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Approval: Chief of Police	Manual: Policy and Procedure			

I. PURPOSE

The purpose of this policy is to establish guidelines for the Kinston Police Department personnel for using force in the performance of job related functions.

II. DEFINITIONS

- A. Force: To compel by physical means; physical contact or action beyond mere restraint. (The use of handcuffs does not constitute the use of force.)
- B. Deadly Force: Force which is intended to cause death or serious physical injury or which the officer reasonably believes will create a substantial risk of death or serious physical injury.
- C. Deadly Weapons: Weapons through normal and intended use are likely to cause death or serious physical injury. This category includes all issued firearms.
- D. Less Lethal Weapons: Weapons through normal and intended use are less likely to cause death or serious physical injury. This category includes batons, OC Spray, EMDs, bean bag munitions and SAGE weapon.
- E. Reasonable Belief: That belief that would cause a reasonably trained law enforcement officer to act or think in a similar way under similar circumstances.
- F. Serious Physical Injury: An injury that creates a substantial risk of death; causes serious, permanent disfigurement; or, results in long-term loss or impairment of the function of any bodily member or organ.
- G. OC Spray: Aerosol spray based on the active natural ingredient oleoresin capsicum, a derivative of various species of cayenne pepper.
- H. CEW: Conducted electrical weapon is an electroshock weapon. It is used to deliver an electrical impulse by means of probes launched from the device or by direct contact with the device.

III. POLICY

- A. In accordance with North Carolina General Statute 15A-401(d), an officer is justified in using force upon another person when, and to the extent that he/she reasonably believes it, necessary:
 - 1. To prevent the escape from custody or to effect the arrest of a person who the officer reasonably believes has committed a criminal offense, unless the officer knows that the arrest is unauthorized; or,

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2. To defend himself or herself or a third person from what the officer reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.
- B. Kinston Police Department officers are justified in using DEADLY physical force upon another person only when it is, or appears to be, reasonably necessary:
1. An officer may use deadly force to protect himself/herself or others from what the officer reasonably believes to be an imminent threat of death or serious physical injury.
 2. To affect an arrest or to prevent the escape from custody of a person who the officer reasonably believes is attempting to escape by means of a deadly weapon or who by his/her conduct or any other means indicates that he/she presents an imminent threat of death or serious physical injury to others unless apprehended without delay.
 3. The use of force is permissible only to the extent reasonably necessary for an officer to accomplish his/her lawful purpose. **EXCESSIVE FORCE IS PROHIBITED.**
 4. The age and/or gender of the aggressor will not be considered a limiting factor for the officer who is threatened with death or serious physical injury.
 5. During the course of an arrest or investigation, an officer may draw and point his/her weapon whenever the officer reasonably believes that such action is necessary to protect against an imminent threat of death or serious physical injury to himself/herself or others.
 6. The use of deadly force against a fleeing felon who does not pose a significant and imminent threat of death or serious physical injury to the officer or others is prohibited.
 7. Justification for the use of deadly force must be limited to the facts known to the officer or perceived by the officer at the time of the decision. Facts unknown to the officer must not be considered in later determining justification of the use of deadly force.
 8. An officer is justified in using the degree of force that the officer reasonably believes to be necessary for self-defense or to defend others from circumstances that are reasonably believed to be life threatening or potentially the cause of serious physical injury. All force must be reasonably necessary. The primary goal in a law enforcement/subject confrontation is control of the subject. In each situation the officer must make a conscious decision, based upon training and experience, to escalate or de-escalate the level of control.
 9. Use of force decisions must be based on the capacity for control versus the potential for death or serious physical injury. Force must not start before resistance starts and must stop when resistance stops.

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Force cannot be used to affect an unlawful arrest because an individual's resistance to unlawful arrest is lawful as long as it is not excessive.

C. The following guide represents levels in the use of force decision-making process:

1. Professional Presence - Verbal Command

The officer assumes control of the situation through announced and/or uniformed appearance and professional bearing. If presence alone fails, the officer begins verbal persuasion, dialogue, and command warning if necessary.

2. Soft Hands

The officer places hand(s) on the suspect and advises the suspect that he/she is under arrest. Any resistance beyond this point is unlawful and must be countered by the officer.

3. Pain Compliance

Officers may use pressure point control, OC Spray or CEW device. If practical, the subject should be warned that OC Spray or CEW device will be used. Once the suspect is under control, the pain application must be released.

