




# Smithfield Police Department

## GENERAL ORDER 310.01

SECTION	EFFECTIVE DATE	PAGES
300 – Law Enforcement Operations	December 8, 2020	11
SUBSECTION	SPECIAL INSTRUCTIONS	
10 – Use Of Force / Weapons Procedure	Rescinds 8/17/20 Version	
TITLE	BY ORDER OF	
310.01 USE OF FORCE		

### I. PURPOSE

To provide sworn officers with guidelines on the use of force.

### II. POLICY

The Department recognizes and respects the value and special integrity of human life. In vesting sworn officers with the lawful authority to use force to protect the public welfare, a careful balance of human interests is required.

Therefore, it is the policy of the Smithfield Police Department that sworn officers shall only use force that is objectively reasonable to accomplish lawful objectives.

### III. DEFINITIONS

- A. **ADMINISTRATIVE REVIEW** - A documented review of an incident or occurrence prepared by or for the Police Chief or his/her designee. The review should indicate whether policy, training, equipment, or disciplinary issues should be addressed.
- B. **ANALYSIS** - A systematic, structured process for dissecting an event into its basic parts to identify any patterns or trends. Analysis should reveal patterns or trends that could be predictive or could indicate program effectiveness, training needs, equipment upgrade needs and/ or policy modification needs.
- C. **APPROPRIATE MEDICAL AID** - Appropriate medical aid may include increased observation to detect obvious changes in condition, flushing chemical agents from the eyes, applying first aid, evaluation by rescue personnel, or for more serious or life threatening incidents, immediate aid by medical professionals.

- D. CHOKER HOLD** - A physical maneuver applied to the neck that restricts an individual's ability to breathe for the purpose of rendering the individual unconscious.
- E. DE-ESCALATION** - Taking action and/or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and/or resources can be called upon to resolve the situation without the use of force or with a reduction of the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and/or tactical repositioning.
- F. IMMINENT THREAT** – Possessing such an appearance of threatened and impending injury as would cause a reasonable police officer to take action to stop the threat.
- G. LESS-LETHAL FORCE OPTION** - Any use of force other than that which is considered lethal, or deadly force.
- H. LETHAL FORCE** - Any use of force that is likely to cause death or serious bodily injury. Lethal force is also referred to as deadly physical force.
- I. OBJECTIVELY REASONABLE FORCE** – That level of force which is necessary and appropriate when analyzed from the perspective of a reasonable police officer possessing the same information and faced with the same circumstances as the officer who has actually used force. Objectively reasonable force is not judged with hindsight, and will take into account, where appropriate, the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations. Important factors to be considered when deciding how much force can be used to apprehend or subdue a subject include, but are not limited to, the severity of the crime at issue, whether the subject poses an imminent threat to the safety of the officers or others, and whether the subject is actively resisting arrest or attempting to evade arrest by flight. This policy guideline applies to all uses of force, including lethal force.
- J. REASONABLE BELIEF** - Those facts and circumstances that would lead a normally prudent police officer to believe that an imminent threat of death or bodily injury exists.
- K. SERIOUS BODILY INJURY** - Physical injury that (1) creates a substantial risk of death or serious disfigurement, or; (2) causes protracted loss or impairment of the function of any bodily part, member, or organ, or; (3) causes serious, permanent disfigurement.
- L. VASCULAR NECK RESTRAINT** - Neck Restraint: A technique that can be used to incapacitate individuals by restricting the flow of blood to their brain.

#### IV. PROCEDURES

##### A. PARAMETERS FOR USE OF LETHAL FORCE

1. Officers are authorized to use lethal force in order to:
  - a. Protect himself/herself, another officer, or other person(s) when the officer has a reasonable belief that an imminent threat of death or serious bodily injury exists to himself/herself, another officer or other person(s).
  - b. To prevent the escape of a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to the officer or another if the subject is not immediately apprehended.
2. When feasible, officers will identify themselves and state their intent to use lethal force.
3. An officer may also discharge a firearm under the following circumstances:
  - a. During range practice or competitive sporting events.
  - b. To euthanize an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured.
4. Officers will adhere to the following restrictions when their firearm is exhibited:
  - a. Except for maintenance or during training, officers will not draw or exhibit their firearm unless circumstances create reasonable cause to believe that it may be necessary to use the firearm in conformance with this policy.
  - b. Warning shots are prohibited.
5. Discharging a firearm **from** a moving vehicle shall be avoided. However, whenever a situation exists where an officer must consider discharging a firearm from a moving vehicle in order to stop an imminent threat of death or serious bodily injury to himself/herself or others, the use of lethal force by the officer must not constitute a greater hazard to the public than does the imminent threat, and must be the most reasonable course of action under the circumstances. Officers must weigh the need to use lethal force against the potential harm to innocent bystanders caused by such use.
6. Discharging a firearm **at** a moving vehicle shall be avoided unless a person in the vehicle poses an imminent threat of death or serious bodily injury to the officer or another person. Officers shall avoid intentionally placing themselves in a position where a vehicle may be used against

