

|  |   |   |
|--|---|---|
| <b>East Haven<br/>Police<br/>Department</b><br><br> | <b>Type of Directive:</b><br><b>Policies &amp; Procedures</b>                   | <b>No. 405.3</b>                          |
|  | <b>Subject/Title:</b><br><br><b>Use of Lethal Force</b>                         | <b>Issue Date:</b><br>December 22, 2015   |
|  | <b>Issuing Authority:</b><br><b>Honorable Board of<br/>Police Commissioners</b> | <b>Effective Date:</b><br>January 1, 2016 |
| <b>References/Attachments:</b><br><br><b>Policies &amp; Procedures #'s: 302, 404, 406, 407, 408</b>                                  | <b>Review Date:</b><br><b>Annually</b>  | <b>Rescinds:</b><br>405.2                 |
|  |   | <b>Amends:</b><br>N/A                     |

## I. PURPOSE

- A. The purpose of this directive is to set forth the policies and procedures of the East Haven Police Department regarding the use of lethal force.
1. The very narrow parameters under which lethal force is authorized: the circumstances in which an officer may legally use lethal force in the performance of his or her duties.

## II. POLICY

- A. It is the policy of the East Haven Police Department that officers may use lethal force in the performance of their duties only in those situations in which they must defend themselves or others from harm that could result in death or serious physical injury. When feasible, officers shall exhaust all other possible methods of force before resorting to the use of lethal force.

## III. DEFINITIONS

- A. Act Aggressively: The subject displays the intent to harm the officer, himself or herself or another person and prevent an officer from placing the subject in custody and taking control. The aggression may manifest itself through a subject taking a fighting stance, punching, kicking, striking, attacks with weapons or other actions which present an imminent threat of physical harm to the officer or another.
- B. Critical Firearms Discharge: A discharge of a firearm by an EHPD officer, including accidental discharges, discharges at animals, and discharges at persons where no one is struck, with the exception of range and training discharges.

- C. Lethal Force: Refers to any use of force likely to cause death or serious physical injury, including, the use of a firearm, neck hold, or strike to the head, neck or throat with a hard object, including a fist.
- D. De-Escalation: The use of verbal and physical cues, such as words and gestures, by a responding officer to reduce the potential for a subject to resist police authority.
- E. Whenever an officer believes that de-escalation is feasible, based on his or her training and judgment, such techniques shall be the first deployed by the officer to gain compliance.
- F. Firearm: A pistol, revolver, shotgun, carbine or machine gun, as well as any instrument capable of discharging a bullet or shot.
- G. Hands-On Defense: The use of hard hands such as the physical pressure necessary to force a person against an object or the ground; use of physical strength or skill that causes pain or leaves a mark; leverage displacement; joint manipulation; pain compliance; and pressure point control tactics. This includes those types of manual holds for which a police officer has been specifically trained in gaining control or maintaining control of a detainee.
- H. Less Lethal Force: A force application not intended or expected to cause death or serious injury and which is commonly understood to have less potential for causing death or serious injury than conventional, more lethal police tactics. Nonetheless, use of less-lethal force can result in death or serious injury.
- I. Less Lethal Weapon: Any apprehension or restraint tool that, when used as designed and intended, is less likely to cause death or serious injury than a conventional lethal weapon (e.g., firearm). Nonetheless, use of a less-lethal weapon may result in death or serious injury.
- J. Objectively Reasonable: The legal standard used to determine the lawfulness of a use of force is the Fourth Amendment to the US Constitution. The US Supreme Court established this standard in its ruling in *Graham v. Connor* (1989).
  - 1. The Court held, "...that all claims that law enforcement officers have used excessive force – lethal or not – in the course of an arrest, investigatory stop, or other seizure of a free citizen should be analyzed under the Fourth Amendment and its objective reasonableness standard...The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation."
  - 2. The force must be reasonable under the circumstances known to the officer at the time the force was used.

