

MAINE STATE LEGISLATURE

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BOARD OF TRUSTEES MAINE CRIMINAL JUSTICE ACADEMY

January 15, 2012

The Hon. Garrett Paul Mason, Senate Chair
The Hon. Gary E. Plummer, House Chair
Joint Standing Committee on Criminal Justice and Public Safety
State House
Augusta, ME 04333

Dear Senator Mason, Representative Plummer, and Members of the Criminal Justice and Public Safety Committee:

Pursuant to Section 2 of Resolve Chapter 58 (2009), the Board of Trustees of the Maine Criminal Justice Academy submits this report concerning the implementation of the changes to the use of deadly force standards promulgated by the Board, and the changes based on those standards to the model policy of the Maine Chiefs of Police Association. This report also includes the work of the incident review teams referenced in Section 1 of the Resolve. The Resolve directed that this report include (1) an update on law enforcement agency compliance and implementation of the policy change, (2) the number of incident review teams that were convened to review instances of the use of deadly force, and (3) the number of reports generated by incident review teams and the availability of those reports. (A copy of the Resolve is attached hereto and incorporated herein as Appendix 1.)

An update on law enforcement agency compliance and implementation of the policy change.

The Board of Trustees of the Maine Criminal Justice Academy has a policy standards review committee consisting of five members of the Board. Throughout 2009, the committee met on this issue and others involving the mandatory minimum standards for law enforcement policies on the use of physical force. On December 4, 2009, the Board voted to adopt the recommendations of the committee regarding the requirements of Resolve 58. Below is the Board mandatory minimum standard that covers the requirement in Resolve 58. (A copy of the Board standards for all law enforcement policies on the use of force is attached hereto and incorporated herein as Appendix 2.)

6. In the case of the use of deadly force, the agency shall develop a procedure for reporting and investigation that complies with the Office of the Attorney General's protocol on Reporting and Investigation of the use of Deadly Force. The procedure shall include at a minimum the following:

- a. Notify the Office of Attorney General as soon as practical.
- b. If death occurs, notify the Office of Chief Medical Examiner as soon as possible.
- c. If the physical force applied in a particular situation was deadly force, the Chief Law Enforcement Officer (CLEO) of the agency involved shall convene an incident review team consisting of members appointed by the CLEO. Members appointed shall include at least one member who is a commissioned officer of the Maine State Police and at least one member of the public who is not and has not previously served as a sworn law enforcement officer.
- d. The incident review team shall review the use of deadly force to determine the following:
 1. The facts of an incident.
 2. Whether relevant policy was clearly understandable and effective to cover the particular situation.
 3. Whether changes are necessary to incorporate improved procedures or practices demonstrated to increase public safety or officer safety.
 4. Whether training protocols should be reviewed or revised.
 5. Whether equipment or other resources should be modified.
 6. In conducting its investigation, the incident review team shall abide by any applicable contractual provisions regarding officers' contractual rights.
- e. The incident review team shall generate a written report of its finding. That report is public as provided under the Maine Revised Statutes, Title 5, section 7070-A, and Title 30-A, section 503, subsection 1-A, and Title 30-A, section 2702, subsection 1-A.

Once the Board adopted this new mandated standard for all law enforcement policies on the use of force, the Maine Chiefs of Police Association took the initiative to amend its model policy on the use of force in order to incorporate the new standard. (A copy of the model policy is attached hereto and incorporated herein as Appendix 3.)

State law requires that when new standards or amended standards are promulgated by the Board of Trustees, these changes must be incorporated into the written policies of all law enforcement agencies in the State. Each agency was required to attest to the Board that the changes were implemented on or before June 1, 2010, and was required to provide a copy of the updated policy to the Board. In Maine, there are a total of 169 law enforcement agencies mandated to comply with these requirements. All agencies met the requirements.

It should also be noted that in 2009, the Board of Trustees mandated that all fulltime and parttime law enforcement officers in the State – about 3,500 – receive at least two hours each of training in situational use of force assessment and law updates. The new requirements brought about by Resolve 58 were included in this training.

There were 14 incidents of the use of deadly force in 2010 and 2011.

2010 – Five (5) incidents

1. April 23 in Cyr Plantation (Aroostook County). Neil Begin shot and killed. Officers were Trooper Flynn of the State Police and Agent Kipler of the U.S. Border Patrol.
2. June 15 in Old Orchard Beach (York County). Thomas Mayne shot and killed. Officers were three agents of the U.S. Bureau of Alcohol, Tobacco, and Firearms (ATF).
3. July 8 at Togus VA in Augusta (Kennebec County). James Popkowski shot and killed. Officers were Officer Park of the Togus VA Police and Sgt. Dunham of the Maine Warden Service.
4. October 4 in Skowhegan (Somerset County). Kemp Lybrook shot and wounded. Officer was Det. Sperrey of the State Police Tactical Team.
5. October 18 in Clinton (Kennebec County). A vehicle driven by Jessica Rood the target of shots fired by Officer Belanger of the Clinton Police Department.

2011 – Nine (9) incidents

1. January 15 in Lyman (York County). Andrew Landry shot and killed. Officer was Deputy Kassa of the York County Sheriff's Office.
2. March 27 in Kennebunk (York County). Katherine Paulson shot and killed. Officer was Officer Morneau of the Kennebunk Police Department.
3. April 10 in Portland (Cumberland County). Jonathan Mitchell shot and wounded. Officer was Officer Miller of the Portland Police Department.
4. June 8 in Belfast (Waldo County). Benjamin Thompson shot and wounded. Officer was Officer Fitzpatrick of the Belfast Police Department.
5. September 24 in Farmingdale (Kennebec County). Paul Fritze shot and killed. The officer was Trooper Black of the State Police Tactical Team.
6. November 8 in Lewiston (Androscoggin County). Kyle Corey shot and wounded. The officers were Officer Meserve of the Lewiston Police Department and Deputy Lovering of the Androscoggin County Sheriff's Office.
7. November 10 in Rumford (Oxford County). Eric Richard shot and killed. The officer was Warden Judd of the Maine Warden Service.

8. November 19 in Farmington (Franklin County). Justin Crowley-Smilek shot and killed. The officer was Officer Rosie of the Farmington Police Department.
9. November 29 in Dover-Foxcroft (Piscataquis County). Michael Curtis shot and killed. The officer was Trooper Jon Brown of the State Police.

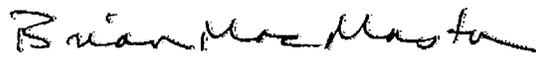
There were 14 incident review teams that were convened to review instances of the use of deadly force.

Incident review teams were convened by the respective agency heads for each of the 14 incidents involving the use of deadly force in 2010 and 2011.

The number of reports generated by incident review teams and the availability of those reports.

As of this date of this report, eight (8) incident reviews have been completed and reports generated. Seven (7) of these reports are accessible to the public upon request¹, which consists of four (4) reports regarding incidents in 2010, and three (3) regarding the first three (3) incidents in 2011. The last six (6) incidents in 2011 are currently the subject of incident reviews for which reports will be issued. The reports, both the ones that have been completed and those that will be completed, are available to the public upon request to the respective law enforcement agency.

Sincerely,



BRIAN MACMASTER
Chair
Board of Trustees

Enclosures

¹ The incident on June 15, 2010, in Old Orchard Beach involving three federal agents was reviewed by ATF. Any report generated as a result of that review is not subject to the requirements of state law. However, as in all incidents of the use of deadly force in Maine, the Office of the Attorney General publicly disclosed the details of this incident.

APPENDIX 1

RESOLVE Chapter 58 LD 1066, item 1, 124th Maine State Legislature
Resolve, Directing the Board of Trustees of the Maine Criminal Justice Academy
To Amend Its Minimum Standards for the Law Enforcement Use of Force Policy
HP0733, LR 480, item 1, Signed on 2009-05-19 00:00:00.0 - First Regular Session - 124th
Maine Legislature, page 1

Resolve, Directing the Board of Trustees of the Maine Criminal Justice Academy To Amend Its Minimum Standards for the Law Enforcement Use of Force Policy

Sec. 1 Board of Trustees of the Maine Criminal Justice Academy to amend its minimum standards for the law enforcement use of force policy.

Resolved: That the Board of Trustees of the Maine Criminal Justice Academy is directed to amend its minimum standards for the use of force policy relative to the procedure for agency investigation and review of the use of deadly force to include, at a minimum, the convening of an incident review team consisting of members appointed by the chief executive officer of each law enforcement agency. Members appointed must include at least one member who is a commissioned officer of the Maine State Police and at least one member of the public who is not and has not previously served as a sworn law enforcement officer. The incident review team shall review the use of deadly force to determine the facts of an incident, whether relevant policy was clearly understandable and effective to cover the particular situation and whether changes are necessary to incorporate improved procedures or practices demonstrated to increase public safety or officer safety, whether training protocols should be reviewed or revised and whether equipment or other resources should be modified. The incident review team shall generate a written report of its findings, and that report is public as provided under the Maine Revised Statutes, Title 5, section 7070-A and Title 30-A, section 503, subsection 1-A and Title 30-A, section 2702, subsection 1-A; and be it further

Sec. 2 Reporting date established. Resolved: That the Board of Trustees of the Maine Criminal Justice Academy shall report about the implementation of the changes to the use of deadly force policy and the work of the incident review teams under section 1 to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters no later than January 15, 2011. The report must include at least the following information: an update on law enforcement agency compliance and implementation of the policy change, the number of incidents where an officer used deadly force, the number of incident review teams that were convened to review instances of the use of deadly force, the number of reports generated by incident review teams and the availability of those reports.