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them. Escape from the path of an oncoming vehicle should be considered prior to, or in lieu of, the implementation of lethal force whenever escape is possible.

7. In both sections 5 and 6 above, the officer's focus will be to stop that person presenting the imminent threat, and not to disable the vehicle of which the suspect is an occupant.

## B. PARAMETERS FOR USE OF LESS LETHAL FORCE

### 1. Less Lethal Force Options:

- a. The level of force used by an officer is directly related to the facts and circumstances encountered by that officer. Force options currently available to officers include, but are not limited to:

***Command Presence*** - An officer's appearance may be enough to dissuade some persons from engaging in resistive behavior.

***Verbal Commands*** - Dialogue used by an officer can serve to diffuse potentially violent situations.

***Physical Skills*** - Physical techniques used by an officer to control potentially violent situations.

***Chemical Spray*** - Used in compliance with a General Order entitled "OC Spray".

***Impact Tools*** - Striking tools used in compliance with a General Order 310.40 entitled, "Use of the Expandable Baton".

***Electronic Control Devices*** - Used in compliance with General Order 310.50 "Deployment of The Taser X-26 Conducted Electrical Weapon."

***K9*** - Used in compliance with General Order 300.03 "Use of the Canine Team."

***Launcher with Impact Munitions*** – Used in compliance with General Order 310.60 "ALSTAC- 40 40mm Single Shot Launcher."

2. Police officers are authorized to use department-approved less lethal force options to accomplish lawful objectives, as follows:
  - a. To protect themselves or another from physical harm.
  - b. To restrain or subdue a resistant individual
  - c. To bring an unlawful situation safely and effectively under control.

- d. To maintain control of a person or situation.
- 3. It is not the intent of this policy to direct officers to try each of the force options before moving to another. Officers may employ that force option which they believe is objectively reasonable to accomplish lawful objectives.
- 4. Choke holds and vascular neck restraints are prohibited unless lethal force is authorized.
- 5. It is understood that when requesting mutual aid assistance, the available force options of the responding agency may differ from those of the requesting agency. Officers shall be subject to the policies and procedures of their employing agencies at all times.
- 6. Authorized less lethal options are those with which the police officer has received department approved training on proper and safe usage, and that comply with departmental specifications.
- 7. A certified instructor will inspect and approve all less lethal weapons authorized for duty prior to issuance.
- 8. Nothing contained in this section limits an officer's ability to use those means objectively reasonable for self-defense or to accomplish lawful objective, including but not limited to items of opportunity.

#### C. GENERAL REQUIREMENTS ON USE OF FORCE

- 1. De-escalation - When safe and appropriate under the totality of the circumstances:
  - a. Officers will assess the situation to determine if a de-escalation tactic is in order and if so, which tactic is appropriate in order to reduce the potential need for force.
  - b. Officers shall use de-escalation techniques and other alternatives to higher levels of force, consistent with his or her training and experience.
  - c. Officers shall allow individuals time and opportunity to submit to verbal commands before force is used 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 suspect or commission of a crime.
- 2. Duty to Intervene - All officers present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so safely, intercede to prevent the use of such force. Officers shall report these observations to a non-involved supervisor without unnecessary delay.

3. Providing First Aid - Appropriate medical aid, consistent with training, shall be provided as soon as is practical in all lethal force and less lethal force option usage resulting in injury, or allegation of injury, to include injuries incurred during apprehension.
4. Use of physical force shall be discontinued when resistance ceases or when the incident is under control.
5. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person.

