



Hamburg Township Public Safety Department

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RICHARD DUFFANY, DIRECTOR OF PUBLIC SAFETY



TO: Hamburg Township Board

FROM: Chief Richard Duffany

DATE: May 2, 2024

RE: Agenda Item Topic: **Updated Public Safety SOP**

General Ledger #: N/A

Number of Supporting Documents: 1

NEW/OLD BUSINESS: **XXX** New Business

_____ Old Business – Previous Agenda #:

Requested Action

- Motion to approve Hamburg Township Public Safety SOP #300-25: *Use of Force*.

Background

The attached amended Public Safety SOP is being submitted to the Board for review and approval. The language change is found on p.11 of the policy. In short, we are eliminating the separate Use of Force form. The separate Use of Force form is redundant and no longer needed since we implemented the requirement of “meaningful reviews” by supervisors on all use of force incidents. We have replaced the Use of Force form in Appendix A with a checklist to be utilized by officers when completing their incident reports. The checklist ensures that all information previously contained in the Use of Force form is contained in the officer’s incident report.

Respectfully,

A handwritten signature in black ink, appearing to read "Richard Duffany".

Chief Richard Duffany
Director of Public Safety

HAMBURG TOWNSHIP PUBLIC SAFETY DEPARTMENT			
STANDARD OPERATING PROCEDURE			
Title: Use of Force			No. 300-25
Distribution: POLICE	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended	Rescinds: 300-25 (10/12/22)	MLEAC Standard(s): 3.3.1, 3.3.2, 3.3.3, 3.3.5
Effective Date: DRAFT			

I. PURPOSE

The purpose of this procedure is to provide Hamburg Township police officers with guidelines on the use of force during the legal performance of their duties and to establish a procedure for reporting use of force.

II. POLICY

This department recognizes and respects the value and special integrity of each human life. In vesting police officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Further, this department recognizes that officers are often forced to make split-second judgments, in circumstances that are tense, uncertain, and rapidly evolving when deciding the amount of force necessary in a particular situation (*Graham v. Conner, 390 U.S. 368, 1989*).

Use of Force shall never be considered routine. Department members, authorized to use weapons or force, shall use only objectively reasonable force when force is used, to accomplish lawful law enforcement objectives, to overcome resistance while affecting a lawful arrest, bringing an incident under control, or protecting the public in the lawful performance of their duty. This shall include immediate action force up to and including deadly force to de-escalation.

The use of unreasonable, unnecessary, or excessive force, and/or the failure to provide medical treatment following the use of force, shall result in disciplinary action against those who use or allow the use of such force or fail to provide for the care of persons in custody, up to and including termination.

III. DEPARTMENTAL USE

This procedure is for departmental use only and represents an administrative guide for officers' decision-making processes and not as a standard for civil or criminal litigation. It should not be construed as a creation of a higher legal standard of safety or care in an evidentiary sense with respect to civil suits or administrative claims. However, violations of this procedure may form the basis for departmental administrative sanctions.

IV. **DEFINITIONS**

For this procedure, the following definitions will apply:

- A. **Choke Hold:** Any hold applied to or around the neck that compresses the upper airway (trachea, larynx or laryngopharynx) which can interfere with breathing and lead to asphyxia. All forms of choke holds or neck restraints, whether applied by empty hand or intermediate weapon, are strictly prohibited.
- B. **Deadly Force:** Any force used by an officer that has a reasonable probability of causing death or serious bodily harm.
- C. **De-Escalation:** The Department of Justice (DOJ) defines “de-escalation” as the strategic slowing down of an incident in a manner that allows officers more time, distance, space and tactical flexibility during dynamic situations on the street.
- D. **Firearm:** Department issued/authorized handgun, rifle or shotgun.
- E. **Last Resort:** Situations wherein certain immediate and drastic measures must be undertaken by an officer in order to protect human life. Force used in these situations may involve the use of techniques or weapons not covered or generally prohibited by this policy. However, the force used must still be objectively reasonable under the circumstances.
- F. **Less-Lethal Force:** Any force used by an officer that will not reasonably be expected to cause death or serious bodily harm.
- G. **Less-Lethal Weapons:** Those devices that when properly used by an officer are not reasonably expected to cause death or serious bodily harm.
- H. **Lethal Weapon:** A device which, when used by an officer may result in great bodily harm or loss of human life. Lethal weapons are considered deadly force in the Force Continuum.
- I. **Level of Control:** That amount of force officers use to gain control over a subject’s resistant actions in the performance of their lawful duties.
- J. **Level of Resistance:** That amount of resistance or force used by a subject to resist compliance with the lawful order or action by an officer.
- K. **Meaningful Review:** A documented review of an incident or occurrence, regardless of outcome, prepared by or for the Director of Public Safety or his/her designee. The review should indicate whether policy, training, equipment, or disciplinary issues should be addressed.

