

Rev: 5-31-06, 3- 4-08, 2-7-12, 3-21-12, 3-30-12, 4-13-12, 12-6-12,11-13-13, 12-01-17, 2-12-19, 8-28-19

DURHAM POLICE DEPARTMENT

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Durham, New Hampshire 03824
(603)868-2324**

POLICY #: 1.3.6

SUBJECT: Use of Force, Report and Review

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.

**ADMINISTRATIVE REPORTING & INVESTIGATION OF
USE OF FORCE**

- ◆ Whenever a member discharges a firearm for other than training, the incident shall immediately be reported to a superior and documented within a Response to Resistance Report within 24 hours to the Deputy Chief.
- **Whenever an employee takes an action involving a firearm that results, or is alleged to have resulted in death, injury, or serious bodily injury to another person, the Chief of Police may use discretion and waive the 24 hour Response to Resistance reporting requirement.** The Durham Police Department believes the mental health and welfare of the officer(s) involved, outweighs the demand for a 24 hour reporting requirement in most cases.
- In all other cases, a Response to Resistance Report must be filed within 24 hours whenever an officer applies physical force to overcome any degree of resistance, other than the “simple” application of handcuffs, when making an arrest or taking someone into custody for any reason.
- In most cases where more than one officer is involved, the initial contact officer shall file the Response to Resistance Report. The initial contact officer will list the names of all other additional officers utilizing any degree of force while assisting in the apprehension of the documented suspect, on the Response to Resistance Report Form. The additional officer’s shall be required to complete supplemental reports as a part of the attached Offense/Arrest report.
- ◆ **In cases involving a firearm that results or is alleged to have resulted in death, injury, or serious bodily injury to another person, where more than one officer is involved, ALL officers shall file a Response to Resistance Report.**
- ◆ Whenever an employee takes an action that results, or is alleged to have resulted, in death, injury, or potential injury to another person, or applies force

Rev: 5-31-06, 3- 4-08, 2-7-12, 3-21-12, 3-30-12, 4-13-12, 12-6-12,11-13-13, 12-01-17, 2-12-19, 8-28-19
through the use of any other action resulting, or could potentially result in injury or death, the incident shall be reported in writing to the Chief of Police, or in his absence, his/her designee.

- ◆ In the case of all incidents requiring immediate report, the Deputy Chief shall, in the absence of an immediate supervisor, designate a person or persons to conduct an on-the-scene investigation without delay, and both the designated investigator(s) and the officer involved shall file the appropriate written report(s) as to all the facts and circumstances of the incident as soon as possible. This report shall be submitted to the Deputy Chief for review. At a minimum, the written report will include:
 1. The names and addresses of victims and witnesses,
 2. The extent and treatment of any injuries, the hospital where treated, and if available, the name of the treating physician,
 3. The reasons and circumstances that required the use of a firearm.
- ◆ No copies of this report will be made or retained by the parties involved. The highest-ranking officer present will ensure that the forms are completed properly and correctly routed.
- ◆ If the incident resulted in death or serious bodily injury to another person, or if any injury results from the use of a firearm, the employee whose action caused the injury shall be relieved of line duty with pay pending administrative review, and psychological and peer counseling shall be made available by the department at no cost to the officer and his/her immediate family members. The firearm used in the incident shall be confiscated by the investigating officer(s) and, unless there is just cause not to do so, a replacement weapon shall be issued to the officer.
- ◆ If an employees' action results in death or serious bodily injury, that employee shall be required to be evaluated by a licensed psychologist selected or approved by the Durham Police Department before they are permitted to return to duty.
- ◆ If the incident resulted in death or serious bodily injury the Chief of Police shall appoint an Administrative Review Board consisting of three officers of equal or superior rank who shall be responsible for reviewing the circumstances surrounding the incident. When reviewing the incident, *only the facts and circumstances known to the employee at the time of the shooting or the use of force may be considered by the Review Board.*
- ◆ Every officer witnessing an incident that requires a Response to Resistance Report will complete a supplemental report detailing their observations. *Only the initial contact officer needs to complete the Response to Resistance Report.*

Rev: 5-31-06, 3- 4-08, 2-7-12, 3-21-12, 3-30-12, 4-13-12, 12-6-12,11-13-13, 12-01-17, 2-12-19, 8-28-19

