

<p style="text-align: center;"><b>East Haven Police Department</b></p> 	<b>Type of Directive:</b> <b>Policies &amp; Procedures</b>		<b>No. 407.3</b>
	<b>Subject/Title:</b> <b>Use of Force Review and Investigations</b>	<b>Issue Date:</b> <b>April 24, 2018</b>	
		<b>Effective Date:</b> <b>June 11, 2018</b>	
	<b>Issuing Authority:</b> <b>Honorable Board of Police Commissioners</b>	<b>Review Date:</b> <b>Annually</b>	
<b>References/Attachments:</b> <b>Policies and Procedures #: 302, 303, 404, 405, 406, 408</b>		<b>Rescinds:</b> <b>407.2</b>	<b>Amends:</b> <b>N/A</b>

## I. PURPOSE

- A. The purpose of this directive is to set forth the policies and procedures of the East Haven Police Department regarding the protocols that must be followed whenever an officer exerts any degree of force that is reportable while in the performance of his/her duties.
1. This directive outlines the method that ranking officers shall use to determine in every such instance that the exercise of force was done in a manner consistent with the Department's policy.

## II. POLICY

- A. It is the policy of the East Haven Police Department that any time an officer uses force that rises above De Minimis force against a person, he/she shall report the use of force according to the procedures in this directive.
- B. Officers who use or observe reportable force and fail to report it shall face discipline up to and including termination, regardless of whether the force was reasonable.

## 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. 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.
- C. Chief of Police Finding: The Chief's report on his/her findings issued to the officer(s) under investigation and included in the file on the incident maintained by the Internal Affairs Officer (IAO).
- D. Critical Firearms Discharge: A discharge of a firearm by an officer, including accidental discharges, discharges at animals, and discharges at persons where no one is struck, with the exception of range and training discharges.
- E. 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.
- F. De Minimis Force: Physical interaction that does not cause pain or injury and is meant to separate, guide, and/or control a subject including compliant handcuffing.
- G. Firearm: A pistol, revolver, shotgun, carbine or machine gun, as well as any instrument capable of discharging a bullet or shot.
- H. Force Review File: A compilation by the supervisor of the Use of Force Reports, Supervisory Force Review Report and documented evidence for each use of force incident. The Force Review File is reviewed by a Division head and submitted to the Chief of Police and IAO.
- I. Hard-hand Control: Force involving the use of controlled knee strikes, elbow strikes, punches, kicks or other striking techniques; hard takedowns and strikes to pressure point areas to control a subject. Such force is impact oriented and presents a moderate chance of physical injury to the subject.
- J. IAO Use of Force Report: The report submitted to the Chief of Police reporting the IAO's investigation and review of an incident. It shall include the Force Review File.
- K. 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.
- L. 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.
- M. 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.

- N. 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.
- O. Officer Involved Shooting Incident: A line-of-duty incident where a shooting causes death or serious bodily injury to an officer or other person.
- P. 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.
- Q. Physical Injury: Refers to any impairment of physical condition or pain.
- R. 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.
- S. 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/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.
- T. 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.

- U. Soft-Hand Control: Force involving the use of pressure point techniques, grabs, holds, soft takedowns, and joint locks/manipulation to control a subject. Such force is not impact oriented and presents a minimal chance of physical injury to the subject.
- V. Supervisory Force Review Report: The immediate supervisor's report on an incident involving use of force.
- W. Use of Force Report: To be completed by all officers who use or witness the use of force by other officers.

## **IV. PROCEDURES**

### **A. Use of Force Levels**

1. The use of force by officers of the Department shall be separated into three levels, Level 1, Level 2, and Level 3. The three (3) levels for the reporting, investigating, and reviewing use-of-force incidents will correspond to the amount of force used and the outcome of the force. The categorization of the use of force is based on the following factors:
  - a. Potential of the technique or weapon to cause injury.
  - b. Degree of injury caused.
  - c. Degree of pain experienced.
  - d. Degree of disability experienced by the subject.
  - e. Nature of the complaint by the subject.
  - f. Degree of restraint on the subject.
  - g. Impairment of the functioning of any organ.
  - h. Duration of force used.
  - i. Physical vulnerability of the subject.
2. Level 1: Force that is reasonably expected to only cause transient pain and/or disorientation during its application as a means to gain compliance. Level 1 does not involve force that is expected to cause physical injury. Level 1 includes the following uses of force:
  - a. Unholstering a firearm and pointing it at a person.
  - b. Unholstering and activating a Conducted Electrical Weapon (CEW) on a person.
  - c. Soft takedowns (controlled descend and placement).
  - d. Soft-hand control.

