

**DURHAM POLICE DEPARTMENT**

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**POLICY #: 1.3.4.5**

**SUBJECT: Use of Force, Less Lethal Shotgun**

NOTE: This written directive is for the internal governance of the Durham Police Department, and as provided by RSA 516:36, is not intended and should not be interpreted to establish a higher standard of care in any civil or criminal action than would otherwise be applicable under existing law.

**PURPOSE**

The purpose of this policy is to establish the training requirement circumstances, deployment and after-action practices regarding the use of the Less Lethal Shotgun.

**POLICY**

It is the policy of the Durham Police Department to arm its officers with those tools necessary to defend themselves or third persons(s) from the use of force; the Less Lethal Shotgun is no exception. Durham Police Officers shall only use that force which is both reasonable and necessary to accomplish lawful objectives.

**GENERAL PROVISIONS**

- An officer has a duty to intervene to prevent or stop the use of excessive force by another officer.
- All uses of force shall be documented and investigated pursuant to this agency's policies.
- An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever possible and appropriate to reduce the need for force.
- Whenever possible and when such delay will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.

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## PROCEDURE

- Effective immediately, all officers shall have the Less Lethal Shotgun available to them while assigned to field duty as an alternative but not a substitute for other components of the force continuum. One such equipped shotgun shall be stored in the trunk of all patrol cruisers.
- Department issued Less Lethal Shotguns are not authorized for off-duty use.
- The Less Lethal Shotgun shall only be used in accordance with training.

## Authorized Weapons

- Remington 870 Pump Action Shotgun marked with yellow paint are for exclusive use as a Less Lethal Shotgun.
- The Less Lethal Shotgun shall be loaded with Defense Technology #23DS beanbag rounds ONLY. No other type of shotgun ammunition is authorized for use in any shotgun marked for less lethal application.

## Tactics

- The Less Lethal Shotgun is only that: *LESS* lethal. Its use is authorized as an alternative when deadly force would otherwise be authorized.
- Additional authorized uses of the less-lethal shotgun shall include, but is not limited to the following:
  - ❖ Keeping in mind the fluid and tumultuous nature of calls involving persons threatening self-harm, deadly force should not be used against persons whose actions are solely a threat only to themselves or property. Officers should still ensure the safety of the public, themselves, and other officers by ensuring deadly force options are available in case the person's actions turn threatening to officers or others. Officers may use the less lethal shotgun to prevent self-destructive acts of violence, such as any violent or potentially violent act by a suspect that is attempting or threatening to commit suicide by any means or cause serious bodily injury to themselves by any means.
  - ❖ Officers may use the less lethal shotgun to prevent self-destructive acts of violence, such as any violent or potentially violent act by a suspect that is attempting or threatening to commit suicide by any means or cause serious bodily injury to themselves by any means.
  - ❖ Where feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use force. This shall not prevent an officer from using reasonable force if such notification is not feasible or safe.

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- ❖ Officers may use the less lethal shotgun to prevent an apparently unarmed barricaded suspect from re-acquiring cover or concealment when it is believed that the suspect was previously armed and that failure to stop the suspect could result in the suspect re-arming themselves.
- ❖ In crowd control situations, officers may use the less lethal shotgun to prevent specifically identified suspect(s) from throwing objects (such as rocks, bottles or other apparently hard objects) that could cause serious bodily injury to police or third persons. Officers shall NOT use the less lethal shotgun to prevent suspects from throwing objects that would cause damage to property only.
- ❖ Officers may use the less lethal shotgun to prevent suspects from *preparing* any explosive device such as “Molotov Cocktails” or other destructive devices. However, the officer shall carefully weigh whether the use of a less lethal weapon will be sufficient to stop the suspect from committing a potentially deadly act.
- The Less Lethal Shotgun shall be used at distances greater than 5 yards, but less than 25 yards.
- The only consideration when firing the Less Lethal Shotgun shall be to stop an act as described above on the part of an aggressor. However, as this is a less lethal attempt to stop an act of aggression or a potential act of aggression, officers using this weapon system should avoid head shots when possible.
  - ❖ When the Less Lethal Shotgun is used, a second officer should be ready to employ deadly force immediately should the Less Lethal Shotgun fail to stop the confrontation.