#### D. TRAINING AND QUALIFICATIONS REGARDING LETHAL FORCE

##### 1. Firearms

- a. While on and off-duty, officers, acting within the course and scope of their employment with the Smithfield Police Department, shall carry and use only firearms and ammunition authorized by and documented with the department.
- b. Authorized firearms are those with which the officer has qualified and received departmental training on proper and safe usage, and that are registered and comply with departmental specifications.
- c. The department shall have a separate policy addressing the authorization of duty, off-duty and specialized firearms, weapons and ammunition. Refer to SPD General Order 310.10 *Department Authorized Firearms*.
- d. The Range Officer or designee, qualified as a firearms instructor or armorer, will inspect and approve all firearms authorized for duty prior to issuance or made available for shared use and prior to qualifications.
- e. Unsafe or defective department issued firearms will be replaced or repaired.
- f. At least annually, and in accordance with Rhode Island General Law, the police department shall conduct training and qualification sessions for duty, off duty and specialized firearms, which will be graded and documented on a pass/fail basis by a certified firearms instructor.
- g. Any recent graduates of the Rhode Island Municipal Police Training Academy, or Rhode Island POST certified police officers that are transferring employment to the Smithfield Police Department, shall be qualified by the Department's Range Officer(s) using its POST certified qualification course. This

qualification shall take place prior to the officer carrying their Department assigned weapon in any official capacity.

- h. Officers who are unable to qualify with their duty firearm(s) in accordance with department testing procedures shall be given individual training by the Range Officer, or designee.
  - (1) Upon successful completion of this training, the officer shall again be tested.
  - (2) If after a second attempt, the officer does not qualify, a report shall be forwarded to the Police Chief by the Range Officer.
  - (3) The Police Chief shall then take such action as he/she deems necessary, not inconsistent with this policy.
- i. An officer shall not be permitted to carry or use any firearm, while acting within the course and scope of their employment with the Smithfield Police Department, with which he/she has not been able to qualify during the most recent qualification period.
- j. An officer that has suffered an illness or injury that could affect his/her ability to use firearms will be required to requalify before returning to enforcement duties.
- k. At least annually, the Department shall ensure that each officer receives training on the department's use of force policies, and document receipt of same. This includes any recent graduates of the Rhode Island Municipal Police Training Academy, or Rhode Island POST certified police officers that are transferring employment to the Smithfield Police Department, and who enter service into the Department prior to its annual use of force training session.
- l. All officers shall sign for and be issued Department use of force policies and any revisions as they occur.

#### E. TRAINING & QUALIFICATIONS REGARDING LESS LETHAL FORCE

##### 1. Training and Proficiency

- a. At least biennially, each sworn officer is required to demonstrate proficiency with approved less lethal force options, which he/she is authorized to use. In the case of the Taser CEW and Launcher, said demonstration of proficiency will be on an annual basis. Proficiency standards are established as follows:

- (1) Attain minimum qualification requirements in accordance with performance standards as determined by current training doctrine, methods, or trends.
  - (2) Proper Demonstration of recognized safe-handling techniques/physical skills.
  - (3) Demonstrated knowledge of department directives pertaining to the use of less lethal force options.
  - (4) The program of instruction shall be conducted by a qualified instructor who has achieved and maintained certification in the respective less lethal force option(s).
- b. The Director of Training shall maintain training documentation to include lesson plans, attendance sheets, and proficiency records.
  - c. Proficiency standards shall be satisfied prior to an officer being authorized to carry and/or utilize the less lethal force option(s).
  - d. Police officers who are unable to show proficiency with a less lethal force option in accordance with department testing procedures will be given remedial training by the department's less lethal force training instructor.
    - (1) Upon successful completion of this training, the officer shall be retested.
    - (2) If after a second attempt the officer does not evidence proficiency, a report shall be forwarded to the Chief of Police by the department's less lethal force training instructor.
    - (3) The Chief of Police shall then take such action as he/she deems necessary and not inconsistent with this policy.

#### **F. REPORTING USES OF FORCE**

1. Officers shall notify a non-involved supervisor, without unnecessary delay, when reportable force is used. This includes instances where Department members take enforcement action while off-duty and a use of force occurs. The supervisor notified of a reportable use of force shall comply with investigative procedures as required by the department.
  - a. A reportable use of force is defined as any incident in which a sworn department member exercises their police powers and uses lethal force or any force option including physical force.
  - b. Exceptions to reportable force: command presence; verbal commands; physical strength and skills which do not result in injury, the appearance of injury or complaint of pain (e.g., the use



of a grip to control a suspect's hand while searching or handcuffing); or, compliance handcuffing which does not result in injury, the appearance of injury, or the complaint of pain.