- e. Pursuits terminated prior to apprehension.
- 3. Level 2: Force that causes physical injury or could reasonably be expected to cause physical injury. Level 2 does not include the uses of force that rise to Level 3. Level 2 includes the following uses of force:
  - a. CEW deployment even if the CEW prongs miss the subject.
  - b. OC Spray/Foam deployment on a person.
  - c. Use of baton against a person that does not result in serious physical injury or complaint of serious physical injury.
  - d. Hard takedowns (uncontrolled descend and placement).
  - e. Hard-hand control.
  - f. K9 bite resulting in physical injury.
  - g. Pursuits resulting in physical injury.
- 4. Level 3: Lethal force; force that results in loss of consciousness, serious physical injury, or death. Level 3 includes the following uses of force:
  - a. All neck holds.
  - b. Discharging a firearm at a subject.
  - c. CEW application lasting longer than fifteen (15) seconds.
  - d. Any Level 2 use of force against a handcuffed subject.
  - e. Strikes to the head, neck or face with a baton or any other hard object.
  - f. K9 bite resulting in serious physical injury or death.
  - g. Pursuits resulting in serious physical injury or death.
- 5. Any use of force in which a Body Worn Camera (BWC) and/or Mobile Video Recorder (MVR) is not activated to capture the entire interaction shall be investigated as a minimum of a Level 2 use of force.

**B. Responsibility for Reporting**

- 1. Officers using, observing, or discovering a use of force that rises above De Minimis force shall, as soon as possible, notify their supervisor(s) of such reportable force.
- 2. Upon receipt of an allegation of unreasonable or excessive force by an officer, officers shall notify their supervisors as soon as possible.

3. Officers involved in the use of reportable force shall document the use of force in a Use of Force Report.
  - a. The Use of Force Report shall include the following:
    - 1) Provide a detailed account of the incident from the perspective of the officer writing the report.
    - 2) Provide the reason for the initial police presence.
    - 3) Provide a specific description of the acts that led to the use of force including the attempts to seek compliance, and the subject's reaction such attempts.
    - 4) Describe the level of resistance encountered.
    - 5) Describe every type of force used.
    - 6) Use no "canned" or conclusory language.
4. Each officer who observed a reportable use of force shall complete a Use of Force Report documenting the officer's own actions and observations.
5. If a supervisor is involved in a use-of-force incident, he/she will submit his/her Use of Force Report to another supervisor not involved in the incident.
6. Officers shall complete any required Use of Force Reports, whether primary or supplemental, before the end of their tour of duty, or as soon as feasible if exigent circumstances exist to prevent the completion of the Use of Force Report before the end of his/her tour of duty.
  - a. All exigent circumstances preventing the completion of the Use of Force Reports shall be documented.
7. Officers' Use of Force Reports shall completely and accurately describe the use of force. Officers shall be held strictly accountable for material omissions or inaccuracies in the Use of Force Report.

C. Force Review and Investigation by Supervisors

1. A supervisor who uses reportable force, authorizes the use of reportable force, authorizes conduct leading to the use of reportable force, or is a witness to the use of reportable force shall not be allowed to conduct the use-of-force investigation.
2. The supervisor of any officer using reportable force shall review all uses of force except those incidents involving the following, which shall be investigated by the IAO:
  - a. Serious use of force; Level 3 use-of-force incidents
  - b. Use of force that appears potentially unjustified or criminal.