APPENDIX 2

Maine Criminal Justice Academy Board of Trustees Minimum Standards

USE OF PHYSICAL FORCE POLICY

Date Board Adopted: 03/04/2011

Effective Date: 12/31/2011

The agency must have a written policy to address the Use of Physical Force by its officers, to include, at a minimum, provisions for the following:

1. A policy statement that makes clear the agency's position on what an officer's responsibility is to the agency and the public when an officer makes a decision to use any form of physical force. This includes the use of an electronic weapon and less-than-lethal munitions, if applicable. The policy statement shall include language that identifies applicable statutes, case law, and other resources available to the officer in formulating the decision to use any form of physical force. At a minimum, the policy statement shall include language that reflects the following:
 - a. This agency recognizes and respects the value and special integrity of each human life.
 - b. In vesting officers of this agency with the lawful authority to use physical force to protect the public welfare, a careful balancing of all human interests is required.
 - c. That an officer may use only that physical force that the officer reasonably and actually believes is necessary to effectively bring an incident under control while protecting the officer or another, including the use of an electronic weapon and less-than-lethal munitions, if applicable.
 - d. That officers be familiar with the applicable laws and guidelines, as outlined in 17-A M.R.S.A. sections 106(6), 107, 108, and 110, and Chapter 2 of the Maine Law Enforcement Officer's Manual (L.E.O.M.), which incorporates applicable case law.
2. The following definitions shall be incorporated into the policy: (Some of the definitions are in statute while others are important to an officer in determining the correct course of action to take in deciding if the application of force is prudent and necessary in a given situation.)
 - a. Actual Belief: A subjective state of mind in which the actor holds a genuine or honest conviction.
 - b. Chemical Agents: Chemical mace or any similar substance composed of a mixture of gas and chemicals that has or is designed to have a disabling effect upon human beings.
 - c. Command Presence: The ability to speak clearly and authoritatively, issuing concise commands using a tone that reflects control and professionalism.

- d. Compliance Techniques: The methods of arrest, restraint, and control that include manipulation of joints, pressure point applications and take-down techniques to control an aggressive offender.
- e. Deadly Force: Physical force, which a person uses with the intent of causing, or which he knows to create a substantial risk of causing, death or serious bodily injury. Except as provided in section 101, subsection 5, intentionally, knowingly, or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force. (17-A MRSA § 2(8))
- f. Electronic Weapon: A portable device or weapon from which an electrical current, impulse, wave or beam may be directed, which current, impulse, wave or beam is designed to have a disabling affect upon human beings. (The use of an electronic weapon is considered to be the use of non-deathly force).
- g. Excessive Force: Physical force that is unreasonable or unnecessary or inappropriate for the particular circumstances. Determining whether the application of physical force was reasonable and appropriate requires consideration of the severity of the crime, the nature and extent of the threat posed by the suspect, the degree to which the suspect resists arrest or detention, and any attempts by the suspect to evade arrest by flight. Facts or circumstances unknown to the officer may not be considered later determining whether the force was justified. Graham V. Connor, 490 U.S.386.
- h. Firearm: Any weapon whether loaded or unloaded, which is designed to expel a projectile by the action of an explosive and includes any such weapon commonly referred to as a pistol, revolver, rifle, gun, machine gun, or shotgun. Any weapon that can be made into a firearm by the insertion of a firing pin, or other similar thing, or by repair, is a firearm. (17-A MRSA § 2(12-A).
- i. Imminent: Impending, immediate or appearing as if about to happen.
- j. Impact Weapon: A device or weapon designed for use by an officer in close quarter physical defense of the officer or another and/or control of an aggressive offender. Examples of an impact tool are a straight baton, a side-handle baton, a collapsible baton, a flashlight, or other similar device.
- k. Less-than-Lethal Munitions: A low-kinetic energy projectile designed to be discharged from a firearm that is approved by the Board of Trustees of the Maine Criminal Justice Academy that has been designed to have a disabling effect upon human beings. The use of less-than-lethal munitions weapon is considered to be the use of non-deadly force in an amendment (17-A MRSA § 1004, section 101, subsection 5 of 17-A)
- l. Non-deadly Force: Any physical force which is not deadly force. (17-A MRSA § 2(18))
- m. Officer Presence: The appearance of a law enforcement officer who is willing and able to handle a situation.
- n. Officer Response Options: Choices available to an officer concerning the type of force to be used in response to a given situation, including but not limited to command presence, physical presence, voice commands, compliance techniques, takedowns, electronic weapons, chemical agents, impact weapons, canines, and deadly force.

- o. Physical Force: The actual exercise of some form of Kinetic energy (one person to another) of such a nature as to create an imminent and substantial risk of causing bodily harm.
 - p. Reasonable Belief: When facts or circumstances provided to or known to the law enforcement officer are such as to cause an ordinary and prudent officer to act or think in a similar way under similar circumstances.
 - q. Serious Bodily Injury: Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or loss or substantial impairment of the function of any bodily member or organ, or extended convalescence necessary for recovery of physical health. (17-A MRSA § 2(23))
 - r. Situational Use-of-Force Options: A dynamic process by which an officer assesses, plans, and responds to situations that threaten public and officer safety. The assessment process begins with the situation immediately confronting the officer, and moves to the suspect's behavior and the officer's perceptions and tactical considerations. Based on this assessment of the conditions, the officer selects from the available officer response options while continuing to evaluate the evolving situation and adapt a plan, and actions that are appropriate and effective in bringing the particular situation under control.
3. Statement of conditions as to when an officer is justified in using deadly force, which at a minimum shall include the following:
- a. To defend the officer or a third person from what the officer actually and reasonably believes is the imminent use of deadly force and actually and reasonably believes that the officer's use of deadly force is necessary to counter such imminence.
 - b. To affect an arrest or prevent the escape from arrest of a person when the officer reasonably believes that the person has committed a crime involving the use or threatened use of deadly force, is using a dangerous weapon in attempting to escape or otherwise indicates that the person is likely to seriously endanger human life or to inflict serious bodily injury unless apprehended without delay, and
 - c. The officer has made reasonable efforts to advise the person that the officer is a law enforcement officer attempting to affect an arrest or prevent an escape from arrest and the officer has reasonable grounds to believe the person is aware of the advice, or
 - d. The officer reasonably believes that the person to be arrested otherwise knows that the officer is a law enforcement officer attempting to affect an arrest or prevent the escape from arrest.
4. Statement of conditions as to when an officer is justified in using non-deadly force, which at a minimum shall include the following:
- a. When and to the extent the officer reasonably believes it is necessary to affect an arrest or to prevent escape from custody of an arrested person, unless the officer knows that the arrest and detention is illegal.

- b. To defend the officer or a third person from what the officer reasonably believes to be the imminent use of non-deadly force encountered while attempting to affect such an arrest or while seeking to prevent such an escape.
 - c. To defend the officer or third person from what the officer actually and reasonably believes to be the imminent use of unlawful, non-deadly force, and the officer actually and reasonably believes that the officer's use of non-deadly force is necessary to meet or counter such imminence.
5. Develop procedures for reporting and investigating, within the agency, any incident involving the use of non-deadly force used by any sworn member of the agency, which at a minimum shall include the following:
- a. All uses of physical force shall be reported in writing on a separate use of physical force report. The Use-of-Physical Force report shall include a description of the incident, the particular application of physical force, and any first-aid or medical services rendered.
 - b. If reasonably possible, the use-of-force report will be completed prior to going off-duty and the supervisor will also determine if replacement equipment is needed, and if applicable will issue that equipment.
 - c. The supervisor will forward the use of force report and any additional information to the agency's administration for review.
 - d. After review of the report by the Chief Law Enforcement Officer, it is determined that the officer engaged in criminal conduct, the CLEO will forward the report to the Office of the District Attorney or the Office of the Attorney General and the Director of the Maine Criminal Justice Academy.
 - e. The determination of the final agency action may be place in the officer's file.
6. In the case of the use of deadly force, the agency shall develop a procedure for reporting and investigation that complies with the Office of the Attorney General's protocol on Reporting and Investigation of the use of Deadly Force. The procedure shall include at a minimum the following:
- a. Notify the Office of Attorney General as soon as possible.
 - b. If death occurs, notify the Office of Chief Medical Examiner as soon as possible.
 - c. If the physical force applied in a particular situation was deadly force, the CLEO of the agency involved shall convene an Incident Review Team consisting of members appointed by the CLEO. Members appointed shall include at least one member who is a commissioned officer of the Maine State Police and at least one member of the public who is not and has not previously served as a sworn law enforcement officer.
 - d. The incident review team shall review the use of deadly force to determine to following:
 - 1. The facts of an incident.
 - 2. Whether relevant policy was clearly understandable and effective to cover the particular situation.
 - 3. Whether changes are necessary to incorporate improved procedures or practices demonstrated to increase public safety or officer safety.
 - 4. Whether training protocols should be reviewed or revised.

