

Title 11: Use of Force

11.10 Use of Force

The Metropolitan Nashville Police Department recognizes and respects the value and special integrity of each human life. When investing police employees with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required.

11.10.010 It is the policy of the Metropolitan Nashville Police Department that authorized employees shall use only that force that is reasonably necessary to effect lawful objectives. Therefore, intentional misuse of the authority granted under this policy is grounds for disciplinary action up to and including those outlined in category A of established policy for Discipline and Corrective Action.

This policy is for Metropolitan Nashville Police Department use only and does not apply in any criminal or civil legal proceedings. This department policy should not be construed as the creation of a higher legal standard of care. Violation of this directive will only form the basis for departmental administrative sanction.

11.10.020 Definitions Specific to Use of Force

A. **Absolutely Necessary:** All other options have been exhausted, unavailable, or are not feasible.

B. **Active Aggression:** Where the employee's attempt to gain lawful compliance has culminated in the perception of an attack, or the potential for such an attack, on the employee or others. The employee makes the reasonable assessment that such actions by the subject would not result in serious bodily injury or death to the employee or others.

C. **Active Resistance:** A subject whose non-compliance includes resistive movements or physical defiance.

D. **Aggravated Active Aggression:** Where the employee's attempt to gain lawful compliance has culminated in the perception of an attack or the potential for such an attack on the employee or others. The employee makes the reasonable assessment that such actions by the subject could result in serious bodily injury or death to the employee or others.

E. **Authorized Weapons and Ammunition:** Weapons and ammunition approved by the Metropolitan Nashville Police Department Chief of Police and the Training Division for which authorized employees receive departmentally approved safety and proficiency training.

F. **Conducted Energy Device (CED):** A hand-held device that is designed to subdue persons and/or animals. The device uses a low dose electrical current to temporarily stun and immobilize. Currently, the departmentally approved CEDs are the Taser® Model M26, Taser® Model X26 or Taser® Model X26P.

G. **Deadly Force:** Any use of force reasonably calculated to produce death or serious bodily injury.

H. **Defensive Force:** Use of hands, feet, or any other defensive

equipment to overcome violent resistance or to protect self or others from assault or injury.

I. **Excited Delirium:** A state of extreme mental and physiological excitement, characterized by extreme agitation (including shouting and disruptive behavior), hyperthermia, excessive watering of the eyes, hostility, paranoia or panic, inappropriate nudity, exceptional strength and endurance without fatigue.

J. **Force-Continuum:** Broad categories of force, in identifiable escalating/de-escalating stages of intensity, in response to a subject's action. They are commonly identified as official presence, verbal direction, soft empty-hand control, hand-held chemical spray/electronic immobilization device, hard empty-hand control, batons, and firearms. A subject's action may be defined in broad categories including full compliance to commands, verbal uncooperativeness, passive resistance, active resistance, active aggression, and aggravated active aggression (deadly force).

K. **Injury:** Includes any physical pain, illness, or any impairment of physical condition.

L. **Less Lethal Devices:** A device that is designed to reduce the potential of causing serious bodily injury or death.

M. **Lethal Weapon:** Any weapon reasonably calculated to produce death or serious bodily injury.

N. **Non-Deadly Force:** Any use of force other than that which is considered deadly force.

O. **Passive Resistance:** A non-compliant subject who offers no sign of physical defiance or resistive movement towards an employee's efforts.

P. **Physical Force:** The application of a technique, action, or device to compel a change in the actions of another person; usually compliance with a desired behavior, submission to authority, or to de-escalate a threatening behavior.

Q. **Positional Asphyxia:** Positional asphyxia is a position that can produce unconsciousness or death caused by a lack of oxygen or an increase of carbon dioxide in the blood.

R. **Reasonable Belief:** The facts or circumstances the employee knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

S. **Restraining Force:** Force which is limited to holding and restraining persons, which shall include arm-lock and takedown holds, but shall not include neck restraints.

T. **Serious Bodily Injury:** Bodily injury that creates a substantial risk of death, causes serious permanent disfigurement, or results in long-term loss or impairment of the functioning of any bodily member or organ.

U. **Verbal Uncooperativeness:** A compliant subject who offers no sign of physical defiance or resistive movement towards an employee's efforts, yet verbalizes resistance to instructions.

11.10.030 Parameters for Non-Deadly Force

A. When the use of force is needed, if feasible, authorized employees will identify themselves and determine which options in the force continuum will best de-escalate the situation in the most safe, reasonable, and prudent manner possible.

B. Authorized employees are permitted to use department authorized non-deadly force techniques and equipment for resolution of incidents to:

1. Protect themselves or another from bodily injury;
2. Restrain or subdue a resistant person for whom there is probable cause to arrest or reasonable suspicion to stop;
3. Prevent damage to property; and/or
4. Bring an unlawful situation in which there is lawful authority for the employee to intervene, safely and effectively under control.