2. Where officers respond to an incident involving reportable use of force, they shall:
  - a. Articulate in their report narrative the force used and the facts, circumstances, and reasons for the use of said force.
  - b. Complete a "*SPD Use of Force Report*" form and submitted to the Internal Affairs Officer as soon as practicable. A single form shall be submitted for the incident by the primary responding officer. The form shall identify all officers applying a reportable use of force during this incident. Incidents of this nature shall include when an officer:
    - (1) Discharges or displays a firearm at a person for the purpose of obtaining and/or maintaining control of that person.
    - (2) Discharges or displays a CEW/TASER at a person for the purpose of obtaining and/or maintaining control of that person.
    - (3) Takes an action that results in, or is alleged to have resulted in, injury or death of another person.
    - (4) Applies force through the use of lethal or less lethal weapons.
    - (5) Applies weaponless physical force at a level defined by the agency.
3. A "*SPD Discharge of Firearm Report*" form shall be completed and submitted to the Internal Affairs Officer as soon as practicable, when the following have occurred:
  - a. A firearm is discharged outside of the firing range;
  - b. A firearm is discharged to euthanize an animal, as set forth in Section IV(A)(3)(b).

#### G. DEPARTMENTAL RESPONSE

1. An employee whose actions or use of force results in death or serious bodily injury shall be removed from line-of-duty assignment upon completion of his/her preliminary report of the incident and pending administrative review. The employee shall be assigned to administrative duty or placed on non-punitive administrative leave, as determined by the Police Chief, until a post incident evaluation is conducted by a licensed,

mental health professional preferably experienced in work with law enforcement personnel.

- a. The Department shall conduct both an administrative and criminal investigation of the incident.
  - b. In accordance with the Rhode Island Attorney General's Protocols, all police incidents involving the use of deadly force, excessive force and custodial deaths shall be reported to the Attorney General's office for review. (See Attachment C).
2. Review of use of force incidents:
- a. Documented initial review of the force used and the facts, circumstances, and reason for the use of said force shall be conducted by the immediate Supervisor.
  - b. All reported uses of force shall be reviewed by the Internal Affairs Officer to determine whether, at a minimum:
    - (1) Departmental rules, policy, or procedures were violated;
    - (2) The relevant policy was clearly understandable and effective to cover the situation;
    - (3) Department training is currently adequate; or
    - (4) Department equipment needs to be addressed.
  - b. All findings of policy violations or training inadequacies shall be reported to the appropriate personnel for resolution and/or discipline.
  - c. All "Use of Force Reports/Discharged of Firearms Report " reports shall be retained, as required by department policy.
  - d. The Internal Affairs Officer shall complete a documented annual analysis of those reports required under Section IV(F), (2) and (3) of this policy. This analysis shall include, at a minimum, the following:
    - (1) Date and time of incidents;
    - (2) Types of encounters resulting in use of force;
    - (3) Trends or patterns related to race, age and gender;
    - (4) Trends or patterns regarding injury to any persons, including employees;

(5) Impact of findings on policies, practices, equipment, and training.

d. The Internal Affairs Officer shall make an annual summary report of this analysis available to the public.

## H. SPECIAL REPORTING

### 1. FBI's CJIS National Use of Force Data Collection

a. Any use of force meeting the following criteria shall be reported to the CJIS database:

- (1) Force resulting in death or serious bodily injury to a person; or
- (2) Where an officer discharges a firearm at or in the direction of a person.
- (3) Where in a given month there are no use of force incidents meeting this criteria, the department shall make a report of "0" incidents in the CJIS database.

2. *Allegations* of excessive use of force shall be reported to the Internal Affairs Officer without unnecessary delay.