5. Whether equipment or other resources should be modified.
 6. In conducting its investigation, the incident review team shall abide by any applicable contractual provisions regarding officers' contractual rights.
- e. The incident review team shall generate a written report of its finding. That report is public as provided under the Maine Revised Statutes, Title 5, section 7070-A and Title 30-A, section 503, subsection 1-A and Title 30-A, section 2702, subsection 1-A. However, the team may brief the CLEO, or designee, on the team's work at any time before the final written report is issued.
7. In cases of Use of Deadly Force, the agency shall develop incident procedures for dealing with officers involved in the use of deadly force, including but not limited to on-scene responsibilities, administrative leave considerations, and critical stress management options. At a minimum the procedure shall contain the following:
- a. On-scene Responsibilities: In all instances involving the use of deadly force, regardless of whether death or injury occurs, the Office of the Attorney General's Protocol on the Reporting and Investigation of the Use of Deadly Force will be followed.
 - b. Psychological Services: When a law enforcement officer's use of force causes death or serious bodily injury, the law enforcement officer will be placed on administrative leave. Said leave shall continue until it is determined by a licensed mental health professional that the officer is fit to return to duty.
 - c. Critical Stress Management: All officers involved in a deadly force incident shall be afforded the opportunity to attend a critical stress debriefing, as soon as reasonably possible.
8. Officers must abide by their agency policy as it applies to all standards of the Maine Criminal Justice Academy Board of Trustees.
- Note: Any violation of these standards may result in action by the Board of Trustees.

APPENDIX 3

adopted: 09/15/2011 MANDATORY POLICY

SUBJECT: SITUATIONAL USE OF FORCE

Number: 1-1

EFFECTIVE DATE: 00/00/0000

REVIEW DATE: 00/00/0000

AMENDS/SUPERSEDES: 02/24/2000
 12/14/2005
 02/04/2010

APPROVED: _____
 Chief Law Enforcement Officer

I. POLICY

It is the policy of this agency that an officer's responsibility is to use only that amount of physical force that reasonably appears necessary to effect an arrest, control a situation, or to defend the officer or a third party from harm. At a minimum this agency's policy reflects the following:

- A. This agency recognizes and respects the value and special integrity of each human life.
- B. In vesting officers of this agency with the lawful authority to use physical force to protect the public welfare, a careful balancing of all human interests is required.
- C. That an officer may use only that physical force that the officer reasonably and actually believes is necessary to effectively bring an incident under control while protecting the officer or another, including the use of an electronic weapon and less-than-lethal munitions, if applicable.
- D. That officers be familiar with the applicable laws and guidelines, as outlined in 17-A M.R.S. sections 106(6), 107, 108, and 110, and the Maine Law Enforcement Officer's Manual (L.E.O.M.), which incorporates applicable case law.

Minimum Standard 1

Given this is a statutorily mandated policy, officers must abide by this agency's policy as it applies to all standards of the Maine Criminal Justice Academy Board of Trustees.¹

Minimum Standard 8

¹ 25 M.R.S. § 2803-B

II. PURPOSE

To establish guidelines governing the situational use of force, and reporting requirements, and to clearly describe permitted and prohibited practices.

III. DEFINITIONS

It is important that officers have a clear understanding of the following terminology and definitions in order to properly assess a use-of-force situation and properly utilize the appropriate force option.

- A. Actual Belief: A subjective state of mind in which the actor holds a genuine or honest conviction.

Minimum Standard 2

- B. AFIDS: Small confetti-like pieces of paper that are expelled from the cartridge of electronic weapons. Most electronic weapons contain Anti-Felon Identification tags (AFID) and has an alphanumeric identifier, which is unique to each cartridge used.
- C. Chemical Agent: Chemical mace or any similar substance composed of a mixture of gas and chemicals that has or is designed to have a disabling effect upon human beings, including but not limited to disabling pepper agents, OC, CN or CS products, or a combination thereof.²
- D. Command Presence: The ability to speak clearly and authoritatively, issuing concise commands using a tone that reflects control and professionalism.
- E. Compliance Techniques: The methods of arrest, restraint, and control that include manipulation of joints, pressure point applications, and take-down techniques to control an aggressive person.
- F. Deadly Force: Physical force, which a person uses with the intent of causing, or which the person knows to create a substantial risk of causing death or serious bodily injury. Except as provided in section 101, subsection 5, intentionally, knowingly or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force.³

Minimum Standard 2

² 17-A M.R.S. § 101(5A), § 1002(1)

³ 17-A M.R.S. § 2(8)

- G. Electronic Weapon: A portable device or weapon from which an electrical current, impulse, wave or beam may be directed, which current, impulse, wave or beam is designed to have a disabling effect upon human beings.⁴ Use of an electronic weapon by a trained law enforcement officer is considered to be the use of non-deadly force.⁵

Minimum Standard 2

- H. Excited Delirium: A state of mind that is manifested, among other things by, incoherence, violence, and uncooperativeness commonly caused by drugs or psychiatric illness, and which has been associated with deaths in custody, or "in-custody death syndrome." Other signs of excited delirium include overheating, profuse sweating, disrobing, violence toward glass, superhuman strength, self-mutilation, and disturbances in breathing patterns.
- I. Excessive Force: Physical force that is unreasonable or unnecessary or inappropriate for the particular circumstances. Determining whether the application of physical force is reasonable and appropriate requires consideration of the severity of the crime, the immediacy of the threat posed by the suspect, the degree to which the suspect resists arrest or detention, and any attempts by the suspect to flee. Facts or circumstances unknown to the officer may not be considered later in determining whether the physical force was justified.⁶
- J. Firearm: Any weapon, whether loaded or unloaded, which is designed to expel a projectile by the action of an explosive and includes any such weapon commonly referred to as a pistol, revolver, rifle, gun, machine gun, or shotgun. Any weapon that can be made into a firearm by the insertion of a firing pin, or other similar thing, or by repair, is a firearm.⁷
- K. Imminent: Impending, immediate or appearing as if about to happen.

Minimum Standard 2

⁴ 17-A M.R.S. § 1004(2)

⁵ 17-A M.R.S. § 101(5)

⁶ Graham v. Connor, 490 U.S. 386

⁷ 17-A M.R.S. § 2(12-A)

- L. Impact Weapon: A device or tool designed for use by an officer in close quarter physical defense of the officer or another and/or control of an aggressive person. Examples of an impact weapon are a straight baton, a side-handle baton, a collapsible baton, a flashlight, or other similar device.
- M. Less-than-Lethal Munition: A low-kinetic energy projectile designed to be discharged from a firearm that is approved by the Board of Trustees of the Maine Criminal Justice Academy that has been designed to have a disabling effect upon human beings.⁸ The use of a less-than-lethal munition approved by the Board by a trained law enforcement officer is considered to be the use of non-deadly force.⁹ (See **Appendix #1**)
- N. Non-deadly Force: Any physical force which is not deadly force.¹⁰
- O. Officer Presence: The attendance of a law enforcement officer who is willing and able to handle a situation.
- P. Officer Response Options: Choices available to an officer concerning the type of force to be used in response to a given situation, including but not limited to command presence, physical presence, voice commands, compliance techniques, takedowns, electronic weapons, chemical agents, impact weapons, canines, and deadly force.
- Q. Physical Force: The actual exercise of some form of kinetic energy (one person to another) of such a nature as to create an imminent and substantial risk of causing bodily harm.

Minimum Standard 2

- R. Probe: A small dart-like projectile which is connected to a wire lead.
- S. Reasonable Belief: When facts or circumstances provided to or known to the law enforcement officer are such as to

⁸ 17-A M.R.S. § 101(5)(B)

⁹ 17-A M.R.S. § 101(5)

¹⁰ 17 A M.R.S. § 2(18)

cause an ordinary and prudent officer to act or think in a similar way under similar circumstances.

Minimum Standard 2

- T. Serious Bodily Injury: Bodily injury that creates a substantial risk of death or that causes serious, permanent disfigurement or loss or substantial impairment of the function of any bodily member or organ, or extended convalescence necessary for recovery of physical health.¹¹
- S. Situational Use-of-Force: A dynamic process by which an officer assesses, plans, and responds to situations that threaten public and officer safety. The assessment process begins with the situation immediately confronting the officer, and moves to the suspect's behavior and the officer's perceptions and tactical considerations. Based on this assessment, the officer selects from the available response options while continuing to evaluate the evolving situation and adapt a plan and actions that are reasonable and effective for the particular situation.
(See Appendix #2)

Minimum Standard 2

IV. PROCEDURES - Application of Physical Force

This agency trains its officers to apply situational use-of-force options while recognizing and reacting reasonably to enhanced or reduced levels of threat. Officers should assess the particular incident to determine which response option will best defuse the situation and bring it under control. Officers of this agency shall carry only agency-issued or approved weapons. Officers must be trained in the use all weapons prior to carrying or using the weapons.