C. Authorized employees may use department issued or approved hobble restraints and approved custodial restraint techniques on subjects who have been combative to reduce the likelihood of self-inflicted injury or to control further resistance while handcuffed. Employees are **not** permitted to use hobble restraints, leg shackles, plastic ties, or any other device to place any subject in a manner which is likely to produce positional asphyxia.

D. Any use of force on subjects who are handcuffed or otherwise in custody is prohibited unless physical resistance must be overcome. Such uses of force must be specifically articulated-with an emphasis on why a particular level of force used was necessary to obtain compliance.

E. Authorized employees are permitted to use only that force which is reasonable and necessary under the particular circumstances to protect themselves or others from bodily injury, and only after other reasonable alternatives have been exhausted or it is determined that such alternative action(s) would be ineffective under the circumstances.

F. Flight alone shall not justify the use of any level of force beyond official presence or verbal direction on a suspect. An officer must have reasonable suspicion or probable cause to believe that the suspect has committed or is about to commit a criminal offense before utilizing force greater than verbal direction.

11.10.040 Use of Chemical Spray

A. When discharging chemical spray on an individual or animal that is within the parameters for the use of non-deadly force, the authorized employee shall:

1. Give the verbal warning of “**clear**” to alert other personnel that the spray is about to be used so they can create a safe distance between themselves and the target of the spray; and
2. Use a short burst and only the number of bursts necessary to achieve the desired effect of temporarily immobilizing the individual

being sprayed; and

3. Use at a maximum distance of fifteen (15) feet, and a minimum distance of three (3) feet from the target person; and

4. When possible, discharge the spray from his/her strong hand; and

651

5. Follow all other techniques and/or instructions taught or disseminated by Metropolitan Nashville Police Department Training Division personnel.

B. Storage & Security

1. Chemical spray shall be securely stored at all times when not in use.

2. An employee shall keep issued **chemical spray** out of reach of children at all times.

C. Further provisions regarding chemical spray:

1. All Metropolitan Nashville Police Department sworn personnel and other authorized employees shall be trained in the proficient use of chemical spray, in accordance with the training provided by Metropolitan Nashville Police Department Training Division personnel.

2. Authorized employees are only allowed to carry departmentally issued chemical sprays.

3. Chemical spray is to be carried only in a department approved holster, on the front side of the utility belt in a manner consistent with established training.

4. Authorized employees will be issued one container of chemical spray by Training Division personnel and can obtain another container after a discharge (when over half of a can is used), if he/she brings the used container to the Training Division. Training Division personnel will attempt to verify that an MNPD Form 108, Use of Force Report is on file that describes the employee's use of the chemical spray before issuing the new container.

5. Carrying of a chemical spray while off-duty shall be at the discretion of the employee.

6. Authorized employees will not carry a chemical spray onto any airplane or helicopter.

7. Prior to using the chemical spray on an individual driving or in physical control of a vehicle, the employee(s) shall immobilize the individual's vehicle to prohibit it from moving during the incident, or ensure the vehicle would not pose an unreasonable risk to persons or property should chemical spray be deployed. All incidents of use will be consistent with established departmentally approved training.

8. Authorized employees should not use a chemical spray in the vicinity of infants.

9. Any use of a chemical spray not consistent with established departmental policy or departmental training is expressly prohibited, and may result in disciplinary action.

10. Violation of departmental policies or training governing the use of chemical spray by an employee may result in remedial training, corrective or disciplinary action.

11.10.050 Use of Conducted Energy Device Taser®

A. The department may issue or make available a Conducted Energy Device (CED) to **authorized** employees who have successfully completed specialized training and qualification in the operation and use of these devices.

Currently, the only departmentally approved CED is the Taser® Model M26, Taser® Model X26P or the Taser® Model X26.

B. CEDs should be fired from the strong hand only. Additionally, CEDs should NEVER be held in the hand at the same time as the pistol.

C. Authorized employees who are qualified by the MNPD to carry a Taser® may individually purchase and carry a departmentally approved Taser®.

11.10.060 Taser® / CED Training & Certification

A. Taser® training shall be provided by the Metro Police Training Division to authorized employees. Such training shall be consistent with approved lesson plans.

B. Only those authorized employees who successfully complete and maintain certification may carry and/or deploy the Taser®.

C. To ensure proficiency, authorized employees will be required to successfully complete departmental Taser® training updates. This training shall, at a minimum, be provided annually.

11.10.070 Taser® Inspection & Storage

A. If a Taser® is individually assigned, the employee will perform a spark test at the beginning of each shift to ensure that the device is charged and properly functioning and/or other such inspection as recommended by the manufacturer.

B. If a Taser® is not individually assigned, the supervisor of the assigned unit will ensure that a spark test is performed at the beginning of each shift to ensure that the device is charged and properly functioning and/or other such inspection as recommended by the manufacturer.