- L. **Minimum Amount of Force:** The least amount of force that will permit officers to overcome the resistance offered.
- M. **Objectively Reasonable Force:** Any force used by an officer which is suitable to the situation and consistent with department approved training and policies. The reasonableness of an officer's actions will be based upon what a "reasonable" officer would have done under similar circumstances.
- N. **Serious Bodily Harm:** A bodily injury that creates a substantial risk of death, causes serious/permanent disfigurement, or results in long-term loss or impairment of any bodily function.
- O. **TASER®:** A less-lethal weapon approved by the department that transmits electrical pulses that causes an uncontrollable contraction of muscle tissue, resulting in temporary physical debilitation to a person.
- P. **Vascular Neck Restraint:** A control technique applied to the sides of the neck, using a combination of physiological factors, to restrict blood flow to the brain which may cause unconsciousness. Use of vascular neck restraints are strictly prohibited.

V. **AUTHORIZED USE OF LESS-LETHAL FORCE**

- A. The application of a necessary amount of less lethal force may be used in the following situations, or when other alternatives are not available or have failed. The totality of circumstances is the factor to be considered in determining the degree of force to be used. Officers are authorized to use department-approved control techniques and authorized less-lethal weapons for resolution of incidents as follows:
 - 1. To stop potentially dangerous and/or unlawful behavior.
 - 2. To protect the officer or another from injury or death.
 - 3. To prevent a person from injuring themselves.
 - 4. During the process of effecting an arrest when a subject offers resistance.
 - 5. To protect another officer or other person from physical assault.
 - 6. To control the attack or menacing of animals against officers, other persons, or property.
 - 7. To prevent escape from custody.
 - 8. To take a person into protective custody.

- B. Officers shall only utilize department authorized less-lethal weapons and shall follow the guidelines for the use of less lethal weapons as outlined in Public Safety SOP #300-28: *Less-Lethal Weapons*.

VI. AUTHORIZED USE OF DEADLY FORCE

An officer may use deadly force under the following circumstances:

- A. When an officer reasonably believes that the use of deadly force is in defense of human life, including the officer's own life, or in defense of any person in imminent danger of serious physical harm., or;
- B. To prevent the escape of a fleeing felon when the felony committed involves the infliction or threatened infliction of death or serious bodily harm; provided that the officer has exhausted all other reasonable means of apprehension, and *all of the following circumstances exist*:
 - 1. The fleeing felon is apparently armed and dangerous; and,
 - 2. Deadly force is necessary to prevent the felon's escape; and,
 - 3. The officer has probable cause to believe that the felon poses a significant threat of death or serious bodily harm to the officer or others if the subject escapes; and,
 - 4. Whenever feasible, some form of verbal warning is given to the fleeing felon.
- C. All firearms, regardless of whether they are owned privately or by the department, shall be used in a lawful manner at all times.
- D. Officers shall not discharge a firearm at a moving vehicle for the purpose of stopping that vehicle unless it can be justified as an authorized use of deadly force or in last resort situations.
- E. Members of this department shall not fire warning shots.

VII. LEVELS OF RESISTANCE AND CONTROL

- A. Officers may use such reasonable force as may be, or reasonably appears to be, necessary to protect themselves or others or to carry out their lawful duties. Officers should use the amount of force that is proportionate to the level of demonstrated subject resistance. As the subject's resistance de-escalates, the amount of force used by the officer must also de-escalate. Force may never be used as punishment or retaliation.