- c. Use of force reassigned to the IAO by the Chief of Police or his/her designee.
  - d. Use of force in which the supervisor was involved, by participating in or ordering the force being investigated.
3. Level 1 Use of Force:
- a. Upon notification of an officer employing a Level 1 use of force, the supervisor shall speak with the involved officer(s).
  - b. It is not mandatory for supervisors to respond to the scene of a Level 1 use of force.
  - c. The supervisor shall review video recordings relating to the Level 1 use of force to sufficiently determine if the use of force was appropriate.
  - d. The supervisor shall review and approve the officer(s)' Use of Force Report(s) or elevate the use of force to a higher level use-of-force review prior to the end of the supervisor's tour of duty absent exigent circumstances.
    - 1) All exigent circumstances shall be documented in the case file.
    - 2) If the Use of Force Report is returned to the officer for revision, all revisions and additional reviews shall be completed within seventy-two (72) hours of the use of force.
  - e. Supervisors shall document a use of force supervisory review using a Supervisory Force Review Report within seventy-two (72) hours of learning of the use of force.
    - 1) A brief summary of the supervisor's review of the incident along with the supervisor's approval or disapproval shall be provided within the narrative of the Supervisory Force Review Report.
  - f. Supervisors shall elevate and investigate any Level 1 use of force that appeared to have violated the Department's Policies and Procedures or was improperly categorized as Level 1.
4. Level 2 Use of Force:
- a. Absent exigent circumstances, the supervisor of any officer, upon notification of a Level 2 use of force or an allegation of unreasonable/excessive force, shall respond to the scene.
  - b. If a supervisor is unable to respond to the scene, the supervisor shall document in the case file the exigent circumstances preventing his/her presence.
  - c. The reviewing supervisor once on scene shall take the following steps in response to a use of force or allegation of excessive force:
    - 1) Examine the subject of the force for injury.

- 2) Interview the subject for complaints of pain or injury
- 3) Ensure that the subject receives medical attention from an appropriate medical provider.
- 4) Notify the IAO of the Use of Force and obtain a Department Review system case number.
- 5) Ensure the canvas for and interview of civilian witnesses.
  - a) Civilian witnesses should be encouraged to provide and sign a written report in their own words.
- 6) Ensure that all officer witnesses provide a statement regarding the incident.
- 7) Separate officers involved in a use of force incident until they are interviewed. Group interviews shall be prohibited.
- 8) Ensure that all Use of Force Reports identify all officers who were involved in the incident or were on the scene when it occurred.
- 9) Interview officers and other witnesses.
  - a) Supervisors shall not ask officers or other witnesses leading questions that improperly suggest justifications for the officers' conduct, when such questions are contrary to appropriate law enforcement techniques.
- 10) Supervisors shall record all interviews with subjects and civilian witnesses and all follow-up interviews with officers.
- 11) Ensure collection of all evidence to establish material facts related to the use of force, including audio and video recordings, and photographs and other documentation of injuries or the absence of injuries. Evaluate the evidence to determine the following.
  - a) Whether the use of force was consistent with the Department's Policies and Procedures.
  - b) Whether it raises any policy, training, tactical or equipment concerns.
- d. Supervisors shall take the following steps immediately after conducting interviews and gathering statements and other evidence.
  - 1) Review all Use of Force Reports and ensure that all reports include the information required by the Department's Policies and Procedures.
  - 2) Consider all relevant evidence, including circumstantial, direct, and physical evidence, and make credibility determinations, if feasible.
    - a) The Department will train all of its supervisors on the factors to consider when evaluating credibility.

- 3) Make all reasonable efforts to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force claimed by the officer and the subject's injuries.
- 4) Where a reasonable and trained supervisor would determine that there might have been misconduct, the supervisor shall immediately notify the IAO to respond to the scene.
- 5) Absent exceptional circumstances, which shall be documented, each supervisor shall provide a written report to the shift commander or their commanding officer by the end of the shift documenting the following:
  - a) The supervisor's preliminary determination of the appropriateness of the use of force, including whether the force was reasonable and within policy.
  - b) Whether the injuries appear proportionate to the use of force described.
  - c) Summaries of subject, witness and officer statements.
- e. Each supervisor shall complete and document a use of force supervisory review using a Supervisory Force Review Report within seventy-two (72) hours of learning of the use of force. A Supervisory Force Review Report shall include the following.
  - 1) The supervisor's narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the officer's conduct based on the supervisor's independent review of the facts and circumstances of the incident.
  - 2) Documentation of all evidence that was gathered, including names, phone numbers and addresses of witnesses to the incident.
    - a) In situations in which there are no known witnesses, the report shall specifically state this fact.
    - b) In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number or address of those witnesses, the report shall state the reasons why.
    - c) Identifying information for anyone who refuses to provide a statement.
    - d) The names of all other Department employees witnessing the use of force.
  - 3) The reviewing supervisor's evaluation of the basis for the use of force, including a determination of whether the officer's actions appear to be within the Department's Policies and Procedures, and consistent with state and federal law.