C. Storage & Security

1. The Taser® shall be securely stored at all times when not in use.

2. An employee storing a Taser® shall be responsible for the safety and security of the Taser® unless another employee assumes responsibility for the device.

3. An employee shall keep the Taser® and cartridges out of reach of children at all times.

D. The Taser® shall be inspected, and its information noted, consistent with established policy and procedure governing departmental inspections.

11.10.080 Taser® Deployment

A. Deployment

1. The Taser® may be deployed consistent with established policy and procedure governing the force continuum. The Taser® is considered an “intermediate” level of force between soft empty-hand control techniques and hard empty-hand control techniques and may be deployed as appropriate.

2. Fleeing Suspect: All other provisions of this order notwithstanding, there must be probable cause to justify the arrest of a fleeing suspect for a criminal offense prior to utilizing the Taser® to effect the arrest.

B. When deploying the Taser®, probes or stun, at or upon an individual or animal that is within the parameters for the use of non-deadly force, the authorized employee shall:

654

1. Whenever possible, give the verbal warning of “**Taser!**” to alert other personnel that the Taser® is about to be used so they can create a safe distance between themselves and the target;

2. Deploy the Taser® consistent with department-approved training. Use only the minimum number of bursts and the minimum duration reasonably necessary to achieve the desired effect of temporarily immobilizing the individual or animal;

3. When possible, one authorized employee should deploy the Taser® while a cover employee is prepared with a standard weapon;

4. Employees should take the suspect into custody as soon as possible after deploying the Taser® thereby minimizing the number and duration of bursts necessary while realizing that the suspect may not be able to respond to commands during or immediately following a burst;

5. Follow all other techniques and/or instructions taught or disseminated by Metropolitan Nashville Police Department Training Division personnel; and

6. Employees shall be aware that first responders from the Metropolitan Fire Department have developed specific protocols when responding to calls where the Taser® has been utilized. To ensure the safety of suspects where a Taser® has been deployed, officers shall:

a. Where feasible, notify the Metropolitan Fire Department prior to deploying the Taser® on a subject exhibiting behavior characteristic of, or similar to, Excited Delirium; or

b. When prior notification is not possible on a subject that is exhibiting behavior similar to Excited Delirium, notify the Metropolitan Fire Department immediately after the Taser® has been utilized.

7. None of the above provisions shall preclude an employee from notifying the Metropolitan Fire Department and request assistance in any other circumstance wherein the presence of medical personnel may be appropriate.

C. Further provisions regarding the Taser®:

655

1. Authorized employees are only allowed to carry the departmentally authorized Taser® units and **only** departmentally issued Taser® cartridges while on or off duty.

2. The Taser® is to be carried in a department approved holster (on the front side of the utility belt in a cross-draw position), secured in the vehicle, or other approved method.

3. Carrying of the Taser® while off-duty shall be at the discretion of the authorized employee.

4. Prior to using the Taser® on an individual driving or in physical control of a vehicle, the employee(s) shall immobilize the individual's vehicle to prohibit it from moving during the incident, or ensure the vehicle would not pose an unreasonable risk to persons or property should the Taser® be deployed. All incidents of use will be consistent with established departmentally approved training.

The Taser® shall not be used on persons known to have been exposed to flammable liquids or sprayed with a chemical spray containing a flammable propellant, or in a location near flammable liquids or where flammable gasses are known to be present.

5. The Taser® should not be used on persons who are visibly pregnant or are at the extremes of age or physically disabled UNLESS there are compelling reasons to do so which can be clearly articulated.

6. The normal reaction of a person exposed to the discharge of a Taser® is the loss of some voluntary muscle control resulting in the subject falling to the ground or 'freezing' on the spot. For this reason, there is clearly a possibility of some secondary injury to the 'Tasered' subject, caused by falling and striking a hard surface. Particular attention should therefore be paid to the immediate environment and to assessing any additional risk factors (i.e. age, physical condition of the subject, objects being held by subject, etc.).

7. A Taser® shall not be used in cases of passive resistance, unless a lesser means of force:

a. Has been attempted and failed;

b. Is not an option due to exigent circumstances; or

656

c. If attempted, could result in a significant possibility of injury to the employee or suspect.

d. Where feasible, supervisory approval should be obtained

before a Taser® is used to effect the arrest of a subject who is passively resisting.

8. Any use of the Taser® not consistent with established departmental policy or training is expressly prohibited, and may result in corrective or disciplinary action.

9. Violation of policies or training governing the use of the Taser® by an employee may result in remedial training, corrective or disciplinary action.

11.10.090 Taser® Maintenance

A. Replacement Cartridges:

Upon use of a cartridge, the deploying personnel shall submit a copy of the completed Taser® Use Report-MNPD Form 108T detailing the use of the Taser® to the Police Training Division. Upon review of the supporting documentation, the Training Division will provide authorized replacement cartridges. Only cartridges provided by the Training Division are authorized for use.