- B. Once a determination is made that physical force is necessary, the amount of force used must be “reasonable” under the circumstances. The factors to be considered in determining reasonableness include, but are not limited to:
1. The severity of the crime;
 2. Whether the suspect poses an immediate threat to the safety of the officers or others;
 3. Whether the suspect is actively resisting arrest or attempting to flee.
- C. For the purpose of this policy, the use of force will be addressed from two perspectives: resistance and control. Both resistance and control can be in the form of verbal directives or physical action. Resistance is defined as actions that are directed from the subject toward the officer; while control is action directed from the officer toward the subject.
1. **Levels of Resistance:** The amount of resistance or force used by a subject to resist compliance with the lawful order or action by an officer.
 - a. **Inactive Resistance** – Resistance that may include psychological intimidation and/or verbal resistance (e.g., blank stare, clenching of fist(s), tightening of jaw muscles, etc.).
 - b. **Passive Resistance** – Any type of resistance whereby the subject does not attempt to defeat the officer’s attempt to touch and control the subject, but still will not voluntarily comply with verbal and physical attempts to control (e.g., dead weight, does not react to verbal commands, etc.). This is the lowest level of physical resistance. At this level, the offender never makes any attempt to defeat the physical contact of the officer. In passive resistance situations, officers should, whenever possible, secure assistance in lifting or wheeling an uncooperative subject to a transporting patrol vehicle. As long as the subject’s level of resistance does not exceed the passive resistance stage an officer’s response shall not exceed “compliance controls” in the force category. Physical controls such as hard empty hand techniques shall not be used unless it becomes necessary to protect the safety of the officer, subject, or others. Physical controls and/or Intermediate controls may be justified when an officer can articulate their reason to believe the subject or other persons on the scene are using or likely to use greater resistance.
 - c. **Active Resistance** – Any action by a subject that attempts to prevent an officer from gaining control of the subject (e.g.,

pulling/pushing away, blocking, etc.). At this level the offender attempts to push/pull away in a manner that does not allow the officer to establish control. However, the subject never attempts to strike the officer.

- d. **Active Aggression** – Physical actions/assaults against the officer with less than deadly force (e.g., advancing, challenging, punching, kicking, grabbing, wrestling, etc.). At this level the subject attacks the officer to defeat the officer's attempt to control him/her. The attack is a physical assault on the officer in which the offender strikes or uses techniques in a manner that may result in injury to the officer or others.
- e. **Deadly Force Assault** – Any force used against an officer and/or another person that may result in great bodily harm or the loss of human life.

2. **Levels of Control:** Force that an officer uses to gain control over a subject's resistant actions.

- a. **Officer Presence/Verbal Direction** – Identification of Authority (i.e., uniformed presence or identification as a police officer); Verbal Direction (i.e., for arrest or to control subject's movements); and/or Use of Restraint Devices (i.e., compliant handcuffing). If the officer is not in uniform, this level would require verbal identification.
- b. **Compliance Controls** – Soft Empty Hand Techniques (e.g., physical control such as strength techniques, leverage locks, pain compliance techniques and pressure points).
- c. **Physical Controls** – Hard Empty Hand Techniques are applied when lower forms of control have failed or **appear to be insufficient**. Techniques that fall into this level of force have a probability of creating soft or connective tissue damage, skin lacerations that require medical attention, or bone fractures (e.g., take downs, strikes, PPCT Shoulder Pin Restraint System, etc.). Strikes may be delivered with an officer's open hand, fist, forearm, leg, knee, or foot.
- d. **Intermediate Controls** – Intermediate Controls (i.e., impact weapons, less-lethal weapons, chemical agents, and/or TASER© device) when used consistently within training deployment standards, provides a method of controlling subjects when deadly force is not justified but when empty hand control techniques **have failed or appear to be insufficient** in controlling, moving or

effecting an arrest. The officer's intent should always be to temporarily disable an offender and not to inflict permanent injury. When intermediate weapons are used, it is quite likely that some form of skin irritation, bruising, soft or connective tissue damage, or bone fracture may occur.

