHORIZED OFF-DUTY FIREARMS

A. [REDACTED].

B. [REDACTED]:

1. [REDACTED].

2. [REDACTED].

3. [REDACTED].

4. [REDACTED].

5. [REDACTED].

12.16 OFF DUTY INTERVENTION

A. An off-duty officer may take reasonable and appropriate police action when encountering apparent criminal activity or circumstances deserving police attention. [REDACTED]:

B. [REDACTED].

C. [REDACTED].

D. [REDACTED].

E. [REDACTED].

F. [REDACTED].

G. [REDACTED].

H. [REDACTED].

I. [REDACTED].

12.17 AMMUNITION

A. Sworn police personnel shall only carry department-issued ammunition for their department-issued duty weapons.

B. [REDACTED].

12.18 MAINTENANCE

- A. Police personnel will keep their issued weapons in good working order to maintain the integrity of the weapon. Some cleaning supplies will be provided as needed.
- B. Alterations and modifications are strictly prohibited unless performed by a department armorer.
- C. If a departmental firearm is not functioning properly, the officer will notify his/her immediate supervisor. The supervisor will notify the Use of Force Staff Supervisor or Armorer to have the weapon repaired or have a replacement issued.

12.19 USE OF FORCE TRAINING AND ASSESSMENT

- A. The Chief of Police shall approve the Use of Force training and assessment programs for Departmental personnel. Prior to the use of Department-issued weapons in the field, officers shall have completed an approved training and assessment program.
- B. The department shall schedule regular training and assessment programs for sworn police officers, Parking and Code Enforcement Officers (PACE) and Jail Service Officers.
 - 1. Police Officers: Firearms, Taser, PCA, Defensive Tactics
 - 2. PACE Officers: PCA, Defensive Tactics
 - 3. Jail Service Officers: Taser, PCA, Defensive Tactics
- C. Police personnel shall attend the required Use of Force training and assessment sessions to which they are assigned, unless excused by the Chief of Police or his/her designee. Unexcused absences will be processed according to disciplinary action. Absences will be tracked by the Use of Force Staff and may require a make-up training day with an Instructor.
- D. Sworn police personnel are required to pass the annual Use of Force assessment/qualification in order to maintain their status as a sworn police officer.
- E. Circumstances involving officers who cannot pass the annual Use of Force assessment because of temporary medical reasons will be considered on a case-by-case basis. The department may invoke restrictions and requirements by each situation.
- F. Failure to pass the Use of Force Qualification Assessments will involve the following:
 - 1. During annual firearms qualification and assessment, sworn officers will be given three opportunities on a specified date to qualify with their duty firearms. Failures will be documented by the Use of Force Instructor conducting

qualification assessments.

2. If unsuccessful, the Use of Force staff will schedule the officer with a Use of Force Instructor for a minimum of two hours of instruction that shall cover the deficient areas. They will then be given three opportunities to qualify. If they are unsuccessful, the Use of Force Supervisor will be notified, and an email will be sent to notify Police Administration.
3. If unsuccessful, the Instructor will notify the Use of Force Supervisor. The Staff will make timely arrangements to have the officer assigned with a Use of Force Instructor for an eight-hour remedial training day. Training in deficient areas will be provided and the officer will be given two opportunities to qualify.
4. If once again unsuccessful at qualifying with their duty firearms, the Use of Force Instructors who assessed the officer will meet with the Use of Force Supervisor, and complete a memorandum summarizing recent firearms training and noted deficiencies. The Use of Force Supervisor will then meet with Police Administration to determine a course of action as directed by the Chief of Police.

12.20 CONDUCT OF OFFICERS DURING TRAINING AND ASSESSMENT

- A. Personnel assigned to range training and assessment sessions shall comply with all range commands. Loud and unruly conduct will not be tolerated.
- B. Unsafe handling of firearms while at training and assessment sessions or careless/reckless discharge of a firearm will not be tolerated. Any sworn officer observed violating this order is grounds for removal from the range by the Use of Force Supervisor or his designee.
- C. The Use of Force Instructors who witness the violation shall notify the Use of Force Supervisor and prepare written report(s) outlining the prohibited conduct. This report will be forwarded to the Use of Force Supervisor before the end of the sworn officer's training day.
- D. The Use of Force Supervisor shall notify the Chief of Police in writing, when an officer is removed from the range.

**EAST LANSING POLICE DEPARTMENT
POLICY AND PROCEDURE
APPENDIX A
East Lansing Police Department**

Use of Force Weapons

- A. Department issued Handgun - [REDACTED]
 - 1. Deadly Force Weapon.

- B. Officer Purchase Program Handgun [REDACTED].
 - 1. Deadly Force Weapon.

- C. Department issued / or Purchased Shotgun. [REDACTED].
 - 2. Deadly Force Weapon.

- D. Department issued and/or Officer Purchase Program Patrol Rifle - [REDACTED].
 - 1. Deadly Force Weapon.

- E. Department issued Personal Chemical Agent (PCA) - [REDACTED]
 - 1. Intermediate Weapon.
 - 2. All sworn personnel, Parking and Code Enforcement Officers and Jail Service Officers shall be issued PCA. When in uniform, all shall carry the issued PCA on the duty belt in an approved holder.

- F. Department issued Conducted Energy Weapon - [REDACTED]
 - 1. Intermediate Weapon.
 - 2. All sworn personnel and Jail Service Officers shall be issued a Taser. When in uniform, all shall carry the issued Taser on the duty belt in an approved holster.

- G. Department issued Specialized Weapons.
 - 1. The East Lansing Police Department does own and utilize a variety of specialized weapons.
 - 2. Deadly Force Weapon and/or Less Lethal Weapon (based on application).
 - 3. Only personnel who have successfully completed a departmentally approved training and assessment course in the proper use and deployment of specialized weapons will be authorized to use them.

- H. [REDACTED]
 - 1. [REDACTED]
 - 2. [REDACTED]

- I. Other - Any item used in Self Defense or the Defense of Another in response to a Deadly Force Assault.

Department issued Use of Force weapons shall only be used in accordance with department approved training methods.