- A. Use of Non-deadly Force:
 - 1. An officer is justified in using a reasonable degree of non-deadly force upon another person:
 - a. When and to the extent the officer reasonably believes it is necessary to effect an arrest or to prevent the escape from custody of an arrested person, unless the officer knows that the arrest and detention is illegal; or
 - b. In self-defense or to defend a third person from what the officer reasonably believes to be the imminent use of unlawful non-deadly force encountered while attempting to effect such an arrest or while seeking to prevent such an

¹¹ 17 A.M.R.S. § 2(23)

escape: or¹²

- c. To defend the officer or a third person from what the officer reasonably believes to be the imminent use of unlawful, non-deadly force and the officer reasonably believes that the officer's use of non-deadly force is necessary.¹³

Minimum Standard 4

B. Use of Deadly Force:

1. An officer is justified in using deadly force only when the officer reasonably believes such force is necessary:
 - a. For self-defense or to defend a third person from what the officer reasonably believes is the imminent use of unlawful deadly force;
 - b. To effect an arrest or prevent the escape from arrest of a person when the officer reasonably believes that the person has committed a crime involving the use or threatened use of deadly force, is using a dangerous weapon in attempting to escape, or otherwise indicates that the person is likely to seriously endanger human life, or to inflict serious bodily injury unless apprehended without delay; and
 - (1) The officer has made reasonable efforts to advise the person that the officer is a law enforcement officer attempting to effect an arrest or prevent an escape from arrest and the officer has reasonable grounds to believe that the person is aware of the advice; or
 - (2) The officer reasonably believes that the person to be arrested otherwise knows that the officer is a law enforcement officer attempting to effect an arrest or prevent the escape from arrest¹⁴.

Minimum Standard 3

- C. An officer may also discharge a firearm under the following circumstances:
 1. While in training.
 2. During range practice or qualification.
 3. To dispatch an animal that represents a threat to

¹² 17-A M.R.S. § 107(1)

¹³ 17-A M.R.S.A. § 108(1)

¹⁴ 17-A M.R.S.A. § 107(2)

public safety or as a humanitarian measure where the animal is seriously injured.

4. To test fire a firearm.
 5. To disable an inanimate object, e.g., shooting out a street light to darken an area.
- D. An officer shall adhere to the following restrictions when the officer exhibits or uses a firearm:
1. An officer shall not draw or exhibit or display a firearm unless the officer reasonably believes that it may be necessary to use the weapon in conformance with this directive or applicable law.
 2. An officer shall not fire warning shots.
 3. An officer shall not discharge a firearm when it creates a substantial risk that an innocent person may be injured.
 4. An officer shall not discharge a firearm in the direction of another person or at a moving vehicle unless the use of deadly force is justified or unless the discharge is that of a less-than-lethal munition.
 5. An officer shall not discharge a firearm at a fleeing suspect unless the use of deadly force is justified or unless the discharge is that of a less-than-lethal munition.

Minimum Standard 3

V. PROCEDURES - Reporting the Use of Physical Force

- A. All uses of physical force shall be reported in writing using the agency's arrest and/or incident report, which shall include noting whether compliance techniques were used and whether any injuries were sustained.
- B. In addition to the required arrest and/or incident report, the law enforcement officer shall submit a separate "Use-of-Force" report. **(See Appendix #4)** If an officer uses compliance techniques and no injury occurs, the officer is not required to submit a separate Use-of-Force report. In cases where a Use-of-Force report is required, the report should be completed prior to going off-duty.
- C. The officer's supervisor will review each incident involving the use of force and collect any additional information.
- D. The supervisor will forward the Use-of-Force report to the Chief Law Enforcement Officer (CLEO). After review of the report by the CLEO, if it is believed that the officer may have engaged in criminal conduct, the CLEO will notify the Office of the District Attorney or the Office of the Attorney General, and the Director of the Maine Criminal

Minimum Standard 5

- E. Depending on the seriousness of the incident or injury, the Chief Law Enforcement Officer should notify the town/city/county manager.
- F. In the case of the use of deadly force, the agency shall report the incident to the Office of the Attorney General pursuant to the "Protocol for Reporting and Investigation of the Use of Deadly Force." (See Appendix #3) At a minimum the agency shall:
1. Notify the Office of the Attorney general as soon as possible.
 2. If death occurs, notify the Office of the Chief Medical Examiner as soon as possible.
 3. If the physical force applied in a particular situation was deadly force, the CLEO shall convene an Incident Review Team consisting of members appointed by the CLEO. The members appointed shall include at least one member who is a commissioned officer of the Maine State Police, and at least one member of the public who is not and has not previously served as a sworn law enforcement officer.
 4. It is recommended that the Incident Review Team have at least one member who is a CLEO from an outside agency, and that one member be a Maine Criminal Justice Academy Certified Firearms Instructor.
- G. The purpose of the Incident Review Team is to review the use of deadly force to determine the following:
1. The facts of the incident.
 2. Whether relevant policy was clearly understandable and effective to cover the particular situation.
 3. Whether changes are necessary to incorporate improved procedures or practices demonstrated to increase public safety or officer safety.
 4. Whether training protocols should be reviewed or revised.
 5. Whether equipment or other resources should be modified.
- H. The Incident Review Team shall generate a written report of its findings. The report is public as provided by law.¹⁶ The team may brief the CLEO or designee on the team's work at any time before the final written report is issued.

Minimum Standard 6

¹⁵ 25 M.R.S.A. § 2807

¹⁶ 5 M.R.S.A. § 7070-A, 30-A M.R.S.A. § 505 (1-A) and 30-A M.R.S.A. § 2702 (1-A)

- I. After review of the report by the Chief Law Enforcement Officer and, if appropriate, by the Office of the District Attorney or the Office of the Attorney General, the report may be placed in the officer's file with a notation that the officer:
 1. Acted within policy.
 2. Acted outside policy. If the officer acted outside policy, appropriate action, remedial or otherwise, will be taken by the agency to prevent a similar situation.

Minimum Standard 5

VI. PROCEDURES - Post Incident

- A. On-scene Responsibilities: In all instances involving the use of deadly force, regardless of whether death or injury occurs, the Office of the Attorney General's Protocol on the Reporting and Investigation of the Use of Deadly Force will be followed. (See Appendix #2)
- B. Psychological Services: When a law enforcement officer's use of deadly force causes death or serious bodily injury, the law enforcement officer will be placed on administrative leave. Said leave shall continue until it is determined by a licensed mental health professional that the officer is fit to return to duty.
- C. Critical Stress Management: All officers involved in a deadly force incident shall be afforded the opportunity to attend a critical stress debriefing, as soon as reasonably possible, per the guidelines outlined in MCOPA Policy 2-32 on Critical Incident Stress Management.

Minimum Standard 7

VII. PROCEDURES - Unique to Electronic Weapons

- A. Authorized Users: Only law enforcement officers who have successfully completed this agency's approved training shall be authorized to carry and use an electronic weapon.
- B. Electronic Weapon Readiness:
 1. The electronic weapon will be carried in a manner consistent with agency policy and training.
 2. The electronic weapon shall be carried fully armed with the safety on in preparation for immediate use.
 3. Only agency approved battery power sources will be

- used in the electronic weapon.
4. No changes, alterations, modifications, or substitutions shall be made to an agency electronic weapon.
 5. At the beginning of each tour of duty, officers shall perform a functions check on the electronic weapon. The functions check shall be completed in a safe manner consistent with agency training. Any malfunctions with the electronic weapon shall be immediately reported to a supervisor. The defective electronic weapon shall immediately be placed out of service.
 6. Only agency-approved cartridges shall be used.

C. Permitted Use of an Electronic Weapon:

1. When physical force is justified against a suspect who is actively resisting arrest or exhibiting active aggression through words or actions towards an officer or a third party actually present. The suspect must pose an immediate threat to the officer or third party.
2. To incapacitate a person who poses a threat of physical injury to himself/herself.
3. Against aggressive animals that pose a threat of physical injury to an officer or another person.
4. During agency authorized training programs or demonstrations.

Minimum Standard 4

D. Prohibited Use of an Electronic Weapon:

1. Against a female who the officer knows or reasonably believes to be pregnant unless deadly force is justified.
2. Against a person who is at an elevated location where a fall could cause serious bodily injury or death, unless deadly force is justified.
3. Against an operator of a motor vehicle if the use of an electronic weapon could reasonably result in the uncontrolled movement of a vehicle, unless deadly force is justified.
4. Against a person who is in close proximity to a flammable gas or a liquid.
5. In drive-stun or touch-stun mode as a prod or escort device.
6. To rouse an unconscious, impaired, or intoxicated person.
7. To experiment on a person or allow a person to experience the electronic weapon, even if the person requests it, when the use would not otherwise be allowed by this policy. This does not apply to

voluntary training exposures or demonstrations as authorized by the CLEO on a case-by-case basis.