### **Precautions**

- The Less Lethal Shotgun shall be loaded with the Def Tec #23DS beanbag rounds only. Officers should routinely check the ammunition in the Less Lethal Shotguns to ensure that there is no other ammunition loaded. Whenever possible, officers deploying the less-lethal shotgun at an incident should check and re-check the less-lethal shotgun to ensure that ONLY less-lethal rounds have been loaded into the weapon.
  1. Any officer that discovers lethal rounds in a shotgun designated for less lethal use shall report the discrepancy to their supervisor immediately.
  2. Any officer that discovers anything but less lethal rounds into a shotgun designated for less lethal application shall report the incident to their supervisor immediately. The supervisor shall take immediate steps to stop the activity and shall make a written report to the Deputy Chief.

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3. The Deputy Chief shall initiate disciplinary proceedings against the subject officer.
  - The Less Lethal Shotgun is only to be used for defensive purposes and in overcoming hostile resistance, which includes multiple assailants, armed assailants, or assailants whose physical strength or ability would overcome a police officer if not engaged with the Less Lethal Shotgun.
  - The Less Lethal Shotgun shall not be used against subjects who are physically engaged with other officers or not isolated from bystanders.
  - Recognize that the Less Lethal Shotgun is a less lethal weapon and may be an inappropriate level of force against an attacker armed with a firearm, knife or other deadly weapon.
  - Once the suspect is in custody, if the Less Lethal Shotgun has been used against the suspect, the arresting officer shall immediately call an ambulance to medically evaluate the suspect.
  - Officers using the less-lethal shotgun should recognize that the physical effects of the less-lethal bean bag rounds may not be immediately apparent, and that continuing to fire less-lethal rounds at a suspect may be fruitless, and may cause deadly injury. Once the officer has made reasonable attempts to stop a suspect by using the less-lethal shotgun, the officer(s) should stop firing the less lethal shotgun and consider other alternatives. However, as always, officer safety and the safety of third persons shall be the first consideration.

#### **Placement on the Force Continuum**

- The Less Lethal Shotgun is considered an alternate use of deadly force with the intention being that it is a *less* lethal option.
- The Less Lethal Shotgun is to be used after other less lethal tactics have failed or would be futile for the officer to attempt those tactics.
- The Less Lethal Shotgun is a force option that may be employed at any time as appropriate and as dictated by:
  - (a) Threat levels
  - (b) Relative capability of officer, such as physical exhaustion, martial arts skills, multiple suspects, etc.
  - (c) Special circumstances that may require you to escalate quickly to the Less Lethal Shotgun skipping other steps on the force continuum.
- **THE LESS LETHAL SHOTGUN SHALL NEVER BE USED ON A PASSIVELY RESISTING SUBJECT.** It shall only be used against ACTIVE

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AGGRESSIVE RESISTANCE or a credible threat of aggressive resistance coupled with an apparent ability to carry it out.

- Intentional shots to the neck or head shall be avoided unless defending against a direct deadly threat.
- Intentional shots to the chest should be avoided unless the immediate need to stop the suspects' behavior outweighs the risk of deployment and no other viable suspect target can be engaged.
- Generally accepted suspect targets include:
  - Arm below the elbow and above the fingers;
  - Thigh;
  - Leg below the knee; and,
  - Buttocks.
- Officers must ensure that proper sighting is acquired after each shot to prevent accidentally striking the head, neck or chest when otherwise unauthorized.

#### **Use against an Officer**

- If a suspect gains control of the officers' Less Lethal Shotgun disengage and consider other use of force options. If the suspect attempts to gain control of the Less Lethal Shotgun, the officer shall employ weapons control techniques or deadly force as necessary.
- Your response to being shot with a Less Lethal Shotgun round may include deadly force if you are in imminent danger of death or serious bodily injury.

#### **Care and Maintenance**

- After each use, report to a shotgun instructor to see if the Less Lethal Shotgun has been damaged.
- The Shotgun instructor shall prepare a Less Lethal Shotgun weapon inspection report and submit a memo to the Captain or his designee only when the weapon is found to be damaged.
- If the Less Lethal Shotgun becomes wet or dirty, it needs to be wiped down to clean it and remove moisture. However, do not disassemble this weapon beyond an authorized field strip; consult the shotgun instructor.
- The Shotgun instructor shall inspect each Less Lethal Shotgun annually at the scheduled training and shall prepare a weapon inspection report if discrepancies are found.

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- The Captain shall maintain a record of each Less Lethal Shotgun as part of the agency firearms inventory.

### **Training**

- No officer shall be issued or permitted to use the Less Lethal Shotgun until he/she has been trained in its use by a properly certified Department Shotgun Instructor or the Police Standards and Training Council or a similar course in this or another state.
- Shotgun instructors shall complete a Force Option Training Report for each officer trained.
- Officers shall re-train with the Less Lethal Shotgun annually, to include live firing of the weapon system at one of the two training sessions.