4. Mechanical Compliance

Usual methods of mechanical compliance include wrist locks and arm bar or other "come along" techniques. These techniques counter joint pressure using leverage that may be applied using handcuffs and baton. Orthopedic injury may occur at this step. Proper techniques must be used.

5. Impact

Impact weapons are used only when mechanical control methods are ineffective or inappropriate. Authorized impact weapons include the expandable baton which an officer may carry only after being trained. The expandable baton is the only impact weapon issued by the department. Blows should be initially directed toward nonlethal areas of the body. Force used by the officer should be appropriate to the force used against the officer. The police canine also serves as an impact weapon.

6. Less Lethal Extended Range Impact Devices

Exact impact weapons are employed only after lethal cover is in place. These weapons are designed to provide a level of force stronger than an impact weapon but with less potential for causing death or serious injury than conventional methods. Officers must be trained to employ a specific exact impact weapon before being authorized to use that specific weapon.

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7. Deadly Force

An officer will apply deadly force only to protect himself or herself or others from death or serious injury, or to apprehend a fleeing felon when all other means of apprehension have been exhausted and the suspect presents an imminent risk to the community. When practical, a verbal warning will be given. Officers' reactions will be dictated by the hostile actions of the suspect and the need for immediate control.

D. Limitations on the Use of Deadly Force

1. The use of a firearm for the application of deadly force is authorized only as justified by state law and departmental directives. Officers will exhaust all other practical and effective means of control before using a firearm. Officers are authorized to discharge a firearm at another person in the performance of duty only when deadly force is justified.
2. Officers will fire their weapons only to stop and prevent an assailant from completing a potentially deadly act. For maximum stopping effectiveness and minimal danger to innocent bystanders, that objective is best accomplished by shooting at the center of the target presented.
3. Officers are prohibited from discharging firearms when it appears likely that an innocent person may be injured, except as an ultimate measure of self-defense or in the defense of another person when the suspect or violator is using deadly force.
4. Officers are prohibited from discharging firearms at or from, a moving vehicle except as an ultimate measure of self-defense or in the defense of another person when the suspect or violator is using deadly force.
5. Officers are prohibited from discharging their firearms for the purpose of firing warning shots.
6. The killing of an animal by firearm is justified:
 - a. For self-defense.
 - b. To prevent substantial harm to the officer or another person.
 - c. When the animal is so badly injured or sick that compassion requires its relief from further suffering and there is need for immediate action; in such instances, the Shift Captain should be notified prior to the firearm use, if possible. A seriously sick or injured animal may be destroyed only after reasonable efforts have been made to request assistance from the owner or agency responsible for the disposal of animals. The destruction of vicious animals should be guided by the same directives set forth for self-defense and to ensure the safety of others.

E. Display of Firearm

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1. Except for general maintenance, storage, or authorized training, officers should not draw, point, or exhibit their firearms unless circumstances create reasonable cause to believe that it may be necessary to lawfully use the weapon in conformance with state law and departmental directives.
2. The pointing of a firearm toward another person constitutes a use of force but does not constitute the use of deadly force. After such an incident occurs, the officer will verbally notify his/her supervisor as soon as possible, complete an Incident Report, if appropriate, or written memorandum detailing the circumstances of the incident and forward through his/her supervisor to the Shift Captain.

The Shift Captain will conduct a preliminary investigation of the incident and will submit an overview memorandum to the appropriate Major, along with the Incident Report or officer's memorandum. The appropriate Major, will review all reports and may refer the incident to the Professional Standards Section for further follow-up. The appropriate Major, will advise the Chief of Police of the incident and any recommendations. A Use of Force Form should be completed if weapon is pointed at subject except during a SWAT operation.

F. Strangle/Choke Holds and Head Blows with Impact Tools

1. Strangle and choke holds and other similar holds that choke or restrict a person's ability to breathe or the flow of blood to the brain are prohibited except when the officer reasonably believes there is an imminent threat of serious physical injury or death to himself/herself or a third person and that he/she has no other reasonable alternative for defending himself/herself or another person.
2. An officer's use of any inanimate object to strike a blow to a person's head is prohibited, except when the officer reasonably believes there is an imminent threat of serious physical injury or death to himself/herself or a third person and that he/she has no other reasonable alternative for defending himself/herself or another person.