8. For any illegal purpose, e.g., coercion, torture, etc.

E. Deployment of an Electronic Weapon:

1. When feasible, the deploying officer should assure that other officers on scene understand that an electronic weapon is about to be deployed. For example, this may be accomplished by shouting "TASER." This also serves to provide the suspect an additional opportunity to cease the conduct that has given rise to deploying the electronic weapon.
2. Use the laser and/or fixed sights to aim the electronic weapon per training.
3. Never aim the electric weapon at the eyes or face. If it is laser-sighted, the top probe will follow the laser sight; the bottom probe will strike below the laser-sighted area. If a frontal shot, officers should aim at an area one foot above the pelvic area to one foot below the pelvic area.
4. Use the Electronic weapon by either discharging the probes or "drive-stun" or contact mode when and to the extent reasonably necessary.
5. In the interest in minimizing the number of discharges, the deploying officer should order the suspect, as the incident mandates, to "Stop Resisting, Lie Flat, Put Your Hands Behind Your Back," etc.
6. After deployment, the suspect should be handcuffed as soon as can be safely accomplished.
7. Officers shall report the use of electronic weapon according to Section V of this policy.

F. Medical Responsibilities:

1. Officers who use the electronic weapon shall ensure that the probes are properly removed from the suspect.
2. In most cases, officers may remove the probes from the suspect and clean the area with an antiseptic wipe and place a band-aid over the affected area. The officer should wear rubber gloves for protection from biohazards.
3. In cases where there is obvious injury caused by either a fall, injuries from use of the electronic weapon, or an adverse reaction by the suspect, the officer shall call emergency medical services.
4. Probes that are imbedded in a sensitive area (e.g. face, neck, female breast, and genital area) may need to be removed by medical personnel. In these cases, the suspect should be transported to the hospital for examination and removal of the probes by medical personnel at the hospital.

5. Officers must keep in mind that persons may be suffering from "excited delirium." If the officer believes the suspect is suffering from excited delirium, medical attention shall be sought.

MAINE CHIEFS OF POLICE ASSOCIATION - ADVISORY

This Maine Chiefs of Police Association model policy is provided to assist your agency in the development of your own policies. All policies mandated by statute contained herein meet the standards as prescribed by the Board of Trustees of the Maine Criminal Justice Academy. The Chief Law Enforcement Officer is highly encouraged to use and/or modify this model policy in whatever way it would best accomplish the individual mission of the agency.

DISCLAIMER

This model policy should not be construed as a creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this policy will only form the basis for administrative sanctions by the individual law enforcement agency and/or the Board of Trustees of the Maine Criminal Justice Academy. This policy does not hold the Maine Chiefs of Police Association, its employees or its members liable for any third party claims and is not intended for use in any civil actions.

Appendix #1

Maine Criminal Justice Academy Board of Trustees Approved Less-Than Lethal Munitions

Manufacturer: CTS – Combined Tactical Systems:

12 gauge – Fired from a 12 gauge shotgun:

1. CN, CS, OC Liquid & Powder Projectiles
2. .31 caliber Sting-Balls
3. Door Breaching
4. Super Sock Bean Bag

37mm, 38mm and/or 40mm Cartridges– Fired from a 37mm, 38mm or 40mm Launcher:

1. Pyrotechnic, smoke, single projectile
2. Pyrotechnic, smoke , three projectiles
3. Pyrotechnic, CN or CS, single projectile
4. Pyrotechnic, CN or CS, three projectiles
5. Powder or Liquid Barricade - CN, OC, CS Powder projectile
6. Heavy Barricade Projectile – CN, OC, CS Powder projectile
7. Muzzle Blast Projectile – CN, OC, CS
8. Kinetic Projectiles:
 - a. Foam baton
 - b. Rubber baton
 - c. .31 cal. Sting Balls
 - d. .60 cal. Sting Balls
 - e. Wood Baton
 - f. Super Sock Bean Bag
9. Pyrotechnic 40mm Cartridges – Smoke, CN or CS
10. Liquid Barricade Projectile 40mm cartridges – CN, CS or OC (Spin Stabilized)
11. Kinetic Projectile 40mm cartridges:
 - a. Sponge, Spin Stabilized
 - b. Foam Baton, Multi
 - c. .31 cal. Sting Balls
 - d. .60 cal. Sting Balls
 - e. Wood Baton, Multi
12. Powder Barricade Projectile 40mm cartridges:
 - a. CS or OC
13. Kinetic Projectile 4

Manufacturer: Taser International:

1. 12 gauge X-REP rounds – Extended Range Electric Projectile

Manufacturer: Def-Tec (Defense Technology):

12 gauge Projectiles:

1. Liquid Ferret – Non-pyrotechnic (Indoor use) OC, CS, CN
2. Powder Ferret – Non-pyrotechnic (Indoor use) OC, CS CN
3. Stinger – 32 cal. Stinger Rubber balls
4. Bean Bag rounds
5. Fin Stabilized – rubber fin stabilized
6. Drag Stabilized – Bean point of aim, point of impact round

37mm & 40mm Projectiles - Pyrotechnic (Outdoor use):

1. CN or CS Long Range (Spedeheat)
2. CN or CS Short Range (Spedeheat)
3. Colored Long Range (Spedeheat) – smoke
4. Skat Shell – CN, or CS Multiple projectile
5. Flite Rite Heavy Duty Barricade – CN or CS

37mm & 40mm Projectiles – Non Pyrotechnic (Indoor Use):

1. Muzzle Blast – Powder blast dispersion – OC, CN, CS
2. Liquid Ferret – Liquid barricade penetrator – OC, CN, CS
3. Powder Ferret – Powder barricade penetrator – OC, CN CS

37mm – Black Powder Rounds

1. Stinger – 32 cal. Rubber balls
2. Stinger – 60 cal. Rubber balls
3. Wood Baton
4. Rubber Baton
5. Foam Baton
6. Bean Bag

40mm – Smokeless Powder Rounds

1. Stinger – 32 cal. Rubber balls
2. Stinger – 60 cal. Rubber balls
3. Wood Baton
4. Foam Baton
5. Rubber Baton
6. Bean Bag
7. Sponge – Exact Impact Sponge Round

37/40mm – Smokeless Powder

1. Stinger – 32 cal. Rubber balls
2. Stinger – 60 cal. Rubber balls
3. Wood Baton
4. Foam Baton
5. Bean Bag

Manufacturer: Less-Lethal.com:

12 gauge Projectiles:

1. 2550 Single Rubber Baton
2. 2581 Sock

37mm Projectiles

1. 3581 Sock

Manufacturer: ALS Technology.com:

12 gauge Projectiles:

1. ALS 1200 Sock
2. ALS1212 Drag Sock

37mm Projectiles

1. ALS 3702 Sock
2. ALS 3704 Drag Sock

Manufacturer: Lightfield Less Lethal:

12 gauge Projectiles:

1. LSSR 12
2. LSLR 12
3. Mid Range Rubber Slug
4. LERS 12

***NOTE:** This should also be a “working list” for when new technology comes into distribution, it can be added.*

***NOTE:** In addition to these rounds, most manufacturers offer Training Rounds as well.*

Situational Use of Force Options

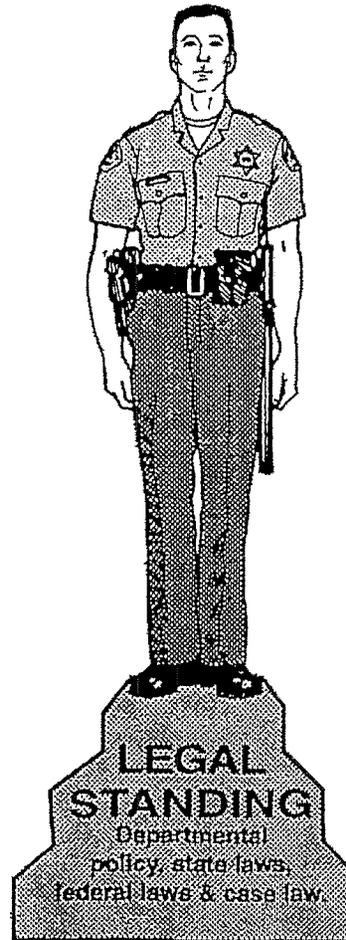
Individual's Actions

Resistive

Officer's Options – Non Deadly Force

Intermediate Weapons

- Control Techniques
- O/C Spray / Chemical Agents
- Electronic Weapons
- Come-Along Techniques
- Control Holds
- Impact Weapons



Individual's Actions

Cooperative

Officer's Options

- Professional Presence
- Control, Handcuff and Search
- Verbal
- Non Verbal

Individual's Actions

Assaultive/High Risk

Officer's Options – Non Deadly Force

- Less Lethal Weapons
- Personal Weapons
- Electronic Weapons
- Impact Weapons
- K-9

Individual's Actions

Life Threatening – Serious Bodily Injury

Officer's Options – Deadly Force

- Firearms
- Impacting Vital Areas



Maine Office of the
Attorney General

**PROTOCOL FOR THE
REPORTING AND INVESTIGATION
OF THE USE OF DEADLY FORCE**

Authority. The Attorney General has exclusive jurisdiction for the direction and control of any criminal investigation of a law enforcement officer who, while acting in the performance of that officer's duties, uses deadly force.¹⁷ Such use of deadly force will be the subject of an investigation or review by the Office of the Attorney General for the purpose of determining whether self-defense or defense of others, as defined in the Maine Criminal Code, is reasonably generated on the facts. Investigators from the Office of the Attorney General will conduct or supervise the investigation, with the assistance of the State Police or other agencies as circumstances may require.