B. All Tasers shall be downloaded on a quarterly basis by designated supervisory personnel at the precinct or unit where Tasers are assigned. The download will include both department issued and personally owned Tasers. Such download data shall be stored on a network based drive, as identified by Police Information Technology Division, and shall be maintained at least five (5) years.

C. Any Taser® which may require service, repair, or maintenance shall be delivered to the Police Training Division as soon as practical. The Academy shall, when available, issue a temporary replacement Taser® until such assigned Taser® can be returned.

11.10.100 Reporting & Documentation of Taser® Use

A. Personnel shall report all use of force incidents for the purpose of determining their justification. Consistent with established policy, when force is applied through the use of the Taser®, the employee shall complete the Use of Force Report-MNPD Form 108 and a Taser® Use Report-MNPD Form 108T.

B. As with any application of force, multiple applications/bursts of the Taser®, in any mode, is a separate application of force within the overall force incident and justification for each must be clearly articulated.

C. Personnel shall report the display of a Taser® when such display has had the effect of reducing or eliminating the need for additional use of force. Reporting of such displays shall be by the completion of a Taser® Use Report-MNPD Form 108T (if no other force is used, a Use of Force Report-MNPD Form 108 is not required). For purposes of this section, display is defined as: drawing and aiming, or indicating potential use, without application, of a Taser® in circumstances where any person perceives the action as a use of force or threat of a use of force, whether or not this is accompanied by a verbal warning, sparking of the device or placing of the laser sight red dot onto a

subject. Reports generated under this section will be submitted through the established chain of command and a copy submitted to the Director of the Training Division.

D. Personnel shall immediately notify a supervisor anytime their Taser® is activated except for a spark test or formal training exercise. Upon the deactivation of the safety, the Taser® is activated and will begin recording dataport information. The laser sighting and led lighting will also occur. Should the incident not require a 108 or 108T, it will be documented on an MNPD supplement form 104. A supervisor shall download the dataport record of this event when appropriate and consistent with established training.

E. The original Taser® Use Report-MNPD Form 108T shall be processed with the original Use of Force Report-MNPD Form 108 consistent with established policy. When appropriate, the download report may be included with the submission packet.

F. Evidence Collection & Maintenance

1. Taser® Cartridge(s) and Probes

Expended Taser® Cartridge(s) and Probes may be placed into property as evidence or disposed of as bio-hazardous waste consistent with established procedure.

2. Photographs

When appropriate, photographs should be made of a subject's injuries/condition.

G. The Police Training Division will maintain a database of Taser® equipment assigned by the MNPD, as well as personally owned Tasers®, and their use consistent with established policy and procedure. Such database will include, at a minimum, the name of the personnel receiving the Taser®, the serial number(s) of assigned Taser®, serial number(s) of assigned/expended cartridges, complaint numbers of incidents related to expended cartridges, and the relevant dates and times relating to issuance of such equipment.

H. Precinct/Division Commander Review

1. Whenever the Taser® is displayed or utilized and the MNPD Form 108T, Taser® Use Report is completed, the Precinct/Division Commander shall review that form and all associated documents.

2. After review, the Precinct/Division Commander shall make a determination whether or not to authorize the officer to continue to carry/utilize the Taser®. If the employee's Precinct/Division Commander is not available to review and approve the MNPD Form 108T (on vacation, sick leave, etc.), another Precinct/Division Commander in that Bureau will review and approve or disapprove the MNPD Form 108T. The MNPD Form 108T cannot be approved by an Acting Precinct/Division Commander. For the purpose of this general order, Precinct/Division Commanders are Police Captains or Police Commanders. If the Precinct/Division Commander disapproves the employee's continued use of the Taser®, he/she

shall complete a detailed narrative supporting his/her decision and attach it to the MNPD Form 108T.

3. The Precinct/Division Commander shall immediately notify the following departmental elements should an employee's authorization to carry the Taser® be suspended:

- a. The employee's chain of command;
- b. The Director of the Training Academy; and
- c. The Chief of Police

11.10.110 Use of Less Lethal Devices

The department may issue or make available less lethal devices (i.e., bean bag, etc.) to **authorized** employees who have successfully completed specialized training and/or qualification in the operation and use of these devices.

11.10.120 Use of Deadly Force in Self Defense

Authorized employees may use deadly force when they have a reasonable belief that the action is immediately necessary to prevent imminent death or serious bodily injury of a human being, including the employee.

11.10.130 Use of Deadly Force to Effect an Arrest

Authorized employees may use deadly force to effect the arrest of a fleeing felon only when:

- A. The employee has probable cause to believe the individual to be arrested has committed a felony involving the infliction or threatened infliction of serious bodily injury; **AND**
- B. The employee has probable cause to believe that the individual to be arrested poses a threat of death or serious bodily injury, either to the employee or to others unless immediately apprehended; **AND**
- C. Where feasible, the employee has identified himself/herself as a police employee and given warning such as, "**STOP--POLICE--I'LL SHOOT,**" that deadly force is about to be used unless flight ceases; **AND**
- D. If all other means of apprehension available to the employee under the attendant circumstances have been exhausted.