- e. **Deadly Force** – Any force used by an officer that may result in great bodily harm or the loss of human life to be used only in those situations described in Section VI of this procedure. Neck restraints or choke holds, whether applied by empty hand or intermediate weapon, constitute deadly force and can be used only as a last resort, when such force is justified.

- 3. In deciding which level of force to use in response to resistance encountered by an officer, the following factors should be considered:

- a. Relative size/stature of the subject.
- b. Multiple subjects/offenders.
- c. Subject's access to weapons.
- d. Subject under the influence of alcohol or drugs.
- e. Exceptional abilities/skills (e.g., martial arts).
- f. Injury to, or exhaustion of, the officer.
- g. Weather or terrain conditions.
- h. Immediacy of danger and/or distance from the subject(s).
- i. Special knowledge (e.g., subject's prior history of violence, etc.).
- j. Officer's perception of the subject's willingness to resist.
- k. Officer's perception of the immediate threat to the subject, third party, or the officer himself/herself.
- l. Availability of or closeness of back-up assistance.

- 4. Officers shall draw and/or display weapons only:

- a. Where an ordinary prudent officer would reasonably fear for his or her safety or the safety of others, or,

- b. Where an officer is authorized to use the weapon to effect an arrest as established by this procedure, or,
- c. For the purposes of destroying an animal, training, or cleaning as provided by departmental policies and procedures.

VIII. DE-ESCALATION

De-escalation tactics are employed in an attempt to increase the likelihood of voluntary compliance and cooperation. It is the policy of this department that when all of the reasonably known circumstances indicate it is safe, prudent, and feasible to do so, an officer shall provide a subject an opportunity to de-escalate. De-escalation tactics may help an officer expand time and space in order to put themselves in a more advantageous position to evaluate response options.

- A. An officer shall attempt to slow down, reduce the intensity, or stabilize a situation so that more time, options and /or resources may become available for incident resolution, when reasonable and when it can be accomplished safely.

Tactics include:

- 1. Increasing distance to allow for greater reaction time. Officers should recognize that they may withdraw or reposition to a location that is tactically more secure or allows them greater distance in order to consider or deploy a greater variety of force options.
 - 2. Maximizing the use of cover or concealment to reduce officer(s) exposure to potential threats by placing the officer(s) in a safer position.
 - 3. Communicating from a safe position to gain the subject's compliance through the use of verbal persuasion, advisements, and/or warnings. Generally, communication techniques should involve active listening to calm agitated individuals and promote rational decision-making.
- B. When time and circumstances reasonably permit, an officer shall consider whether a subject's lack of compliance is a deliberate attempt to resist or is the result of an inability to comply based on factors including, but not limited to:
 - 1. Medical Conditions
 - 2. Mental Impairment
 - 3. Developmental disability
 - 4. Physical limitation
 - 5. Language barrier

6. Behavioral crisis
 7. Fear or anxiety
 8. Drug interaction
 9. Past history/experiences
- C. An officer's awareness of factors such as outlined above (VIII. B), when time and circumstances reasonably permit, shall be balanced against the facts of the incident and which tactical options are the most appropriate to bring the situation to a safe resolution. An officer is not expected to engage in force de-escalation measures that could jeopardize the safety of the community or the safety of officers.
- D. Supervisors should possess a good knowledge of tactics and supervise officers under their command in regard to proper training standards. As a good practice, supervisors when available will respond to incidents in a timely manner where law enforcement use of force is probable.
- E. De-escalation cannot be measured solely on whether officers used force or not. There are times when the application of reasonable force is the only way to "de-escalate" a situation.

IX. DUTY TO INTERVENE

- A. Each officer has an affirmative duty to safely intervene, and notify a supervisory authority, in instances where they observe an agency employee, another agency employee or public safety associate engage in any inappropriate, unreasonable, or excessive use of force. Along with any violation of agency written directive, or any violation of local ordinance, state, or federal law.
- B. Officers failing to intervene to stop the use of inappropriate, unreasonable, or excessive force by another officer, regardless of the ranks of the involved officers, shall be subject to strict discipline up to and including termination of employment.