Definitions. For purposes of this protocol, "deadly force" has the same meaning as in Title 17-A, section 2, subsection 8 of the Maine Revised Statutes Annotated. That subsection reads:

8. "Deadly force" means physical force that a person uses with the intent of causing, or that a person knows to create a substantial risk of causing, death or serious bodily injury¹⁸. Except as provided in section 101, subsection 5¹⁹, intentionally, knowingly or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force. For purposes of this protocol, "serious bodily injury" has the same meaning as in Title 17-A, section 2, subsection 23 of the Maine Revised Statutes Annotated. That subsection reads:

¹⁷ 5 M.R.S.A. § 200-A

¹⁸ As used in subsection 8, "serious bodily injury" means a bodily injury – i.e. physical pain, physical illness or any impairment of physical condition – which creates a substantial risk of death or which causes serious, permanent disfigurement or loss or substantial impairment of the function of any bodily member or organ, or extended convalescence necessary for receiving of physical health. 17-A M.R.S.A. § 2 (5) and (23).

¹⁹ For purposes of this chapter, use by a law enforcement officer, a corrections officer or a corrections supervisor of the following is use of nondeadly force:

- A. Chemical mace or any similar substance composed of a mixture of gas and chemicals that has or is designed to have a disabling effect upon human beings; or
- B. A less-than-lethal munition that has or is designed to have a disabling effect upon human beings. For purposes of this paragraph, "less-than-lethal munition" means a low-kinetic energy projectile designed to be discharged from a firearm that is approved by the Board of Trustees of the Maine Criminal Justice Academy.

23. "Serious bodily injury" means a bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or loss or substantial impairment of the function of any bodily member or organ, or extended convalescence necessary for recovery of physical health.

Requirement. A law enforcement agency whose officer uses deadly force while acting in the performance of that officer's duties shall make notification of the event, as soon as practicable, to the Office of the Attorney General. In order that the Office of the Attorney General may properly carry out its investigative responsibility, the following circumstances in which physical force is used requires reporting to the Office of the Attorney General by the agency whose officer uses such physical force while acting in the performance of that officer's duties:

1. The use of physical force that in fact causes death or serious bodily injury.
2. The use of physical force under circumstances that in fact create a substantial risk of causing death or serious bodily injury, whether or not death or injury actually results.
3. The use of physical force when it is the officer's intent to cause death or serious bodily injury, whether or not death or injury actually results.
4. The discharge of a firearm in the general direction of another person or at a moving vehicle, whether or not the projectile hits the person or vehicle. (It is not necessary to report the discharge of a firearm if the discharge is that of a less-than-lethal munition. It is not necessary to report the pointing of a firearm – even loaded and cocked – at another person.)
5. Ramming an occupied vehicle.
6. A roadblock set up to terminate a vehicular pursuit when the roadblock in fact creates a substantial risk of causing death or serious bodily injury to the occupants of the fleeing vehicle or other persons, and that results in death or serious bodily injury.

Procedure for reporting. In any of the six mandatory reporting circumstances identified above, the incident must be reported as soon as practicable by the officer's agency to the Office of the Attorney General.

Contact Attorney General Investigations

**Brian MacMaster - Office 626-8520 - Home 582-4870 - Cell 441-0671
Or Call Central Maine RCC**

Preservation of the scene and witnesses. The scene shall be preserved and cordoned, and involved officers separated by available law enforcement officials until the arrival of an investigator from the Office of the Attorney General or a designee whose responsibility is to coordinate the investigation and/or to process the scene. The scene shall not be disturbed. In the case of a death, the body of the deceased shall not be moved or disturbed in any way until

authorized by the Attorney General's Office or the Office of the Chief Medical Examiner, unless the body is in immediate danger of destruction or further damage. Evidence technicians of the State Police or other agencies or other personnel designated and dispatched under the authority of the Attorney General for the purpose of processing the scene shall be granted access to the scene.

Interviews of officers. During the course of the Attorney General's investigation, no member or representative of an involved law enforcement officer's agency may be present during interviews of the officer, unless previously authorized by the Director of Investigations or the director's designee. A member or representative or agent of an involved law enforcement officer's agency may not issue any order or instruction of any type concerning whether the officer should or should not speak with an investigator from the Office of the Attorney General.²⁰

Public Statements. Press statements or other public comments regarding a determination of an involved officer's legal justification or criminal culpability may not be made or given except by the Office of the Attorney General. Press contacts or statements or other public comments in other regards, particularly as they involve the facts of a particular event, may not be made or given without prior authorization and coordination with the Director of Investigations or the director's designee. Release of the name of an involved officer will, when at all possible, be postponed until the officer and the head of the officer's employing agency are notified that the information will be released.²¹ As in any case, the name of a decedent will not be released until the family or next of kin has been notified.

The following guidelines are provided for cases involving the investigation by the Office of the Attorney General of the use of deadly force by a law enforcement officer in the performance of that officer's duties, and are intended to govern the release of information to the news media or the public during the pendency of the investigation. The general practice of the Office of the Attorney General is to not comment on details of a pending investigation. While that practice should remain in effect for purposes of deadly force investigations, these further guidelines are offered as examples of the type of information that may and may not be released during the pendency of the investigation.

Examples of information that *may* be released:

1. The fact that an incident involving the use of deadly force occurred and, pursuant to statutory requirements, is being investigated by the Office of the Attorney General.
2. The fact that the investigation is focused upon a determination of whether deadly force was in fact used and whether self-defense or defense of others is reasonably generated on the facts.

²⁰ This section is necessary in order to maintain the appropriate legal distinction between the Attorney General's criminal investigation and an administrative or internal affairs investigation by the employing agency.

²¹ The name of the subject officer in matters involving the use of deadly force is a matter of public information. 5 M.R.S.A. § 7070-A, 30-A M.R.S.A. § 503(1-A) and § 2702(1-A).

3. Whether person(s) were injured or killed as a result of the use of deadly force.
4. The identity of person(s) injured or killed (provided that next of kin has been notified) to include name, age, residence, occupation, and family status.
5. The time and place of the incident under investigation.
6. The identity of an involved law enforcement officer (provided that the agency head and the officer have been given prior notification) to include name, age, and agency affiliation.
7. A brief description of the circumstances of the particular incident, e.g., the nature of a call for service being answered by police, an arrest, a vehicle stop, etc.

Examples of information that *may not* be released:

1. The details of investigative procedures or speculation upon any matters, legal or otherwise.
2. The character or reputation of any person(s) involved in the incident.
3. The existence or contents of any statement given by any persons involved in the incident, or the failure of any persons to provide statements.
4. The identity of witnesses.

Dated: March 15, 2011

s/William J. Schneider
WILLIAM J. SCHNEIDER
Attorney General

Appendix # 4 Use-of-Force Report

A. Incident Information

Date	Time	Day of Week	Location	INCIDENT NUMBER
Type of Incident <input type="checkbox"/> Crime in progress <input type="checkbox"/> Domestic <input type="checkbox"/> Other dispute <input type="checkbox"/> Suspicious person <input type="checkbox"/> Traffic Stop <input type="checkbox"/> Other (specify) _____				

B. Officer Information

Name (Last, First, Middle) and Unit #	Agency	Sex	Race	Age	Injured <input type="checkbox"/> YES <input type="checkbox"/> NO	Killed <input type="checkbox"/> YES <input type="checkbox"/> NO
Rank	Duty assignment	Years of service		On-Duty <input type="checkbox"/> YES <input type="checkbox"/> NO	Uniform <input type="checkbox"/> YES <input type="checkbox"/> NO	

C1. Subject 1 (List only the person who was the subject of the use of force by the officer listed in Section B.)

Name (Last, First, Middle)	Sex	Race	Age	Weapon <input type="checkbox"/> YES <input type="checkbox"/> NO	Injured <input type="checkbox"/> YES <input type="checkbox"/> NO	Killed <input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/> Under the influence <input type="checkbox"/> Alcohol <input type="checkbox"/> Drugs <input type="checkbox"/> Both <input type="checkbox"/> Other unusual condition (specify) _____			Arrested <input type="checkbox"/> YES <input type="checkbox"/> NO	Charges		
Subject's actions (check all that apply) <input type="checkbox"/> Resisted police officer control <input type="checkbox"/> Physical threat/attack on officer or another <input type="checkbox"/> Threatened/attacked officer or another with blunt object <input type="checkbox"/> Threatened/attacked officer or another with knife/cutting object <input type="checkbox"/> Threatened/attacked officer or another with motor vehicle <input type="checkbox"/> Threatened officer or another with firearm <input type="checkbox"/> Fired at officer or another <input type="checkbox"/> Other (specify) _____		Officer's use of force toward this subject (check all that apply) <input type="checkbox"/> Compliance hold <input type="checkbox"/> Hands/fists <input type="checkbox"/> Kicks/feet <input type="checkbox"/> Chemical/natural agent <input type="checkbox"/> Strike/use baton or other object <input type="checkbox"/> Canine <input type="checkbox"/> Taser <input type="checkbox"/> Less Lethal (specify) _____ <input type="checkbox"/> Other (specify) _____		(check all that apply) Firearms Discharge <input type="checkbox"/> Intentional <input type="checkbox"/> Accidental Number of Shots Fired _____ Number of Hits _____ [Use "UNK" if unknown]		

C2. Subject 2 (List only the person who was the subject of the use of force by the officer listed in Section B.)