11.10.140 Administration of First-Aid

A. Whenever an employee is involved in a use of force incident in which a person sustains injuries or requests evaluation and/or treatment, the appropriate first-aid shall be administered either by the employee or others at the scene, by transporting the injured person to the hospital, and/or by summoning emergency medical personnel.

B. After any use of force, employees should inquire of the subject as to injuries or pre-existing medical conditions, regardless of whether they are obvious. Where employees are informed or have reason to believe that a person, to whom any use of force has been applied, has an injury or pre-existing medical condition which places the subject at an increased risk of developing a medical crisis, employees shall provide immediate aid by transporting the injured person to the hospital, and/or

by summoning emergency medical personnel.

C. After any use of force on an individual who has exhibited signs or symptoms of excited delirium, extreme drug/alcohol intoxication, extreme hyperactivity, or similar uncontrolled behaviors, employees shall provide immediate aid by summoning emergency medical personnel and/or by transporting the person to the hospital.

D. After any use of force on an individual who is suspected to have ingested contraband, evidence, or unknown suspicious substances; employees shall provide immediate aid by summoning emergency medical personnel and/or by transporting the person to the hospital.

E. After any use of force, at a minimum, employees shall notify receiving DCSO personnel of any known or observed injuries or pre-existing medical conditions so that the DCSO Nurse can conduct an informed intake interview and assessment.

F. In a case when chemical spray is used the employee will:

1. Monitor and verbally reassure the subject that the effects of the spray will normally subside in thirty to forty-five minutes;
2. After the subject is secured, allow the subject proper ventilation to expedite the recovery period;

3. If the individual experiences or complains of symptoms other than those normally associated with the use a chemical spray or does not show signs of recovery within the normally expected time period, they should be afforded immediate medical attention.

Unusual symptoms include profuse sweating, respiratory problems, or chest and/or neck pain. If these symptoms do occur the employee should administer first aid and call for an ambulance.

Employees will also advise medical personnel that the individual has been exposed to chemical spray;

4. The Chemical Spray Aftercare Notice, MNPd Form 109, shall be provided to all individuals who have been exposed to the chemical spray; and

5. When transferring custody of a subject who has been exposed to chemical spray to medical personnel, Davidson County Sheriff's Office Personnel, or others, the employee shall advise the receiving personnel of the transferred subject's exposure to the chemical spray and the time of the exposure.

G. When the Taser® is used, either by probes or drive stun, the employee will:

1. Monitor and verbally reassure the subject that the effects of the Taser® will normally subside in a matter of minutes, if not immediately.

2. If the individual experiences or complains of symptoms other than those normally associated with the use of the Taser® or does not show signs of recovery within the normally expected time period, they should be afforded immediate medical attention. Employees will advise medical personnel that the individual has been exposed

to the Taser®, and when custody is transferred, the transferring personnel shall also notify the receiving personnel that the subject has been exposed to the Taser®.

3. After Taser® use, the following persons shall be medically evaluated by emergency medical personnel or by an appropriate medical facility:

- a. Persons who are visibly pregnant or are at the extremes of age or physically disabled,
- b. Persons who had more than three (3) bursts applied via probes,
- c. Persons who had more than one CED effectively used in the same incident,
- d. Persons who have been subjected to a continuous burst of fifteen (15) seconds or more, or
- e. Persons described as requiring evaluation and/or treatment as described in Sections A or B above or the Guidelines for Probe Removal of the MNPD Taser® Student Manual.

4. The Taser® Aftercare Notice shall be provided to all individuals who have been exposed to the Taser®.

5. Probe Removal: Probes that have not pierced the skin or are superficially in the skin may be removed by an employee who is trained to do so and, if practical, in the presence of another employee. Authorized employees shall remove such probes consistent with department-approved training and the Guidelines for Police Officer Removal of Taser® Probes. Employees shall NOT attempt removal if subject is combative or if the location of the probe is in the face, neck, ear, breast, groin, or deeply embedded.

11.10.150 General Provisions

A. In addition to the use of force provisions stated in this order, an authorized employee may also discharge a firearm under the following circumstances:

1. During legal or routine firearms training; and
2. To destroy seriously injured and suffering or dangerous animals when no other disposition is practical. A supervisor's approval will be sought when possible.

B. Authorized employees shall adhere to the following restrictions:

1. Except for maintenance, official inspections, or during training, employees **shall not** draw or exhibit their firearm unless circumstances create reason to believe that it may become necessary to use it as provided in this policy;
2. Warning shots are prohibited;
3. When effecting an arrest, no form of deadly force shall be used which would pose a substantial risk to innocent bystanders; and
4. When the use of deadly force is necessary to defend the employee or another from death or serious bodily harm, every effort will be made to minimize the risk of harm to innocent persons.