X. AFTERCARE PROCEDURES

- A. All personnel shall be alert to any injury or complaint of injury occurring as a result of any use of force utilized to control a subject.
- B. Officers using force on a subject shall make medical treatment available to that subject when:
1. The subject complains of injury and/or requests medical treatment.
 2. Any officer observes or suspects injury to the subject.

3. The subject does not substantially recover from the effects of a less lethal weapon within a reasonable and expected time period.
 4. When directed by a supervisor.
- C. When a less-lethal weapon is used on a subject the officer shall follow the post-deployment procedures specific to that less-lethal weapon as outlined in Public Safety SOP #300-28: *Less-Lethal Weapons*.
 - D. If a less-lethal weapon is used on a subject and they are lodged in the Livingston County Jail, the transporting officer shall inform jail personnel upon arrival at the jail that a less-lethal weapon was deployed on the subject.
 - E. If a less-lethal weapon is used on a subject and they are turned over to another agency, the transporting officer shall inform the receiving officer from that agency that a less-lethal weapon was deployed on the subject.
 - F. Officers are reminded that they may be held civilly and criminally liable for failing to provide appropriate care and/or failing to request medical treatment for persons in their custody when circumstances warrant. When in doubt, request a medical evaluation by fire personnel or Livingston County EMS.

XI. SUPERVISORY RESPONSIBILITIES

- A. Any officer, whose actions or use of force in an official capacity results in death or serious physical injury, shall be removed from line-duty assignment, pending a documented meaningful review and/or investigation. The on-scene supervisor shall ensure that the procedures outlined in Public Safety SOP #300-23: *Response to Critical Incidents* and Public Safety SOP #300-59: *Administrative Duty/Leave* are followed.
- B. Whenever a supervisor has knowledge that a use of force incident has occurred, it shall be the supervisor's responsibility to ensure that both an incident report and Use of Force form are completed.
- C. The shift/on-duty supervisor will conduct a meaningful review of all use of force incidents including discharging a firearm for anything other than training or recreational purposes, weaponless subject control, unintentional discharge of a firearm or CEW (Taser), the application of a less lethal device/weapon, and the application of deadly force. The supervisor's responsibility is to determine whether the degree of force used was justified in accordance with the terms of this policy, whether any violations of department policies or procedures occurred, and whether policy, training, equipment, or disciplinary issues should be addressed. The reviewing supervisor should be one rank above the officer using force

whenever possible. If a supervisor one rank above the officer using force isn't available or the Director of Public Safety was involved in the Use of Force, a review committee of department Use of Force instructors will conduct the meaningful review.

- D. If the reviewing supervisor finds that the use of force was not justified or that a violation of department policy occurred the reviewing supervisor shall indicate their findings on the Use of Force form and initiate the disciplinary process as outlined in Public Safety SOP #100-3: *Disciplinary Procedures* and Public Safety SOP #300-59: *Administrative Duty/Leave*.
- E. If the reviewing supervisor finds that the use of force was justified the supervisor shall indicate that finding on the department's Use of Force form and forward it to the Deputy Director - Police for review.
- F. The Deputy Director shall review the findings and forward the Use of Force form to the Director of Public Safety.
- G. The Director of Public Safety shall review the use of force incident and make a final determination if the amount of force used was within department policy. If the Director was involved in the use of force, the Township Supervisor shall assume the role of the Director of Public safety for purposes of making a final determination.

XII. REPORTS

- A. Officers shall complete a detailed incident report and reference the department's Use of Force ~~Form~~ Checklist (Appendix A) whenever force is used, except in instances outlined in Officer Presence/Verbal Direction level of control (VII.C 2a). *The information contained on the Use of Force Checklist shall be contained in the officer's incident report unless clearly not applicable.*
- B. In Use of Force incidents for which the officer is already generating a complaint number for the incident (e.g., resisting, disorderly, etc.), the officer will complete the following under the original complaint number:
 - 1. Complainant, victim and witness information and statements.
 - 2. Factors used to determine the reasonable suspicion and/or probable cause that existed.
 - 3. Level(s) of resistance encountered, and the type(s) and degree of force used to overcome the resistance.
 - 4. Injury to the prisoner or officer(s).
 - 5. Treatment of prisoner or officer(s).