Name (Last, First, Middle)	Sex	Race	Age	Weapon <input type="checkbox"/> YES <input type="checkbox"/> NO	Injured <input type="checkbox"/> YES <input type="checkbox"/> NO	Killed <input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/> Under the influence <input type="checkbox"/> Alcohol <input type="checkbox"/> Drugs <input type="checkbox"/> Both <input type="checkbox"/> Other unusual condition (specify) _____			Arrested <input type="checkbox"/> YES <input type="checkbox"/> NO	Charges		
Subject's actions (check all that apply) <input type="checkbox"/> Resisted police officer control <input type="checkbox"/> Physical threat/attack on officer or another <input type="checkbox"/> Threatened/attacked officer or another with blunt object <input type="checkbox"/> Threatened/attacked officer or another with knife/cutting object <input type="checkbox"/> Threatened/attacked officer or another with motor vehicle <input type="checkbox"/> Threatened officer or another with firearm <input type="checkbox"/> Fired at officer or another <input type="checkbox"/> Other (specify) _____		Officer's use of force toward this subject (check all that apply) <input type="checkbox"/> Compliance hold <input type="checkbox"/> Hands/fists <input type="checkbox"/> Kicks/feet <input type="checkbox"/> Chemical/natural agent <input type="checkbox"/> Strike/use baton or other object <input type="checkbox"/> Canine <input type="checkbox"/> Taser <input type="checkbox"/> Less Lethal (specify) _____ <input type="checkbox"/> Other (specify) _____		(check all that apply) Firearms Discharge <input type="checkbox"/> Intentional <input type="checkbox"/> Accidental Number of Shots Fired _____ Number of Hits _____ [Use "UNK" if unknown]		

UNIT TITLE: Situational Use of Force

UNIT NUMBER: 1.1.0



Maine Criminal Justice Academy
15 Oak Grove Road
Vassalboro, ME 04989

Date: October 2008

Many thanks go out to all who assisted in this lesson plan project for Situational Use of Force. Those include:

- Officer Owen Davis, York Police Department, Simunitions Instructor
- Trooper Seth Edwards, Maine State Police, Troop E, Simunitions Instructor
- Trooper Scott Hamilton, Maine State Police, Troop E, Lead Mechanics of Restraint & Control Instructor
- Trooper Brian Harris, Maine State Police, Troop J, Lead High Risk Stop Instructor
- Officer Robert Lane, Brunswick Police Department, Lead Simunitions Instructor
- Officer Soren Sundberg, Bar Harbor Police Department, Mechanics of Restraint & Control Instructor

Attorney General's Office for review of the contents of this lesson plan

Instructors utilizing this lesson plan need to make every attempt to avoid using any reference to 'force levels' and concentrate on using the term 'force options'. The Maine Criminal Justice Academy is attempting to emphasize that it is officer discretion on what option to choose based on the totality of the circumstances involved.

Goal

This course will review legal considerations on use of force options in performing law enforcement functions. Extralegal consideration in whether or not appropriate selection of use of force will be discussed.

Performance Objectives

After this unit of instruction the student will be able to accomplish the following objectives as outlined in this lesson plan.

- 3.9.1 Define deadly force and identify circumstances where use of deadly force is justified by law.
- 3.9.2 Define non-deadly force and identify circumstances where use of non-deadly force is justified by law.
- 3.9.3 Identify officer deadly & non-deadly use of force options.
- 3.9.4 Identify individual action categories as used in situational use of force.
- 3.9.5 Identify non-legal factors to be considered prior to use of force.
- 3.9.6 Identify potential civil & criminal liability for application of force issues.
- 3.9.7 Identify mandatory use of force reporting requirements.

Administrative Information

Estimated Time Range:

Presentation Methods / Media

Methods

Interactive discussion
Situational Role-playing
Group work

Media

Handout
- Definitions
- Attorney General
- Deadly force
- Nondeadly force
Laptop Computer
Overheads 1, 2
Videos
1 tuff cop
1 officer down
Scenarios 1,2,3,4

Material & Equipment

Projector
Overhead projector
Projector screen

Student outside assignments:

Maine Criminal Justice Academy
Lesson Plan Outline

Outline of instructional Unit	Objectives & Notes
<p>I.</p> <p>A. Introduction</p> <p>B. Credentials</p> <p>C. Attention Grabber</p> <p>D. Goals and Objectives</p> <p>II. DEADLY FORCE</p> <p>A. Deadly force definition (17-A M.R.S.A. § 2(8)) "Deadly force means physical force that a person uses with the intent of causing, or which he knows to create a substantial risk of causing, death or serious bodily injury. Intentionally or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force."</p> <p><u>B. In Defense of Self and Others 17-A M.R.S.A. § 107(2)(A)</u></p> <p>Reasonable and actual belief that unlawful deadly force is imminently threatened against the officer or a third person.</p> <p>Reasonable and actual belief that the officer's use of deadly force is necessary to meet or counter that imminent threat.</p> <p><u>Stopping Dangerous Criminal 17-A M.R.S.A. § 107(2)(B)</u></p> <p>Deadly force to make an arrest or prevent an escape from arrest.</p> <p>Reasonable and actual belief that the person has</p> <ul style="list-style-type: none"> - committed a crime involving the use or threatened use of deadly force 	<p>Short funny video or most recent officer killed statistics</p> <p>Deadly force handout 3.9.1</p> <p>Infant scenario handout w/ group discussion</p> <p>3.9.2 Door knocker scenario handout w/ group discussion</p>

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<p><u>or</u> - is using a dangerous weapon in attempting to escape from arrest</p> <p><u>or</u> - otherwise indicates that the person is likely to endanger seriously human life or to inflict serious bodily injury unless apprehended without delay.</p> <p>Officer must first make reasonable efforts to advise the person that the officer is a law enforcement officer attempting to make an arrest or prevent an escape from arrest, <u>and</u> the officer must have reasonable grounds to believe that the person is aware of this advice.</p> <p>Alternatively, reasonable and actual that the person otherwise knows that the officer is a law enforcement officer attempting to make an arrest or prevent an escape from arrest.</p> <p>III. NON DEADLY FORCE A. Non-deadly Force definition (17-A M.R.S.A. § 2(18) - means any physical force that is not deadly force. B. A law enforcement officer is justified in using a reasonable degree of nondeadly force upon another person when and to the extent that the officer reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person, unless the officer knows that the arrest or detention is illegal; or in self-defense or to defend a 3rd person from what the officer reasonably believes to be the imminent use of unlawful nondeadly force encountered while attempting to effect such an arrest or while seeking to prevent such an escape. Implicit in an officer's authority to take a person into protective custody under 34-B M.R.S.A. § 3862 is the authority to use the amount of nondeadly force reasonably necessary. 1.</p> <p>IV. Use of Force to Prevent Suicide 17-A M.R.S.A. § 106(6).</p>	<p>3.9.7</p> <p>Attorney General deadly force protocol handout</p>

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<p>A person acting under a reasonable belief that another person is about to commit suicide or to self-inflict serious bodily injury may use a degree of force on such other person as the person reasonably believes to be necessary to thwart such a result. (This would include deadly or nondeadly force.)</p> <p>V. Reporting requirements</p> <p>A. Mandatory reporting for Use of Force Situations</p> <ol style="list-style-type: none">1. 5 M.R.S.A 200-A states that an agency whose law enforcement officer uses deadly force while in performance of the officer's duties will make notification to the AG as soon as practicable.2. The following uses of physical force require reporting to the AG as well:<ol style="list-style-type: none">a. use of force that in fact causes death or serious bodily injuryb. use of force that creates a substantial risk of causing death or serious bodily injury, whether or not either occurred.c. Use of force when the officer's intent was to cause death or serious bodily injury, whether or not it occurred.d. Discharge of a firearm in the general direction of a moving vehicle or another person, whether or not the projectile hits either.e. Ramming an occupied vehiclef. Roadblock that was set up to terminate a vehicular pursuit when the roadblock creates a substantial risk of causing death or serious bodily injury to the occupants or other persons that result in death or bodily injury.3. The following are not necessary to report:<ol style="list-style-type: none">a. The discharge of a firearm that is not in the direction of a moving vehicle or another person.b. The pointing of a firearm – even loaded and	<p>Overhead 1 In groups class will be asked to rephrase this statement in their own words</p>