C. Employees shall adhere to department approved procedures, training,

and tactics related to use of force.

D. Employees **shall not** discharge their firearm at or from a moving vehicle unless absolutely necessary to protect the life of the employee or others.

E. Employees shall not knowingly place themselves in a position where they would be in jeopardy of being struck by a suspect vehicle or knowingly stand and/or step into the path of a vehicle, creating circumstances where the use of deadly force may be necessary.

F. All authorized employees shall be armed while on duty except, subject to supervisory approval, when their assignment requires otherwise.

G. The carrying of firearms while off-duty shall be at the discretion of the employee. If the employee chooses not to carry a firearm and the need for police services arises, the employee **shall** take appropriate action and request an on-duty employee to respond.

H. A firearm must always be carried by an authorized employee when operating a departmental vehicle except, subject to supervisory approval, when his/her safety might be jeopardized should his/her identity be revealed.

I. When an authorized employee is in civilian attire and armed, the firearm must be concealed from view when in public. Authorized employees shall always possess their departmental credentials (I.D. card and badge) when armed.

J. Use of equipment, other than the approved baton, as an impact device is prohibited.

1. However, under **exigent circumstances**, other equipment may be used as a defensive impact device when the use of the baton is not feasible.

a. If such non-lethal equipment is used as a defensive impact device within the guidelines of this policy, the guidelines applicable to the use of a baton shall apply.

b. If lethal equipment (firearm, vehicle, etc.) is used as a defensive impact device within the guidelines of this policy, the guidelines applicable to the use of a deadly force shall apply.

2. When such equipment is used as a defensive impact device, the member should disengage as soon as the situation permits and transition to an approved device.

K. When an employee reasonably believes that an arrestee has secreted an item within his/her mouth believed to be contraband or evidence, the following shall apply:

1. An officer may reasonably order an arrestee to remove that which the arrestee has within his/her mouth.

2. Before an officer may use physical force to search an arrestee's mouth for contraband the officer must first have (all of the following simultaneously present):

a. a lawful arrest of the person based upon probable cause;

b. probable cause to believe that the arrestee has secreted a

"seizeable item" (e.g. illegal drugs) within his/her mouth;
c. a "clear indication" that a seizeable item will be found within the arrestee's mouth; and

d. either a warrant authorizing an intrusion into the arrestee's mouth, or exigent circumstances, such as:

- (1) imminent destruction of evidence or
- (2) a medical emergency.

3. Once all of the prerequisites listed above have been satisfied, then an officer may use objectively reasonable force to extract the contraband secreted in the arrestee's mouth in a manner consistent with departmentally approved training.

4. After such incidents, such persons shall be medically evaluated by emergency medical personnel or by an appropriate medical facility.

11.10.160 Use of Force Training

A. All employees will be provided with a copy of the current use of force policy and thoroughly trained before being authorized to carry any weapon. Authorized employees will be instructed in the policies and procedures described in such policy and provided with the necessary training, at a minimum, on an annual basis. Employees shall adhere to principles and practices provided during departmentally approved training.

(The category of violation is based upon the circumstances and nature of the offense).

B. Less Lethal Devices

Only those authorized employees who have successfully completed specialized training and/or qualification in the operation and use of less lethal devices may use such devices.

C. Lethal Weapons

For policy regarding training in the use of lethal weapons, see current firearms policy and departmentally approved lesson plans.

D. Written directives and lesson plans governing the use of force shall be reviewed annually by the Director of the Training Division.

11.10.170 Reporting Use of Force

A. Personnel shall report all use of force incidents. However, no MNPD Form 108 is required when official presence, verbal direction, and/or soft empty-hand control is used by the employee and there is no injury and no allegation of injury.

665

B. Use of force incidents to be reported shall include but are not limited to:

1. Whenever an employee discharges a firearm, other than for training, or legal recreational purposes;
2. Whenever an employee takes an action that results in (or is alleged to have resulted in) injury or death of another person;
3. When force is applied through the use of less lethal weapons, CE devices, chemical spray, baton, etc.; and/or
4. Whenever an employee uses defensive or physical force other than

soft empty-hand control.

C. The employee involved in a use of force incident shall notify the appropriate supervisor immediately and complete an MNPDP Form 108, Use of Force Report.

D. The employee's immediate supervisor shall investigate the incident and review the MNPDP Form 108, Use of Force Report and any associated documents completed by the employee, and document his/her findings on an MNPDP Form 104, Supplement Report.

E. Such supervisory investigation, for Taser® use reports, shall include a review of the Precinct/Division conducted Taser® Download Report.

The specific data from the Taser® download to be listed on the MNPDP Form 108T after a Taser® incident and included in the Supervisory Review are, at a minimum, the Date & Time of the Taser® use, Duration, Temperature and Battery information. The page from the download report documenting this incident shall be attached to, and become a part of, MNPDP Form 108T.