## V. ATTACHMENTS

- A. *Smithfield Police Department "Use of Force Report" form.*
- B. *Smithfield Police Department "Discharge of Firearm Report" form*
- C. *The Attorney General's Protocol For The Review Of Incidents Involving The Use Of Deadly Force, Excessive Force And Custodial Deaths*

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# Smithfield Police Department

## USE OF FORCE REPORT



DATE: TIME: LOCATION: REPORT#:

### OFFICER(S) INVOLVED IN USE OF FORCE:

	NAME	RANK	AGE	SIGNATURE
#1				
#2				
#3				

### SUBJECT INFORMATION:

NAME: AGE: SEX: RACE: HEIGHT: WEIGHT:

TYPE OF INCIDENT / CHARGES:

At time of incident, subject appeared to be: ☐ Not visibly impaired ☐ Under influence of alcohol ☐ Under influence of drugs  
☐ Mentally Impaired/Emotionally Disturbed ☐ In possession or threatening use of a weapon ☐ Other \_\_\_\_\_

### REASON FOR USE OF FORCE: (Check all that apply)

☐ Effect Arrest ☐ Handcuff/Restrain ☐ Defend Self ☐ Defend Another Officer/Person ☐ Protective Custody/Subject Safety  
☐ Prevent Escape ☐ Prevent Violent Felony ☐ Warrant Execution ☐ Unintentional ☐ Other: \_\_\_\_\_

### OFFICER #1

### FORCE OPTION(S) USED: (Check all that apply)

☐ Compliance Techniques: Physical force used to gain control (restraint, takedown, strikes, hands, arms, feet, legs)  
☐ O.C. Spray: Distance from Subject: \_\_\_\_\_ # & Duration of Bursts: \_\_\_\_\_  
☐ M.E.B./Impact Weapon Impact Location(s) if any: \_\_\_\_\_  
☐ Taser CEW: (Must also fill out SPD Taser Deployment Report form) ☐ Taser CEW (presented)  
☐ Firearm (presented): ☐ Handgun ☐ Rifle ☐ Shotgun  
☐ Firearm (discharged): (Must also fill out SPD Discharge of Firearm Report form)  
☐ K-9  
☐ Launcher ☐ Other (Describe): \_\_\_\_\_

\* Each officer who uses force shall describe such use of force in his/her police report narrative.

### OFFICER #2

### FORCE OPTION(S) USED: (Check all that apply)

☐ Compliance Techniques: Physical force used to gain control (restraint, takedown, strikes, hands, arms, feet, legs)  
☐ O.C. Spray: Distance from Subject: \_\_\_\_\_ # & Duration of Bursts: \_\_\_\_\_  
☐ M.E.B./Impact Weapon Impact Location(s) if any: \_\_\_\_\_  
☐ Taser CEW: (Must also fill out SPD Taser Deployment Report form) ☐ Taser CEW (presented)  
☐ Firearm (presented): ☐ Handgun ☐ Rifle ☐ Shotgun  
☐ Firearm (discharged): (Must also fill out SPD Discharge of Firearm Report form)  
☐ K-9  
☐ Launcher ☐ Other (Describe): \_\_\_\_\_

\* Each officer who uses force shall describe such use of force in his/her police report narrative.

### OFFICER #3

### FORCE OPTION(S) USED: (Check all that apply)

☐ Compliance Techniques: Physical force used to gain control (restraint, takedown, strikes, hands, arms, feet, legs)  
☐ O.C. Spray: Distance from Subject: \_\_\_\_\_ # & Duration of Bursts: \_\_\_\_\_  
☐ M.E.B./Impact Weapon Impact Location(s) if any: \_\_\_\_\_  
☐ Taser CEW: (Must also fill out SPD Taser Deployment Report form) ☐ Taser CEW (presented)  
☐ Firearm (presented): ☐ Handgun ☐ Rifle ☐ Shotgun  
☐ Firearm (discharged): (Must also fill out SPD Discharge of Firearm Report form)  
☐ K-9  
☐ Launcher ☐ Other (Describe): \_\_\_\_\_

\* Each officer who uses force shall describe such use of force in his/her police report narrative.

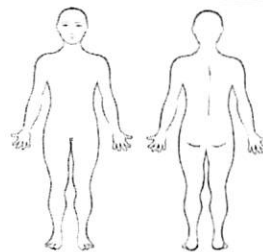
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**INJURIES:****SUBJECT INJURED?** ☐ YES ☐ NO

If YES:

☐ Visible Injury/Injuries ☐ Complaint of Injury/Injuries☐ Photos Taken ☐ Subject Treated on Scene/at Station ☐ Subject Refused Treatment**SUBJECT TRANSPORTED TO HOSPITAL?** ☐ YES ☐ NO

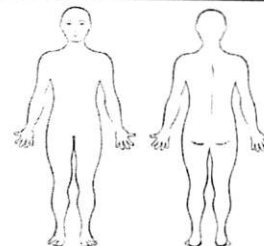
If YES:

☐ For Injury/Injuries ☐ For Psychiatric Evaluation ☐ For Drug/Alcohol Detox*Mark injuries with an "X" on diagram***OFFICER #1 INJURED?** ☐ YES ☐ NO

If YES:

☐ Visible Injury/Injuries ☐ Complaint of Injury/Injuries☐ Photos Taken ☐ Officer Treated on Scene/at Station ☐ Officer Refused Treatment**OFFICER #1 TRANSPORTED TO HOSPITAL?** ☐ YES ☐ NO

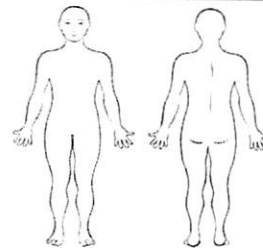
If YES:

☐ Treated and Released ☐ Admitted*Mark injuries with an "X" on diagram***OFFICER #2 INJURED?** ☐ YES ☐ NO

If YES:

☐ Visible Injury/Injuries ☐ Complaint of Injury/Injuries☐ Photos Taken ☐ Officer Treated on Scene/at Station ☐ Officer Refused Treatment**OFFICER #2 TRANSPORTED TO HOSPITAL?** ☐ YES ☐ NO

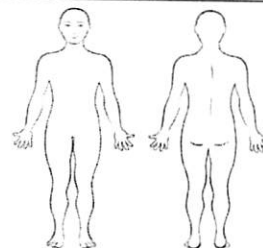
If YES:

☐ Treated and Released ☐ Admitted*Mark injuries with an "X" on diagram***OFFICER #3 INJURED?** ☐ YES ☐ NO

If YES:

☐ Visible Injury/Injuries ☐ Complaint of Injury/Injuries☐ Photos Taken ☐ Officer Treated on Scene/at Station ☐ Officer Refused Treatment**OFFICER #3 TRANSPORTED TO HOSPITAL?** ☐ YES ☐ NO

If YES:

☐ Treated and Released ☐ Admitted*Mark injuries with an "X" on diagram***WITNESSES:**

	NAME	ADDRESS	PHONE #	CONNECTION TO INCIDENT
#1				
#2				
#3				

**AUDIO/VIDEO RECORDING OF INCIDENT:**☐ Yes ☐ No ☐ UnknownIf Yes, was the audio/video secured? ☐ Yes ☐ No ☐ Unknown

Source of the audio/video recording: \_\_\_\_\_

SUPERVISOR SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**INTERNAL AFFAIRS REVIEW:**

NAME: \_\_\_\_\_

RANK/BADGE #: \_\_\_\_\_

Based on Administrative Review, Use of Force was in compliance with Policies & Procedures: ☐ YES ☐ NO*If use of force not in compliance with policy & procedures, the Internal Affairs Officer shall document any corrective action that is taken regarding this use of force.*

SIGNATURE: \_\_\_\_\_

DATE/TIME: \_\_\_\_\_

# SMITHFIELD POLICE DEPARTMENT DISCHARGE OF FIREARM REPORT FORM



**\* A DISCHARGE OF FIREARM REPORT shall be completed whenever an officer discharges a firearm outside of a firing range, including but not limited to, uses of force, emergency animal euthanizations, and accidental discharges. Exceptions include such off-duty activities as competitive sporting events and legally-sanctioned hunting.**

**\* When a discharge of firearm is the result of a use of force, the officer must also file a USE OF FORCE REPORT Form.**

<b><u>OFFICER'S NAME/RANK:</u></b>  _____	<b><u>DATE of INCIDENT:</u></b>  _____	<b><u>LOCATION:</u></b>  _____	<b><u>REPORT or CALL #:</u></b>  _____
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<b>FIREARM USED:</b>			
HANDGUN <input type="checkbox"/>	SHOTGUN <input type="checkbox"/>	RIFLE <input type="checkbox"/>	OTHER <input type="checkbox"/>
SPD-OWNED <input type="checkbox"/>	PRIVATELY-OWNED <input type="checkbox"/>	<b>NUMBER of ROUNDS FIRED:</b>	
<b><u>MAKE:</u></b>	<b><u>MODEL:</u></b>	<b><u>CALIBER:</u></b>	<b><u>SERIAL NUMBER:</u></b>