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<p style="text-align: center;">cocked at another person.</p> <p>B. Specificity on Reports – what should be included</p> <ol style="list-style-type: none"> 1. include extralegal considerations from the officers perspective. 2. Write report as if a juror views the incident for the officers point of view. 3. Write report with explaining how the officer reacted to the subject's actions. <p>VI. Situational Use of Force</p> <p>A. Definition</p> <p style="padding-left: 40px;">A dynamic process by which an officer assesses, plans, and responds to situations that threaten public and officer safety. The assessment process begins with the situation immediately confronting the officer, and moves to the suspect's behavior and the officer's perceptions and tactical considerations.</p> <p>B. Threat Assessment</p> <ol style="list-style-type: none"> 1. Intent- This is most critical <ol style="list-style-type: none"> a. Statements <ol style="list-style-type: none"> i. I'm going to kill you ii. I'll put the weapon down b. Actions <ol style="list-style-type: none"> i. Signs of attack <ol style="list-style-type: none"> a. Clenching fists b. Lowering of body c. Taking a fighting stance d. Verbal and physical actions in conflict – believe the physical. ii. Reaching for objects that could be potential weapons 2. Capability <ol style="list-style-type: none"> a. Possession/Access to Weapons <ol style="list-style-type: none"> i. Weapons on subject <ol style="list-style-type: none"> a. Visible b. Implied ii. Weapons in hand 	<p>3.9.3 3.9.4 Overhead 2</p> <p>Q&A with class having them list Force options for each Action Category</p>

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<ul style="list-style-type: none"> iii. Weapons in vehicle iv. Weapons in the building b. Size and Fitness <ul style="list-style-type: none"> i. Of individual ii. Of Officer c. Number of Subjects <ul style="list-style-type: none"> i. Of individuals ii. Of Officers d. Demonstrated Skills <ul style="list-style-type: none"> i. Boxing background ii. Martial Arts background iii. Other C. Action Categories/Officer Options (Offered in No particular order) <ul style="list-style-type: none"> 1. Life Threatening / Serious Bodily Injury <ul style="list-style-type: none"> a. Firearms b. Impacting Vital Areas c. Other Deadly Force Options <ul style="list-style-type: none"> i. Moving motor vehicle ii. Other 2. Resistive (passive/aggressive) <ul style="list-style-type: none"> a. Intermediate Weapons b. Control Techniques c. OC Spray / Chemical Agents d. Electronic Weapons e. Come-Along Techniques f. Control Holds g. Impact Weapons (Non-Striking) h. K-9 3. Assaultive High Risk <ul style="list-style-type: none"> a. K-9 b. Personal Weapons c. Electronic Weapons d. Impact Weapons e. Less Lethal Weapons 	<p>Ask class to discuss Question #4 in groups and report 3.9.5</p> <p>With use of dry erase board or flip chart elicit responses from class for each consideration listed.</p>

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<ul style="list-style-type: none"> <ul style="list-style-type: none"> i. Pepper ball gun ii. Bean bag Gun iii. Other technologies as available 4. Cooperative <ul style="list-style-type: none"> a. Professional Presence <ul style="list-style-type: none"> i. Cruiser ii. Uniform b. Control, Search and Handcuff <ul style="list-style-type: none"> i. Proper techniques c. Verbal <ul style="list-style-type: none"> i. Orders ii. Commands iii. Announce presence d. Non-Verbal D. Considerations <ul style="list-style-type: none"> a. Environment <ul style="list-style-type: none"> i. Cover - definition ii. Concealment - definition b. Number of Individuals c. Perceived Ability of Individuals d. Knowledge of Individuals <ul style="list-style-type: none"> 1) Prior known mental state 2) Past encounters e. Time and Distance f. Officers Skills g. Backup availability of other officers h. Age <ul style="list-style-type: none"> 1) Of officer 2) Of subject i. Gender <ul style="list-style-type: none"> 1) Of officer 2) Of subject j. Size <ul style="list-style-type: none"> 1) Of officer 2) Of subject k. Disabilities <ul style="list-style-type: none"> Back issue, injuries, etc. l. Continuing danger posed by offender to public 	<p>Question#5 in groups Report results to class</p> <p>3.9.6</p> <p>Class will reference handout.</p>

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<p style="text-align: center;">and officer if not taken into custody.</p> <ol style="list-style-type: none"> 1) Nature of offense 2) Nature of subject 3) Weapons present 4) Law Enforcement resources immediately available 5) Likelihood of danger to citizens if offender must be pursued 6) Risk to officer if subject is pursued <p>m. Proximity of bystanders n. Location of event</p> <p>VII. General Liability</p> <ol style="list-style-type: none"> a. Tort Liability <ol style="list-style-type: none"> i. A "tort" is an injury to another person or to property, which is compensable under the law. ii. There must be a legal duty of care to another person; iii. There must be a breach of that duty; iv. The claimant must have suffered damages, and v. The damages must have been proximately caused by the breach of duty. b. State Criminal liability <ol style="list-style-type: none"> i. Criminal prosecution ii. State prison sentence c. Federal civil suits. <ol style="list-style-type: none"> i. 42 U.S.C. 1983 ii. "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United State or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.." iii. You can be sued for violating someone's federal rights 	

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<ul style="list-style-type: none">d. Federal criminal liability<ul style="list-style-type: none">i. 18 U.S.C 24ii. Definitioniii. Can face federal jail sentence. e. Departmental discipline<ul style="list-style-type: none">Department Policy f. If you know you are making an unlawful arrest or your use of force option is unreasonable you can be sued. <p>VIII. Conclusion</p> <ul style="list-style-type: none">A. Review objectives	

Criterion Test Questions Answer sheet

Answer the Following Questions as Outlined in this Class

1. Define deadly force.

"Deadly force" means physical force that a person uses with the intent of causing, or which he knows to create a substantial risk of causing, death or serious bodily injury. Intentionally or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force.

2. A reasonable degree of non-deadly force is justified if the officer reasonably believes that non-deadly force is _____ upon the officer or a 3rd person.

Imminent

3. The District Attorney's Office needs to be notified as soon as practicable that any law enforcement officer has used deadly force while in performance of his duties. True or False

False: Notify the Attorney General's Office as soon as practicable.

4) Jim Bob has a past history of committing violent crimes including assaulting an Officer. Jim went to his Ex-wife's house and shot and killed her with a handgun and left the scene. Several people you know to be credible witnessed this event. You know Jim is driving a 1990 blue F-150 pickup truck with Maine registration JIM1. While on patrol you see this exact vehicle pass by you and you can positively identify the operator as Jim Bob. As you stop the vehicle Jim quickly exits and points an object towards you that you actually believe to be a handgun. Can you use deadly force in this situation? If yes explain your reasoning.

Yes, you actually believed the object was a gun and any reasonable Officer would react similarly in this situation

5) Officer Judy is a 5'2", 110-pound female Officer who is 41 years old. While on duty she responds to a domestic assault involving Joe Blow and his wife. Joe has bail conditions to have no contact with his wife from a previous domestic assault. Backup is on the way but they will be there in 25 to 30 minutes. Joe is 28 years old and is approximately 6'5 and 210 pounds. On arrival Joe is outside his house and visibly intoxicated wearing only his undershorts. Joe makes the statement, "I hate all women. They all should get beaten especially if they are cops." Joe does not move towards

Officer Judy, but does not respond to any verbal commands. Officer Judy deploys her impact weapon and strikes Joe repeatedly to his thighs and affects an arrest. Is she justified in her use of force option? If yes explain why in your own words.

Yes, given the differences in Age, Gender and Size of the Officer and the suspect (and other considerations) Judy can reasonably use this level of force.

6) You have placed Joe Moretto under arrest for aggravated assault and resisting arrest. He has been properly handcuffed and searched. While walking him to the cruiser, Joe tries to pull away from you and then spits on your recently shined boots. You proceed to strike Joe several times in the face with open palm strikes. Based on these facts could Joe sue you for excessive force?

Yes, Joe did not show any intent to cause physical injury and had a very limited capability to do so.

7) You are placing Jimmy John under arrest for Operating After Suspension. You tell Jimmy to put his hands behind his back, which he does. As you approach Jimmy and attempt to hand cuff him he quickly spins away from you and puts his hands up in the air so they are open and the palms are facing you. Jimmy states, "Can't we talk about this?" You immediately deploy your impact weapon and intentionally strike Jimmy in the ribs and place him under arrest. This use of force option is

- A. Justified because Jimmy was actively resisting arrest.
- B. Justified because Jimmy was committing a crime in your presence and not complying with the verbal commands you gave him.
- C. Not justified because the option of force did not correspond to the threat presented.**
- D. OK if you write a really good report.

8) List the four action categories in situational use of force as described in this course.

Assaultive/High Risk

Cooperative

Resistive

Life Threatening/Serious Bodily Injury

- 9) Discharging a firearm is a reasonable option of force in what situation?
- A. Assaultive/High Risk
 - B. Life Threatening/Serious Bodily Injury**
 - C. Cooperative
 - D. Resistive (aggressive)

10) According to Situational Use of Force, when facing a cooperative person your use of force options would be?

- A. Professional Presence**
- B. Pressure Points
- C. Joint Manipulation
- D. Come Along Techniques

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