- ◆ All reports made pursuant to this policy shall be reviewed by the Chief to ensure compliance with the law and this policy. Appropriate disciplinary action or criminal charges may be filed if warranted.
- ◆ All documentation of a use of force incident will be included on a Response to Resistance Report form, including the original incident report.
- ◆ The Response to Resistance Report form will include the following information:
 1. Information about the death, hospitalization, injury, or medical treatment received by officer(s) or other involved persons, including how each person was transported from the scene,
 2. Any striking of a person with hands, feet, baton, or other such instrument,
 3. The presence of any blood or broken skin on the officer(s) or any other person,
 4. Any visible bruises or swelling,
 5. Any complaint of injury made by any person in the presence of a police officer, that is the result of the incident in question,
 6. Any discharge of a firearm, including accidental discharges,
 7. If photographs were taken, include who took them, who has custody of them, and where they can be located.
- ◆ Any injuries to involved persons other than the employee(s), including self-inflicted wounds, which occurred before the officer(s) arrival, will be fully described in the narrative section of the officer's incident report.
- ◆ In all cases involving the use of deadly force, copies of dispatch tapes that contain any radio or telephone conversations pertaining to the incident will be requested.
- ◆ All statements to the media concerning such incidents shall be issued only with the approval of the Chief or his/her designee.
- ◆ Any use of force, as defined in this policy, which does not require a separate RESPONSE TO RESISTANCE REPORT, shall be recorded in an arrest or investigation report. The report shall include the same information required for a RESPONSE TO RESISTANCE REPORT, as applicable.
- When deadly force is used to destroy an animal for humanitarian reasons, it is not necessary to copy dispatch tapes, or for separate reports to be written by witnessing officers.

ADMINISTRATIVE REVIEW

- ◆ All reported use of force, involving deadly and less-lethal force, will be reviewed by the department to determine whether applicable use of force policies, or any other rules or procedures, were violated. Consideration will also be given to

Rev: 5-31-06, 3- 4-08, 2-7-12, 3-21-12, 3-30-12, 4-13-12, 12-6-12,11-13-13, 12-01-17, 2-12-19, 8-28-19
whether the policy was clearly applicable in the circumstances in question, and whether it was effective to cover the situation.

1. All Response to Resistance Reports, and Arrest/Investigation Reports that detail a use of force, shall be reviewed and signed by the involved officer's sergeant if possible. Due to the 24 hour reporting requirement, this sometimes may not be feasible. The next available sergeant shall review and sign the report in the absence of the involved sergeant. The sergeant shall then forward the report to the Deputy Chief.
 2. The Deputy Chief may assign the review to an instructor certified in the use of force involved, for a comprehensive review and comparison of the use of force to existing departmental policies and applicable State laws. The review may include interviews of the involved officers, a "walk-through" of the place of incident, and requests for additional written documentation.
 3. The Deputy Chief shall sign the Response to Resistance Review and submit the findings to the Chief of Police within one business week if the incident was a violation of policy or law.
 4. If a violation of policy or State law is identified, it will be brought to the attention of the Chief of Police, who shall then assign an Internal Affairs Investigation to the Captain. The Captain shall conduct an Internal Affairs Investigation in accordance with the Internal Affairs policy of this manual.
- ◆ All findings of training inadequacies or policy violations will be referred to the Chief of Police through the chain of command for resolution or disciplinary action. Inadequacies in the structure or content of the policy will be referred to the Chief of Police for resolution. Modifications may be made with the approval of the Chief of Police.
 - ◆ All reports related to a use of force incident will be retained as required by state law.
 - ◆ Each year, during January, the Captain will prepare a summary analysis of all incidents involving force during the preceding calendar year. The Chief of Police will review this report.
 - ◆ The Captain shall conduct an annual review of all assaults on law enforcement officers to determine trends or patterns, with recommendations to enhance officer safety, revise policy, or address training issues.

CRIMINAL INVESTIGATIVE AUTHORITY

Death of Person in Official Custody

- ◆ The witnessed or unattended death of any person while in custody or while being placed under arrest for a criminal offense shall be reported to the Office of the Attorney General and the Strafford County Attorney's Office. This includes the suspected or actual suicide of a person who is in custody.

Officer-Involved Incidents

- ◆ **The responsibilities for conducting any investigation and processing any crime scene(s) related to the use of deadly force or the use of less-lethal force resulting in the death or serious bodily injury of any person shall be determined by the Attorney General's Office.**
- ◆ The use of deadly force, as defined by RSA 627:5, by any Durham Police Officer or the use of deadly force against any law enforcement officer, resulting in death or injury of any person, or any other significant event involving the use of deadly force by or against a law enforcement officer in which public safety may be jeopardized shall be reported immediately to the Office of the Attorney General and the Strafford County Attorney's Office.
- ◆ The use of less-lethal force by any Durham Police Officer, resulting in serious bodily injury to another or whenever any person is transported by ambulance due to the actions of an officer, shall be reported immediately to the Deputy Chief or designee.
- ◆ The Deputy Chief or designee shall have the authority to notify the Strafford County Attorney's Office or New Hampshire State Police and request their assistance with any related investigation if deemed appropriate.
- ◆ The use of less-lethal force by any Durham Police Officer resulting in the death of any person shall be reported immediately to the Office of the Attorney General and the Strafford County Attorney's Office.
- ◆ The on-call assistant attorney general can be reached 24 hours a day at **(603) 931-9060**. *(Refer to Attorney General's "Updated Procedure for Reporting of and First Response to Homicides, Suspicious Deaths, Deaths of Person in Official Custody and Officer Involved Incidents" memo for additional phone numbers if the on-call assistant attorney general cannot be reached)*