F. The reviewing supervisor shall ensure a departmental control number is assigned to the Use of Force Report immediately upon receipt.

G. MNPDP Form 108, Use of Force Reports, Taser® download reports, and the MNPDP Form 104 Supplement Report containing the supervisor's findings, shall be processed through the appropriate chain of command up to the Office of the Chief of Police and copies forwarded to the Director of the Training Division.

H. Upon receipt, the support staff in the Office of the Chief of Police shall file the original and make any copies deemed necessary. All use of force incidents shall be logged into a computer database.

I. The notified supervisor shall ensure that all appropriate notifications are made, consistent with established policy and procedure on callouts of investigative elements.

J. Responsibilities of the Office of Chief of Police

The Office of the Chief of Police will receive and file all original MNPDP Form 108, Use of Force Reports, MNPDP Form 108T, Taser® Use Reports, Taser® Download Reports, and related reports. Such reports shall be copied and distributed as directed. Relevant data from such reports will also be entered into a computer database.

K. Administrative and Investigative Procedures

1. Any employee whose use of force results in a death or serious bodily injury shall be removed from line or field duty assignments consistent with those outlined in Chapter 4, Section 4.60 (Relief From Duty/Decommission and Alternate Duty Assignment) by his/her supervisor without loss of pay or benefits, pending the investigative review.

2. As soon as practical, the employee's supervisor shall schedule a meeting between the involved employee and a representative from the Police Advocacy/Support Services Section for debriefing.

3. When an employee discharges a firearm in a manner that

constitutes deadly force, the employee will be required to submit that firearm for examination or testing by the appropriate firearms examination laboratory as may be necessary for the investigation. The firearm will not be left at the laboratory and never out of the employee's possession. The results of any examination will be submitted directly to the investigator.

4. The employee-in-charge of the investigation will document the firearm used by recording the make, model, and serial number of that firearm in his/her report. The firearm will be retained by the employee involved, but will not be cleaned prior to the examination.

11.10.180 Force Review Board

A. The Force Review Board examines whether policies and procedures governing the use of force have been followed. The Chief of Police has the discretion of convening a Force Review Board as a result of any departmental use of force incident. The Chief of Police shall be the final authority within the department as to the disposition of each incident reviewed by the board.

B. A Force Review Board shall be convened to review:

1. All uses of force involving firearms discharges.

***NOTE:** Firearms discharges at injured or suffering animals or those involving accidental or negligent discharges are addressed in Section C, below.*

2. All uses of force involving the use of deadly force, or any force which results in death or serious bodily injury.

3. Uses of less than lethal force when such force is applied through the use of a primer activated weapon.

4. Any incident referred to the board by the Chief of Police, a Bureau Deputy Chief, the Director of the Training Division, or the Director of the Office of Professional Accountability.

C. Weapons Discharges at Injured or Suffering Animals & Negligent/Accidental Firearms Discharges

1. All firearm discharges resulting in the death of an injured and suffering animal, when no other disposition is practical, shall be investigated and reviewed by the affected employee's chain of command.

2. All firearm discharges as the result of negligence or an accident, unless occurring during an application of some type of force, shall be investigated and reviewed by the affected employee's chain of command.

3. The involved employee's component commanding employee will review the circumstances and make a conclusion as to whether the weapon discharge was within departmental policy. The component commander will then forward a written report to the Chief of Police, through his/her chain of command, detailing his/her conclusion. If the component commander reasonably believes that the employee's actions may have been outside the parameters of the

department's policies, procedures, or directives, a recommendation regarding remedial training and/or corrective/disciplinary action shall be included.

4. Discharges under this section will only be presented to the Force Review Board when the employee's chain of command determines such review to be in the best interest of the department.

D. Firearm discharges involving an application of force, including dangerous animals for employee safety, or any use of deadly force will be investigated by the Homicide Section or Precinct Investigative Units, consistent with their established operating procedures, and presented to the Force Review Board.

E. Force Review Board Membership

The Force Review Board shall consist of:

1. The Deputy Chiefs of Police, or a designee approved by the Chief of Police. The Deputy Chief of the involved employee shall be the chairperson;

2. The Director of the Training Division;

3. The Commander of the Homicide Section;

4. The component commander of the involved employee, as designated by the board chairperson;

5. An equivalent rank/classification of the involved personnel, selected by the Chairperson;

6. A representative of the Office of Professional Accountability, who is assigned to assist the board and is a non-voting member; and

7. An attorney from the Metropolitan Department of Law, who will be present as a non-voting member.

F. Meetings and Findings

1. The chairperson of the Force Review Board should schedule a meeting of the Force Review Board to occur within thirty (30) calendar days, but no more than sixty (60) calendar days after each use of force required to be reviewed under this policy.

2. If facts indicate that criminal charges may be filed against an employee as a result of a use of force, the Force Review Board shall delay final recommendations until after such court actions are concluded.