<b>INJURIES:</b>			
<b><u>SUBJECT/SUSPECT:</u></b>	NONE <input type="checkbox"/>	MINOR INJURY <input type="checkbox"/>	SERIOUS INJURY or DEATH <input type="checkbox"/>
<b><u>OFFICER:</u></b>	NONE <input type="checkbox"/>	MINOR INJURY <input type="checkbox"/>	SERIOUS INJURY or DEATH <input type="checkbox"/>

<b>NARRATIVE (For Incident NOT Documented in an Arrest or Incident Report):</b>

<b><u>SUBMITTING OFFICER'S SIGNATURE:</u></b>	<b><u>BADGE NUMBER:</u></b>	<b><u>DATE of REPORT:</u></b>
<b><u>REVIEWING OFFICER'S SIGNATURE:</u></b>	<b><u>BADGE NUMBER:</u></b>	<b><u>DATE of REVIEW:</u></b>



**State of Rhode Island and Providence Plantations  
OFFICE OF THE ATTORNEY GENERAL**

*Peter F. Neronha, Attorney General*



**THE ATTORNEY GENERAL'S PROTOCOL FOR THE REVIEW OF  
INCIDENTS INVOLVING THE USE OF DEADLY FORCE, EXCESSIVE  
FORCE AND CUSTODIAL DEATHS**

**June 17, 2020**

**BACKGROUND**

It has been the long-standing practice in this State that when a police officer uses deadly force, or where there has been a custodial death, the law enforcement agency reports the incident to the Office of the Attorney General for review and joint investigation. This Protocol updates and expands upon the Attorney General's Protocol Regarding The Review Of Incidents Involving The Use of Deadly Force and Custodial Death (last revised in 2007). It is designed to promote greater uniformity, accountability and impartiality in the investigation of police use-of-force incidents where deadly force was employed, where there has been an allegation of excessive use of force by police, and where a custodial death occurs. **It is applicable to all Rhode Island state and municipal law enforcement agencies.** For convenience, the terms "police officer" and "police department" are used in this Protocol.

A police officer's use of deadly force, alleged use of excessive force and the death of a person in police custody are some of the most sensitive matters that law enforcement agencies investigate. These investigations frequently pose complex factual and legal issues and are closely followed by the public we serve. It is critical that the public have confidence that when police use force, and deadly force in particular, that that use of force was reasonable and lawful. This Protocol sets forth the policies and practices of the Office of the Attorney General for the investigation of deadly force and custodial death incidents and for the investigation of allegations of the use of excessive force. It also provides guidance on potential *Garritty* issues.

## USE OF THE PROTOCOL

The Protocol shall be followed whenever:

A police officer uses deadly force, whether or not death or injury of any person results.

A person dies while in police custody or dies during the apprehension or attempted apprehension of a person.

A police officer uses less than deadly force that results in serious bodily injury to any person.<sup>1</sup>

A police department receives a complaint alleging that a police officer used excessive force during his/her interaction with a person, and there is evidence, including but not limited to video or other electronic evidence, to warrant additional investigation.

This Protocol may also be followed:

Whenever a person dies or is injured as a result of a police interaction even if the police did not intentionally use force or deadly force. For example, motor vehicle accidents involving the police where there is a fatality or serious injury.

In any situation, not explicitly addressed above, where the police department and the Attorney General jointly agree that review by the Attorney General would be in the public interest.

## OBLIGATIONS OF THE EMPLOYING POLICE DEPARTMENT

The police department employing the police officer whose action prompts the application of this Protocol ("Employing Police Department") shall immediately notify the Office of the Attorney General (after hours, an Assistant Attorney General may be reached through the Bureau of Criminal Identification at 401-732-7629) and, in situations involving the use of deadly force or a custodial death, the Rhode Island State Police (401-444-1000). Where the action of a member of the Rhode Island State Police prompts the application of this Protocol, notification shall include the police department of the city or town where the action occurred.

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<sup>1</sup> Serious bodily injury" means physical injury that: (1) creates a substantial risk of death; (2) causes protracted loss or impairment of the function of any bodily part, member, or organ; or (3) causes serious permanent disfigurement



The Employing Police Department shall limit the investigative steps taken prior to assembly of the multi-agency investigative team (see “Investigative Team” section below) to those measures necessary to secure the scene, preserve evidence, identify witnesses, and any other measures necessary to address exigent circumstances.