Rev: 5-31-06, 3- 4-08, 2-7-12, 3-21-12, 3-30-12, 4-13-12, 12-6-12,11-13-13, 12-01-17, 2-12-19, 8-28-19

- ◆ After contacting the Attorney General's Office, notification should next be made to State Police Dispatch at (603) 271-3636 if the State Police will be responsible for the investigation. State Police Dispatch thereafter shall notify the following:
 - **State Police Major Crimes Unit**
 - **Office of the Chief Medical Examiner**
 - **County Attorney**
 - **County Sheriff**
- ◆ Unless the victim has been officially pronounced dead by the medical examiner or deputy medical examiner prior to notification of the Attorney General's Office, the on-call assistant attorney general will consult with the Office of the Chief Medical Examiner in making a decision as to who will view the victim and pronounce the person dead.

Public Information Plan

- ◆ Public statements pertaining to homicides, suspicious deaths or officer involved incidents handled by the Attorney General's Office shall be authorized solely by the Attorney General's Office. Consistent with the requirements of the Federal and State Constitutions, statutes, and court rules, all statements provided by the Attorney General's Office are worded to comply with ethical rules while providing transparency to the on-going investigation.
- ◆ The Chief of Police or designee shall authorize any public statement pertaining to incidents involving less-lethal uses of force that resulted in serious bodily injury. The release of any public information will follow the protocol found in policy (54.1.1) Public Information.

Victim/Witness Assistance Program

- ◆ Next-of-Kin notifications will remain the responsibility of law enforcement.
- ◆ The assistant attorney general assigned to the suspicious death, homicide or officer involved incident will notify the on-call Victim/Witness advocate regarding the incident.
- ◆ The following checklist has been put together to assist the supervisors and the administration when dealing with an officer involved shooting scenario. Scenario's such as this are complicated and confusing and the checklist may assist the organization during the initial and later stages of the ensuing investigation.

Rev: 5-31-06, 3- 4-08, 2-7-12, 3-21-12, 3-30-12, 4-13-12, 12-6-12,11-13-13, 12-01-17, 2-12-19, 8-28-19

DURHAM POLICE DEPARTMENT
Officer Involved Shooting Checklist

SUPERVISOR

- Notify Dispatch, location, medical and Injuries
- Secure scene/establish perimeter
- Render medical assistance to injured
- Check all officers for injuries/wounds
- Contact-Brief Deputy Chief/his designee
- Contact State Police/AG's Office
- Exchange weapons with officers involved and ensure that the appropriate serial number and officer's information is logged
- Notify Union Representative
- Photographs (If the situation allows. Do not enter crime scene and disturb evidence)
- Secure involved cruisers: Do not disturb any evidence, make sure cruisers are not left unattended
- Call in next scheduled patrol shift

ADMINISTRATION

- Chief to notify insurance company
- Notify all officers involved in writing of Administrative Leave within twelve (12) hours of the incident
- Notify all department members of the incident as soon as practical, so information is not received through press
- Meet with officers on Administrative Leave regarding protocol on steps prior to returning to work
- Following shift called in to cover officer put on Administrative leave
- Medical evaluation for officer involved requested/needed
- Meet with Attorney General's Office
- Response to Resistance report completed prior to meeting with the Attorney General's Office
- Administrative review of Response to Resistance report
- Ensure that all employees are fully informed of the availability of the Employee Assistance Program (EAP)
- Schedule Post Shooting Debriefing

Rev: 5-31-06, 3- 4-08, 2-7-12, 3-21-12, 3-30-12, 4-13-12, 12-6-12,11-13-13, 12-01-17, 2-12-19, 8-28-19

Training

- ◆ All Durham Police Department Supervisors responsible for the management of use of force incidents resulting in serious bodily injury or death, or acting as liaisons for the department in cases involving the Attorney General's Office, will receive related training as the needs of the Durham Police Department allow. Although training specific to that topic may not be readily available, training such as Crime Scene Management and Homicide Investigation will be considered acceptable.

- ◆ All personnel potentially impacted by any use of force related incident shall be responsible to review this policy annually.