- 4) Whether there is any evidence of criminal conduct by the officer. Whenever a supervisor finds evidence of apparent criminal conduct by an officer, he/she shall suspend the investigation immediately and notify his/her Division Head.
  - 5) An assessment of the incident for tactical and training implications, including whether the use of force may have been avoided through the use of de-escalation techniques or lesser force options.
  - 6) Documentation of any non-disciplinary corrective action taken.
- f. The investigating supervisor shall submit the completed Supervisory Force Review Report file, including copies of all Use of Force Reports completed by involved officers, to his/her Division Head. The completed Supervisory Force Review Report and Use of Force Reports along with all records, evidence and documents shall be combined by the supervisor into a Force Review File. The supervisor shall submit the complete Force Review File to his/her Division Head.
5. Level 3 Use of Force:
- a. Upon notification of a Level 3 use of force, the supervisor shall immediately respond to the scene.
  - b. The supervisor shall ensure medical attention is provided to injured person; secure and stabilize the scene.
  - c. The supervisor shall follow the procedures set forth in the Policies and Procedures # 408 – Post Incident Deadly Force when the use of force is an officer involved shooting.
  - d. The IAO shall be notified of any Level 3 use of force, and the IAO shall investigate such use of force.

D. Use of Force Review by the Division Head

1. The Division Head shall review the Supervisory Force Review Report to ensure that it is complete and that the findings are supported by a preponderance of the evidence
2. The Division Head shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings.
3. Where the findings of the Supervisory Force Review Report are not supported by a preponderance of the evidence, the Division Head shall modify the findings after consultation with the reviewing supervisor, and document the reasons for this modification, including the specific evidence or analysis supporting the modification.
4. The Division Head shall counsel the reviewing supervisor regarding the modification and on any investigative deficiencies that led to it. The Division Head shall order corrective action where appropriate.

5. The Division Head shall be held accountable for the accuracy and completeness of all materials in the Force Review Files compiled by supervisors under his/her command.
  - a. Where a reviewing supervisor repeatedly conducts deficient investigations, the supervisor shall receive the appropriate corrective action, including training, demotion, and/or removal from a supervisory position.
6. Whenever a Division Head finds evidence of apparent criminal conduct by an officer, he/she shall suspend the investigation immediately and notify the Chief of Police or his/her designee.
7. When the Division Head finds that the supervisor force review is complete and the evidence supports the findings, the Force Review file shall be forwarded to the Chief of Police or his/her designee.

E. Force Investigations by Internal Affairs

1. The IAO shall use the IA Reporting Module, a single, uniform reporting and investigation and review system for all serious uses of force, including firearm discharges.
  - a. The IAO is to conduct the following.
    - 1) Administrative investigations of serious use of force incidents.
    - 2) Administrative investigations of use of force incidents reassigned to the IAO by the Chief of Police.
  - b. The IAO shall receive training on proper use-of-force investigations.
  - c. The Department and the Town shall ensure that all allegations of officer misconduct are received and are fully and fairly investigated.
  - d. All investigative findings are supported by a preponderance of the evidence and documented in writing.
  - e. All officers who commit misconduct are held accountable pursuant to a disciplinary system that is fair and consistent.
2. The IAO shall review the Force Review File and determine whether an incident arises to a Serious Use of Force.
3. The Department shall ensure that all serious use of force incidents (Level 3) are investigated fully and fairly by a properly-trained IAO or supervisor with the appropriate expertise, independence and investigative skills to ensure the following.
  - a. That uses of force that are contrary to law or policy are identified and appropriately resolved.