The Employing Police Department shall immediately collect, preserve, and turn over to the multi-agency investigative team all video and audio recordings that pertain to the incident in question. Any public release of video and audio recordings in the possession of law enforcement shall be done in accordance with the law and in a manner that preserves the integrity of the criminal investigation, protects the rights of the accused, and respects the privacy of civilians captured on the recording. Absent extraordinary circumstances, video and audio recordings should not be released until all witness statements have been collected and the criminal investigation has concluded.

The Chief of Police of the Employing Police Department, or, where the matter involves the conduct of a member of the Rhode Island State Police, the Colonel of the State Police, shall serve as the primary point of contact for media inquiries, coordinating all responses with the Attorney General and other members of the multi-agency investigative team. The Chief of Police, or, where applicable, the Colonel of the State Police, may also refer such inquiries to the Attorney General.

### ROLE OF THE ATTORNEY GENERAL

The Attorney General shall assign a senior prosecutor (or prosecutors) to work with and provide legal advice to investigators throughout the course of the investigation.

As a general rule, the Attorney General will present every police-involved use of force incident resulting in death or serious bodily injury to a grand jury for its review and consideration.

Incidents involving use of force that did not result in death or serious bodily injury and where the undisputed facts indicate that the use of force was objectively reasonable under the law may be concluded without a formal grand jury presentation.

The Attorney General may, however, present any matter to a grand jury where doing so is necessary to obtain evidence, develop the testimony of witnesses, and otherwise conduct a full and complete investigation.

## INVESTIGATIVE TEAM

### Matters Involving the Use of Deadly Force and Custodial Death

Where a police officer uses deadly force, regardless of whether death or injury results, or where a person dies in police custody or during apprehension or attempted apprehension by police, the investigative team will be comprised of members of the Attorney General's Office, the Rhode Island State Police and the Employing Police Department.

Where a member of the Rhode Island State Police uses deadly force, regardless of whether death or injury results, or where a person dies in State Police custody or during apprehension or attempted apprehension by the State Police, the investigative team will be comprised of the Attorney General's Office, the Rhode Island State Police, and the municipal police department of the city or town where the incident occurred.

The investigative team will respond to the scene immediately after notification of the incident initiating application of this Protocol.

### Matters Involving Less than Deadly Force and Allegations of Excessive Use of Force

Whenever a police officer uses less than deadly force that results in serious bodily injury to a person, or is alleged to have used excessive force and the evidence supporting such allegation, including but not limited to video or other electronic evidence is sufficient to warrant additional investigation, the Employing Police Department shall:

- Promptly notify the Attorney General; and
- Provide the Office of the Attorney General with copies of all non-compelled statements and any other evidence pertaining to the matter.

The Attorney General and the Employing Police Department will jointly review the evidence pertaining to the matter and pursue any follow up investigation as necessary. It is strongly preferable that members of the Employing Police Department's Professional Standards Unit or equivalent be assigned to the investigation.

The Attorney General will determine whether criminal charges are appropriate, and, if charges are appropriate, the nature of such charges, including whether the appropriate charge or charges constitute a misdemeanor or felony or

both. The Attorney General will determine whether presentation to a grand jury is necessary to obtain additional evidence or develop the testimony of witnesses.

### GARRITY ISSUES

Pursuant to the United States Supreme Court's decision in *Garrity v. New Jersey*, 385 U.S. 493 (1967), when a police officer is compelled by a supervisor to make a statement in the course of an administrative or internal investigation or face termination, such statement and any evidence derived from that statement cannot be used in any subsequent criminal investigation or prosecution of that officer.

If a police officer agrees to provide a voluntary statement, the officer's statement may be shared with all investigators and prosecutors assigned to the matter.

If an officer is not willing to provide a voluntary statement, the investigative team, in consultation with the Attorney General, must determine whether a statement should be compelled by a supervisor. If the decision is to compel a statement, under *Garrity*, his or her statement and evidence derived from that statement cannot be used in any subsequent prosecution. Accordingly, under these circumstances, the investigative and prosecution team must be divided into two groups. The first group will be allowed access to the compelled statement and any evidence obtained as a result. The second group must be walled off from the contents of any compelled statement and the evidence derived from such statement.

The first group will be assigned to investigate any administrative and departmental violations allegedly committed by the police officer providing the compelled statement. They may also participate in the criminal investigation and/or prosecution of any other individual, including a police officer, whose statement was not compelled.

The second group will be assigned to pursue the criminal investigation and/or prosecution of any officer whose statement was compelled.



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PETER F. NERONHA  
ATTORNEY GENERAL