6. Follow-up actions taken by officers.
 7. Other officers involved.
 8. Evidence, including weapons and photographs.
- C. If a prisoner requires medical treatment or complains of injury that occurred during the officer's contact with the subject when force was used, the officer shall include in the original incident report: the injury, treatment, and photographs of the injury, as well as, all other information listed in XII. B., above.
- D. If a prisoner requires medical treatment or complains of injury when force was not used and the injury did not occur during the officer's contact with the subject, notation of this required medical treatment or complaint of injury shall be made in the original incident report.
- E. Whenever a department issued or department approved and registered second/back-up firearm is discharged by police personnel under any circumstance other than authorized animal terminations, training exercises at the range, lawful hunting, or lawful recreation a report shall be initiated detailing the incident for a police firearm discharge.
- F. The use of restraints is outlined in Public Safety SOP #300-76: *Use of Handcuffs and Restraining Devices*.

XIII. DATA COLLECTION

The Hamburg Township Public Safety Department participates in the DOJ/FBI National Use of Force Data Collection. The Deputy Director, or designee, will submit monthly statistics on use of force. This national database is used to provide an aggregate view of the incidents reported and the circumstances, subjects, and officers involved.

- XIV.** The Director of Public Safety, or designee, will conduct a documented annual review and a written annual analysis of all use of force incidents in the aggregate. This analysis should reveal patterns or trends that could be predictive or could indicate effectiveness, training needs, equipment upgrade needs and/or policy modification needs.

XV. OFFICERS ASSIGNED TO OTHER AGENCIES

Officers of this department assigned to or assisting other law enforcement agencies shall follow the guidelines established in this procedure.

Issued by:

A handwritten signature in dark ink, appearing to read "Richard Duffany", with a stylized, flowing script.

Richard Duffany
Director of Public Safety

Approved by Hamburg Township Board of Trustees: **DRAFT.**

(APPENDIX A)

**HAMBURG TOWNSHIP
PUBLIC SAFETY DEPARTMENT**

USE OF FORCE REPORT CHECKLIST

This checklist is intended to assist officers in completing incident reports for use of force incidents. The information contained on this checklist shall be contained in the officer's incident report unless clearly not applicable.

OFFICER(S):

- “Use of Force” heading is recommended.
- Officer(s) Using Force
- Type of Force Used
 - Compliance Controls - Soft Empty Hand Techniques (e.g., physical control such as strength techniques, leverage locks, pain compliance techniques and pressure points).
 - Physical Controls - Hard Empty Hand Techniques are applied when lower forms of control have failed or **appear to be insufficient**. Techniques that fall into this level of force have a probability of creating soft or connective tissue damage, skin lacerations that require medical attention, or bone fractures (e.g., take downs, strikes, PPCT Shoulder Pin Restraint System, etc.). Strikes may be delivered with an officer's open hand, fist, forearm, leg, knee, or foot.
 - Intermediate Controls
 - Taser
 - If a Taser was deployed, reference the “Taser” section of the checklist.
 - 40MM LLIM
 - If the 40MM was deployed, reference the “40MM” section of the checklist.
 - Deadly Force

INJURY:

- Did the application of force cause injury?
 - If yes, describe nature of injuries (including complaints of injury)
- Did the subject receive medical treatment at the scene?
 - If yes, who provided treatment (EMS, Fire, Police)
- Was the subject transported to the hospital.
 - If yes, name of hospital and who transported.

TASER®:

- Approximate suspect distance at the time of deployment
- Number of cartridges deployed.
- Number of cycles applied.
 - Articulate the subject's demeanor/actions along with the justification for additional cycles/deployments.
- Was this a dart probe contact, drive stun or both.
- Description of dart impact area(s)
- Did the dart(s) penetrate the subject's skin?
- Were the probes removed on scene? By whom?
- Take photographs of the impact area along with any injuries.

40MM

- Approximate suspect distant at the time of deployment.
- The number of eXact iMpact rounds deployed.
- The number of eXact iMpact rounds that struck the suspect.
 - Articulate the subject's demeanor/actions along with the justification for additional rounds deployed.
- Description of the impact area(s).
- Take photographs of the impact area along with any injuries.