- b. That policy, training, equipment, or tactical deficiencies related to the use of force are identified and corrected.
  - c. That investigations are of sufficient quality to ensure that officers are held accountable as necessary.
  - d. Where appropriate to ensure the fact and appearance of impartiality, investigations of serious use of force or force indicating apparent criminal conduct by an officer shall be referred for investigation to an independent, competent entity outside of the Department.
4. The IAO shall respond to the scene of every incident involving serious use of force (Level 3), any use of force indicating apparent criminal conduct by an officer or as ordered by the Chief of Police.
5. The Chief of Police or his/her designee shall immediately notify the appropriate agency regarding any use of force incident indicating apparent criminal conduct by Department personnel, or any use of force in which an officer discharged his/her firearm, or where an individual has died while in or proximate to the custody of the Department.
6. Where apparent misconduct is reported to a supervisor, the supervisor shall immediately document and report this information to the IAO. Failure to report or document apparent misconduct or criminal behavior shall be grounds for discipline, up to and including termination of employment. The default discipline for a failure to report criminal behavior shall be termination.
7. In the event of a criminal investigation, any compelled interview of the subject officer(s) may be delayed. Routine reports on the incident that affect public safety are not compelled statements and shall be completed consistent with Policies and Procedures # 303 – Incident Reports and Review. No other part of the investigation shall be held in abeyance unless specifically authorized by the Chief of Police in consultation with the agency conducting the criminal investigation.
8. The subject officer(s) shall not be compelled to provide a statement to administrative investigators where there is a potential criminal investigation or prosecution of the officer(s), until consultation with the criminal investigative agency and approval by the Chief of Police.
9. If at any time during complaint intake or investigation the investigator determines that there may have been criminal conduct on the part of any officer or employee, the investigator shall immediately notify the Chief of Police. Where an allegation is investigated criminally, the IAO shall continue with the administrative investigation of the allegation, except that it may delay or decline to conduct an interview of the subject officer(s) or other witnesses until completion of the criminal investigation unless, after consultation with the investigating agency and the Chief of Police, such interviews are deemed appropriate.

10. The Department shall ensure allegations of officer misconduct made during criminal prosecutions or civil lawsuits are identified and investigated as misconduct complaints.
  11. The IAO shall complete his/her administrative use of force investigation within sixty (60) days from the use of force, unless directed otherwise by the State's Attorney. At the conclusion of each use of force investigation, the IAO shall prepare an IAO Use of Force Report on the investigation.
    - a. The IAO shall submit the completed IAO Use of Force Report to the Chief of Police.
  12. Use of Force Reports shall be maintained centrally by the IAO for tracking and analysis purposes.
  13. At least annually, the IAO shall analyze the year's force data, including force-related outcome data, to do the following.
    - a. Determine significant trends.
    - b. Identify and correct deficiencies revealed by the analysis.
    - c. Document his/her findings in a public report.
- F. Review by Chief of Police.
1. The Chief of Police shall review all Force Review Files.
  2. The Chief of Police shall review each force review and investigation within thirty (30) days of receiving the force review/investigation report to ensure that it is complete and that the findings are supported by a preponderance of the evidence.
  3. The Chief of Police shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings.
  4. Where the findings are not supported by a preponderance of the evidence, the Chief of Police or his/her designee shall modify the findings and document the reasons for this modification, including the specific evidence or analysis supporting the modification.
  5. Determine whether the force violated the Department's Policies and Procedures.
    - a. If the force violated the Department's Policies and Procedures, the Chief of Police of his/her designee shall take appropriate disciplinary action, including referring the review or investigation report to the Board of Police Commissioners for appropriate disciplinary action.

- b. Determine whether the incident raises policy, training, equipment, or tactical concerns, and refer such incidents to the appropriate commander or supervisor within the Department to ensure they are resolved.
  - c. Direct supervisors to take and document non-disciplinary corrective action to enable or encourage an officer to improve his/her performance.
6. Document his/her findings within forty-five (45) days of receiving the force review or investigation.
7. After a force review, an officer's use of force is found to be inconsistent with the Department's Policies and Procedures, the Chief of Police shall direct and ensure appropriate discipline to include, if necessary, forwarding the outcome of the force review to the Board of Police Commissioners for disciplinary action.
8. At the discretion of the Chief of Police and/or his/her designee, a use of force review may be assigned to another supervisor, whether within or outside of the shift in which the incident occurred or may be returned to the Division Head for further review or analysis.
9. Where the use of force indicates policy, training, tactical, or equipment concerns, the Chief of Police and/or his/her designee shall ensure that necessary training is delivered and that policy, tactical or equipment concerns are resolved.
10. The Chief of Police shall issue a finding to the officers(s) subject to the investigation indicating one of the following conclusions.
  - a. The Chief found no violations of the Department's Policies and Procedures, or law.
  - b. The Chief of Police found evidence of a need for corrective action such as training or counseling. The Chief of Police will describe in detail the requirements of the corrective action.
  - c. The Chief of Police finds probable cause that the use of force violated the law and that the case has been referred to the proper authorities.
11. In all cases the Chief of Police's written finding will be maintained on file by IAO. It will be included in the Early Intervention System file(s) of the officer(s).