3. At least five (5) working days prior to each Force Review Board meeting, the chairperson of the Force Review Board will ensure that all appropriate investigative reports are delivered to participating board members. Board members shall be advised that the investigative reports are not to be reviewed by anyone other than board members, and all reports must be returned at the conclusion of the board review.

4. Findings of the Force Review Board:

The Force Review Board, as a result of its review process, shall report three findings at the conclusion of each hearing. The board shall make the following findings:

a. In Policy or Out of Policy

The board shall make a finding as to whether the use of force was consistent with established departmental policy or procedure. The finding shall be reported as follows:

- (1) In Policy: The application of force was consistent with established departmental policy or procedure, or
- (2) Out of Policy: The application of force violated established departmental policy or procedure. The board, in its findings, shall specify which policy or procedure was violated.

b. Intentional, Negligent, or Accidental

The board shall make a finding as to whether the use of force was intentional, negligent, or accidental.

c. Associated Recommendations

The board shall make such recommendations it deems necessary, to include but not limited to:

- (1) the need for remedial training;
- (2) the need to review or revise departmental policy, procedure, or training;
- (3) the need for corrective or disciplinary action; or
- (4) any other recommendation the board deems relevant.

5. A report of findings shall be submitted to the Chief of Police. This report should also include:

- a. The relevant facts and circumstances surrounding the incident;
- b. A conclusion as to whether the use of force complies with departmental policies and procedures; and
- c. Any other documentation as needed.

6. When the board has reviewed the circumstances of the use of force and formulated their conclusions, the chairperson will cause the preparation of a report for the Chief of Police, detailing the board's conclusions and any recommendations. This report will be forwarded to the Chief of Police within fifteen (15) working days after the conclusion of the Force Review Board hearing. Should the voting members fail to unanimously agree regarding the board's conclusions and recommendations, each dissenting opinion shall be fully reported.

Within fifteen (15) working days after the Force Review Board issues its report to the Chief of Police, the representative from the Office of Professional Accountability may forward a separate opinion regarding the conclusions and recommendations of the Force Review Board to the Chief of Police.

7. The chairperson will retain all records, notes, and reports associated with the board hearing.

G. Responsibilities

1. The Chief of Police shall be the final authority within the department as to the disposition of each incident. The Chief of Police shall review all relevant reports and take one of the following actions:

- a. Adopt the findings of the Force Review Board as stated in its report; or
 - b. Modify the findings of the Force Review Board and, if appropriate, issue an addendum to the report indicating the manner in which the findings have been modified; or
 - c. Request the Force Review Board reconvene for the purpose of making additional findings and reporting them to the Chief of Police. In such an event, the Chief of Police shall instruct the board in writing as to what additional findings are needed.
2. The Chief of Police shall, upon a determination that a use of force incident was out-of-policy, refer the matter to the Office of Professional Accountability or the employee's chain of command for processing in accordance with the department's corrective or disciplinary action procedures.
 3. Should the Chief of Police find that a need for additional or remedial training exists, either for the affected employee or throughout the department, the Director of the Training Division shall be responsible for providing the appropriate additional and/or remedial training and maintain a record of such training as a part of the departmental training records.
 4. It will be the responsibility of the involved employee's component commander to have:
 - a. MNPD Form 343, Remedial Training Request, completed and forwarded to the Director of the Training Division;
 - b. Ensure the employee successfully completes any recommended remedial training; and
 - c. Forward documentation of the employee's successful completion of the recommended remedial training to the Office of the Chief of Police for inclusion in the employee's Force Review Board file.
 5. The Office of the Chief of Police shall maintain a file for all cases reviewed by the Force Review Board.
 6. The Office of the Chief of Police shall cause the Director of the Training Division to be notified of the final results and approved dispositions of all force incidents reviewed by the Board. The Director shall review all incidents to identify training issues or needs.
 7. If the Chief of Police makes a recommendation calling for action by a component of the department, that component's Deputy Chief shall be responsible to ensure that the proper follow-up action is taken. That Deputy Chief shall provide a report to the Chief of Police detailing what action was taken.
 8. The Chief of Police has the ultimate responsibility for reviewing use of force incidents.
 - H. The Chief of Police will schedule a Departmental Force Review Board annually. The core members shall review each use of deadly force and

all cases reviewed by the Force Review Board for the purpose of identifying any potential patterns and/or systemic problems and to report their findings and recommendations to the Chief of Police.

1. Core members of the annual Departmental Force Review Board shall include the Chief of Police, the Deputy Chiefs, the Director of the Training Division, the commanding employee of the Homicide Section, and a representative from the Office of Professional Accountability. Other persons may be present at the discretion of the Chief of Police.

2. The Strategic Development Division will annually provide the Chief of Police and members of the Departmental Force Review Board with a use of force analysis to assist in identifying any potential patterns and/or systemic problems in regard to the department's use of force incidents.