- K. Physical Injury: Refers to any impairment of physical condition or pain.
- L. Probable Cause: Probable cause for arrest exists if, at the time of arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to cause a reasonable person to believe that the person being arrested has committed or is committing the crime for which the arrest is being made.
- M. Resisting Arrest/Interfering with Police: Refers to the act of a person who knowingly prevents or attempts to prevent a police officer, acting under the color of his or her official authority, from effectuating an arrest. To resist arrest includes such things as using or threatening to use physical force or violence against a law enforcement officer, or the use of any other means to create a substantial risk of physical injury to a police officer.
- N. Active Resistance: Refers to the subject's physical actions to defeat an officer's attempt at control and to avoid being taken into custody. Verbal statements alone do not constitute active resistance. Examples include: fighting and breaking the officer's grip.
- O. Passive Resistance: Refers to circumstances in which the subject is not complying with an officer's commands and is uncooperative, but is taking only minimal physical action to prevent an officer from placing the subject in custody and taking control. Examples include: standing stationary and not moving upon lawful direction, falling limply and refusing to use their own power to move (becoming "dead weight"), holding onto a fixed object, or locking arms to another during a protest or demonstration.
- P. Serious Physical Injury: Refers to physical injury that creates substantial risk of death, or causes serious disfigurement or serious impairment of health, or loss or impairment of the function of any bodily organ.

#### **IV. GENERAL GUIDELINES AND CONSIDERATIONS**

- A. Members of this Department are expected to use only that degree of force that is objectively reasonable in making a lawful arrest, placing a person into protective custody, effectively bringing an incident under control, or preventing harm to or death(s) of others or themselves.
- B. Control is reached when a person either complies with an officer's directions, or the suspect is restrained or apprehended and no longer presents a threat to the officer or others. Since officers will encounter a wide range of behaviors, they must be prepared to utilize a range of force options to maintain and/or re-establish control by overcoming resistance to the officers' lawful authority while minimizing injuries, bearing in mind that the use of force must be reasonably necessary under the circumstances.
- C. The lawful and proper use of force, including lethal force, is limited to only that which is necessary to control and terminate resistance and/or to prevent any further physical attack against the officer or any other person.

- D. The Department issues lethal and less lethal weapons to its officers to provide them the optimum ability to protect others and themselves. The use of any of the weapons authorized and issued to East Haven Police Department personnel could result in serious physical injury or death.
- E. Members of this Department are expected to justify any use of force in any criminal, civil or administrative proceedings that arise. Members who cannot or will not comply with this policy will subject themselves to disciplinary action, as well as the possibility of criminal and civil liability.

## **V. PROCEDURES**

### **A. Justification for the Use of Lethal Force**

- 1. Because there exists an unlimited number of circumstances that could arise, no written policy can offer definitive answers to every situation in which the use of force might be appropriate. Rather, the goal of this policy is to set forth specific guidelines for the exercise of sound judgment and reasonable decision-making.
- 2. Officers are authorized to use lethal force to protect the officer or others from what is reasonably believed to be a threat of death or serious physical injury.
- 3. When feasible prior to discharging a firearm, officers shall identify themselves as law enforcement officers and state their intent to shoot.
- 4. Officers may use lethal force to euthanize an animal that is attacking a person or represents a threat to public safety.
  - a. Officers may use lethal force as a humanitarian measure where an animal is seriously injured or gravely ill when the officer reasonably believes that lethal force can be used without harm to the officer or others.
- 5. Officers shall not use lethal force to stop fleeing felons, except against those whose escape presents a clear and immediate danger to the public.

### **B. Use of Firearms**

- 1. Removing a Firearm from its Holster up to Pointing of a Firearm at Another Individual(s): The production of a firearm or the pointing of a firearm at another individual, even if coupled with a threat to cause death or serious physical injury does not constitute the use of lethal force so long as its purpose is limited to creating an apprehension, rather than actual harm. Any officer who points a firearm at another individual(s), shall be required to fully document the incident in a Use of Force Report, using the reporting guidelines and review process set forth in Policies and Procedures number 407 – Use of Force Investigations.
  - a. The mere removal of a firearm from its holster does not constitute a use of force.
  - b. The mere display of a long gun at the low ready does not constitute a use of force.