G. Off-Duty Actions Relating to Use of Force

1. Off-duty officers should refrain from taking forcible police action except in circumstances that seriously threaten life, valuable property, or public order.
2. In other circumstances, the most appropriate police action is to request the assistance of an on-duty officer at the first opportunity.
3. Before taking any action while off duty, officers should carefully consider the risks to themselves and to others that may be caused by sudden confrontation with armed criminals or suspects. The off-duty officer should identify himself/herself as a law enforcement officer before taking action.
4. No unarmed off-duty officer will be subjected to disciplinary action for failure to take action if that action would reasonably require being armed.

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H. Issuance of Weapons/Use of Force Training

1. The use of unapproved, non-issued weapons or ammunition, either deadly or non-deadly, is prohibited. All weapons, deadly and non-deadly, and ammunition must be either issued by the department or approved by the Chief of Police or his/her designee.
2. No weapon will be issued for field use until the employee has demonstrated an acceptable level of proficiency in its use as established by the Kinston Police Department. Before being authorized to carry a firearm or other approved weapon, employees will be issued copies of, and instructed in, departmental directives governing use of force and weapons. In-service training for all sworn employees on the use of deadly and non-deadly force will occur annually.
3. Officers may be required to defend themselves against an attack with whatever means are available, which may include items not normally considered to be weapons. These incidents will not be considered as evidence that establishes the inappropriate use of force. Each incident resulting in an injury or death will be investigated to determine the factual circumstances surrounding the event.

I. Post Use of Force Procedures

1. Whenever an officer takes any action that results, or is alleged to have resulted, in the injury or death of another person, and/or applies force with or without the use of deadly or non-deadly weapons, including the accidental or intentional discharge of a firearm (excludes training, ballistics examinations, incidents involving the destroying of animals, and lawful recreational shooting or hunting in any jurisdiction, unless such lawful recreational shooting results in death or injury to any person or damage to any property), the officer will immediately:
 - a. Determine the physical condition of any injured person and render first aid when appropriate.
 - b. Request necessary emergency aid.
 - c. Notify the Shift Captain.
 - d. Notify the Patrol Major and the Chief of Police, if serious injury or death occurs.
 - e. Protect his/her weapon for examination and submit the weapon to a supervisor upon request.
 - f. If a firearm was used as deadly force, a supervisor will take the weapon from the officer and submit it to the Evidence Custodian for entry as evidence. If possible, the officer's supervisor should take the weapon from the officer after returning to the department. The weapon will be handled in the same manner as any other firearm seized as evidence. Another firearm will be issued and

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training will be conducted only after receiving approval by the Chief of Police or appropriate Major.

- g. Remain at the scene, unless injured, until instructed otherwise by the responding supervisor.
 - h. The Shift Captain at the scene may instruct the officer to respond to another more appropriate location. For incidents involving the use of deadly force, the officer's supervisor should remove the officer from the scene and return to the Police Station as soon as possible.
 - i. Prepare and submit a detailed Incident Report and Use of Force Report through the Shift Captain.
2. Following incidents involving the use of deadly force or any other critical incident where an officer's actions will undergo the scrutiny of a criminal investigation, the officer's supervisor should (at the appropriate time):
- a. Encourage the officer to contact a family member or friend to join him/her at the department or another appropriate location, and provide transportation for the family member or friend if needed.
 - b. Contact the Employee Assistance Plan psychologist, as appropriate.
 - c. Ensure that the involved officer is interviewed and allowed to wait in an area separate from the area used to interview suspects. A period of rest and recovery for the officer is recommended, if possible, prior to the interview.
 - d. Review with the involved officer the events and activities that will likely take place, such as an SBI investigation, required psychological debriefing, etc.

J. Weapon Discharge while off duty and/or in another jurisdiction

- 1. In the event that an officer's weapon is discharged in another jurisdiction, the officer will immediately notify the appropriate law enforcement agency in that jurisdiction and contact an on-duty Shift Supervisor of the Kinston Police Department, as soon as possible.
- 2. In the event that an officer's weapon is discharged outside the line of duty, the officer will immediately advise the Communications Center of the incident and request that the on-duty Shift Supervisor be notified. The officer should secure the area of the shooting, if appropriate, and await the arrival of the supervisor.

The supervisor will determine if an investigation is required and, if so, will conduct an investigation as if the weapon was discharged within the officer's official capacity. If the supervisor determines that an investigation is not required, the officer will forward a memorandum detailing the facts of the incident to his/her Shift Captain as soon as practical.