- c. If an officer unholsters/displays a firearm during an incident, interaction, or event that would require an incident report, the officer will document that a firearm was unholstered/displayed in that report.
2. Identifying oneself: Whenever feasible to do so, an officer will always identify him or herself as a “police officer” when pointing a firearm at another person and state his or her intentions to shoot prior to discharging a firearm.
  - a. Exception: Officers engaged in a controlled tactical operation (i.e., Special Response Team conducting the execution of a search warrant) will not be subject to the reporting requirements for Removing a Firearm from its Holster up to Pointing of a Firearm at Another Individual(s). The official after action report will make a blanket statement reporting that officers involved in the operation removed and pointed their weapons. Any outcomes resulting from the use of weapons shall be reported as prescribed below under Use of Force Reporting and Review in policy number 407.
3. Use of Firearms in Performance of Duty: An officer is only authorized to use a weapon that he or she has been authorized to carry, and only to the extent that is required in the lawful execution of his or her duties as defined by Departmental Policies and Procedures 302 and by law.
4. Reporting to a Supervisor: Officers who use or observe force shall notify their supervisors immediately following any use of force or upon receipt of an allegation of unreasonable or unreported use of force by any officer.
  - a. Whenever an officer discharges a firearm, either accidentally or in the performance of police duty, whether on duty or off duty, the officer must notify his or her Supervisor immediately. In such instances, the officer will be guided by the reporting requirements as established by this directive and policy number 407.
  - b. Circumstances where officers are excused from the reporting requirements are expressly limited to the following circumstances, and only where the discharged firearm does not inflict injury to a person or cause property damage:
    - 1) Use of Firearms for Training or Recreational Purposes: Officers who discharge firearms while engaged in sanctioned training or for recreational purposes with Department issued or personal firearms (recreational target shooting or hunting) are exempt from the requirements outlined within this section of the directive.
    - 2) Authorized Test Firing of Firearms: Officers who have been authorized to test fire a firearm, whether it is part of the firearms maintenance program of Department issued weapons, or as part of a court process to determine its operational capacity, will not be subject to the Use of Force Reporting guidelines. However, there are other types of records or reports that are normally required whenever performing either one of these functions.
5. Destruction of Animals: On occasion, an officer may be required to use his or her service weapon to destroy an animal for humane purposes, or to protect persons, other

- animals, or property. The use of lethal force under these circumstances is warranted when the officer reasonably believes the animal to be rabid and when there is no other viable way of dealing with the animal (e.g., capture, transport to veterinarian, or disposal of the animal by other means). Before discharging a firearm for the purpose of destroying an animal, the officer must consider the following factors:
- a. To destroy an animal for humane purposes the officer must first receive approval from his or her supervisor. The officer does not need prior approval in situations he or she judges to be emergencies, e.g. to protect persons, other animals, or property.
  - b. The officer must exercise extreme caution so as not to pose any risk to surrounding persons or property.
  - c. If an officer uses a firearm to destroy an injured or gravely ill animal, the officer shall complete an incident report detailing his or her actions and reasons why an animal had to be destroyed. In addition, a Deer Kill Report will be completed if the animal destroyed is a deer. No additional Use of Force Report is required under this circumstance. The incident report should address the reasons for using this method of destruction, as well as any issues or circumstances that may have arisen, and address how the animal was disposed of once it had been destroyed.
6. Discharging Warning Shots: Under no circumstances may an officer discharge his or her weapon for the purpose of providing a warning, or to threaten another.
  7. Signaling Devices: Firearms shall not be used as a signaling device or for the purpose of summoning assistance.
  8. Firing at or from Moving Vehicles: Officers shall not fire at or from a moving vehicle, unless use of lethal force is justified by something other than the threat from the moving vehicle
    - a. Officers shall not intentionally place themselves in the path of or reach inside a moving vehicle.
    - b. Officers where possible shall attempt to move out of the path of a moving vehicle before discharging their weapon.