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3. In the event that an officer's weapon is discharged by an individual who is not employed by the department, the officer will follow the same procedure as if he/she had fired the weapon.
4. The Shift Captain will conduct a preliminary investigation of the incident and will submit an overview memorandum to the appropriate Major, who will forward, to the Professional Standards Section, along with the Incident Report and Use of Force Report.
5. The appropriate Major, refer the incident to the Professional Standards Section for further follow-up and forward to the Chief of Police.
6. The Professional Standards Section will follow up in accordance with departmental protocol pertaining to internal affairs.
7. The Chief of Police will review all Use of Force reports and will determine what further action is required.

K. Investigation of Deadly Force

1. The Chief of Police may request that the State Bureau of Investigation (SBI) assume responsibility for any criminal investigation arising from an incident involving the use of deadly force (see **Kinston Police Department Policy and Procedure 200-15 for additional policy for Officer Involved Shootings**).
2. An administrative investigation will be conducted for each incident involving the use of deadly force. This investigation will be the responsibility of the Professional Standards Section and will be subordinate to any criminal investigation.
3. The Chief of Police will submit deadly force data to the Uniform Crime Records Section of the Federal Bureau of Investigation (FBI) for every incident that culminates in the death of a citizen as a result of the use of force by a police officer employed by the department.
4. The department will compile data on every non-training shot fired by departmental employees.

L. Relief from Duty

1. An officer directly involved in an incident involving the use of deadly force, that results in serious physical injury or death, will be placed on non-disciplinary suspension or will be assigned to an administrative duty assignment, as designated by the Chief of Police, during the investigation of the incident. This action is taken in order to protect the interests of the individuals involved, and the department, while an investigation is being conducted and does not imply or indicate that the officer acted improperly.

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2. If on non-disciplinary suspension without an administrative duty assignment, the officer will remain available for departmental interview and will be subject to recall to duty at any time. Upon returning to duty, the officer may be assigned to an administrative duty assignment for a period of time determined appropriate by the Chief of Police.

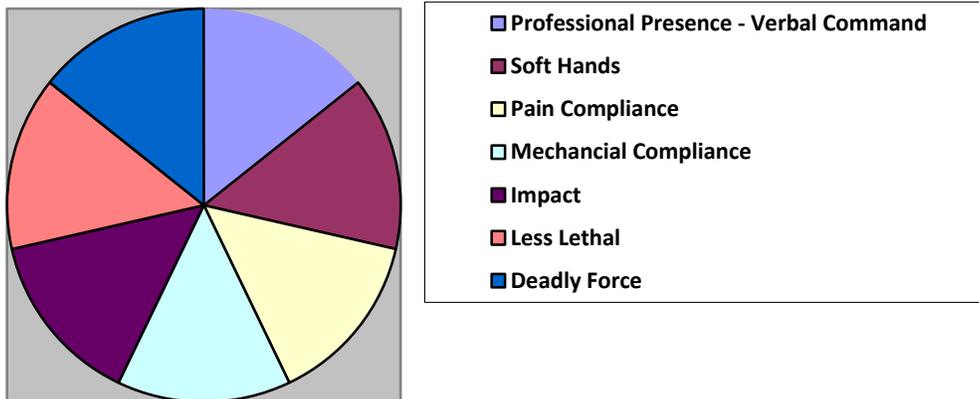
M. Incident Review Process

1. The Professional Standards Section will review all incidents involving the use of deadly force. Incidents involving the application of non-deadly force may be presented to the Professional Standards Section when so ordered by the Chief of Police.
2. The Professional Standards Section will have access to all available documents concerning the incident, including copies of investigative reports.
3. The Professional Standards Section may solicit testimony from officers and witnesses.
4. The Professional Standards Section will develop findings and make recommendations to the Director of Public Safety in consideration of the following:
 - a. Compliance with departmental directives;
 - b. Tactics used;
 - c. Training issues;
 - d. Quality of supervision;
 - e. Disciplinary issues; and,
 - f. Critique of post-incident investigation.

N. Critical Incident Debriefing

1. All officers directly involved in any incident involving the use of deadly force, that results in injury or death, will be required to undergo a debriefing with a psychologist provided by the department as soon as possible within 48 hours. Involved officers also will be required to make one follow-up visit with the psychologist within 60 days after the critical incident.

O. Force Continuum



P. Duty to Intervene

1. Any officer present and observing another officer using force that is beyond that which is objectively reasonable under the circumstances shall safely intercede to prevent the use of such excessive force. Officers shall promptly report these observations to a supervisor.