

SOUTH PORTLAND POLICE DEPARTMENT

STANDARD OPERATING PROCEDURES

Subject:	Use of Force & Control: Response Options / Medical Aid / Reporting / Review	Policy #	1-1-A
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I. PURPOSE:

To establish guidelines governing the use of force and control by South Portland Police officers, and to describe requirements for medical aid, reporting, and review of all such incidents.

II. POLICY:

The South Portland Police Department recognizes and respects the value and special integrity of each human life. In vesting officers with the trust and lawful authority to use physical force to protect the public welfare, a careful balancing of all human interests is required. Since there are too many variables that go into an officer's split-second decision to use force in what are oftentimes tense, uncertain and rapidly evolving situations, this procedure, although intended to provide clear direction, is unable to be all inclusive and does not attempt to describe in absolute terms and in every circumstance when an officer should or should not use a particular response option. It is the policy of this agency for officers to attempt to control an incident by the use of de-escalation whenever it may be safe and reasonable to do so and, in compliance with State and Federal law, to use only the degree of force that the officer *reasonably* and *actually* believes to be lawful, necessary and appropriate to effect an arrest, overcome resistance to arrest, defend themselves or others from harm, effectively bring an incident under control, or accomplish some other lawful objective. When force is necessary, the degree of force employed must be proportional and in direct relationship to the amount of resistance exerted, or the immediate threat to the officers or others. Officers authorized to use force must do so in a way that does not violate the SOP and the civil rights guaranteed by our Constitution and applicable law. Officers shall report their use of physical force, and shall take reasonable steps to obtain appropriate medical attention for resultant injuries or complaints of injuries. Supervisors and command staff shall review all uses of force and control to ensure compliance with legal requirements and this policy. Given this is a statutorily mandated policy, officers must abide by this SOP as it applies to all standards of the MCJA Board of Trustees.¹ This policy will be reviewed, and officers understanding of it will be evaluated, annually.

III. DEFINITIONS:

- A. **Actual Belief:** A subjective state of mind in which the officer holds a genuine or honest conviction.
- B. **Bodily Injury:** Physical pain, physical illness or any impairment of physical condition.
- C. **Canine (K-9):** A department authorized dog, the training and certification of which has included handler protection and suspect apprehension. This is considered the use of non-deadly force.
- D. **Chemical Agents:** A response option intended to disable a person with the use of chemicals, inflammatory agents, or similar substances (e.g., OC or CS) that has an irritating or disabling effect upon human beings. This is considered the use of non-deadly force.²
- E. **Compliance Techniques:** Methods of arrest, restraint and control that include the manipulation of joints, pressure point applications, and take down techniques to control a resistant or aggressive offender.
- F. **Conducted Energy Weapon (CEW):** An incapacitating weapon that uses electricity against a person, causing involuntary muscle contraction, and overriding the person's voluntary motor responses. This is considered an intermediate level use of non-deadly force.

¹ 25 M.R.S.A., § 2803-B

² See 17-A, MRSA, § 101(5)(A)

- G. **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, including but not limited to the intentional, knowing or reckless discharge of a firearm in the direction of another person or at a moving vehicle.³
- H. **De-escalation:** The use of verbal or non-verbal actions and tactics, whenever feasible and possible, preceding a potential force encounter. This may include, but is not limited to the use of distance, cover, tactical re-positioning, and communication in order to stabilize the situation, reduce the immediacy of the threat, and allow for more time and options for resolution. The goal of these tactics is to slow down the situation, allowing access to additional resources (e.g., personnel, supervisors, specialized officers or teams) that may mitigate the intensity of the encounter, help gain voluntary compliance, or otherwise allow for control of the situation and the safety of the officer, subject and others without the need to use force, or with the use of a lower level of force.
- I. **Excessive Force:** Physical force that is unreasonable, unnecessary or inappropriate given the facts and circumstances known to the officer at the time the force was used.
- J. **Firearm:** Any weapon whether loaded or unloaded, which is designed to expel a projectile by the action of an explosive and includes a pistol, rifle, revolver, gun, machine gun or shotgun, but not including the *PepperBall* system or a CEW device.
- K. **Imminent:** Impending, immediate or appearing as if about to happen or occur.
- L. **Impact Projectiles (Less Lethal Munitions):** Specialty, low-kinetic energy projectiles, approved by the MCJA Board of Trustees, designed to be discharged from a firearm and have a disabling effect upon human beings. Law enforcement use of such munitions is considered the use of non-deadly force.⁴
- M. **Impact Tool / Weapon:** A tool or device designed for use by an officer in close quarter physical defense of the officer or another and / or control of an aggressive offender. The issued baton is a department-approved impact tool.
- N. **Individual Actions:** As a part of the Situational Use of Force assessment process, the categories below can be used to describe an individual subject's behavior:
- **Cooperative:** Compliant and willing to obey, posing minimal threat to the officer(s) or others.
 - **Resistive (Passive):** Non-compliance, defiance or failure to cooperate with lawful verbal direction, but offering no resistive or evasive bodily movement to prevent the officer's attempt at physical control (e.g., a passive demonstrator, a person going limp, prone or refusing to stand up, lie down, enter / exit vehicle, leave the scene, etc.).
 - **Resistive (Active):** Physically resistive or evasive bodily movement, including but not limited to muscle tension, bracing, pushing, pulling, flailing or flight, to avoid or defeat an officer's attempt at physical control, or to prevent being taken into or retained in custody. Verbal statements, defiance and belligerence alone do not constitute active resistance.
 - **Active Aggression:** A threat of an assault, coupled with any pre-attack indicators (e.g., clenched fists, flanking, fighting stance, etc.) and the present ability to carry out the threat or assault, reasonably indicating that an assault or injury to the officer or another person is imminent.
 - **Assaultive (High Risk):** An overt act of an assault, or highly agitated or combative actions or behavior posing an imminent threat of injury to the officer or another. Such actions may include, but are not limited to hostile physical or active resistance, kicking, punching or spitting, whether an assault occurs or not.
 - **Life Threatening:** Actions or behavior that could cause death or serious bodily injury, potentially justifying the use of deadly force.
- O. **Less Lethal Force:** Response options that are not designed or used with the intention of causing (and have less potential for causing) death or serious bodily injury, including but not limited to chemical agents, *PepperBall*, impact projectiles or munitions, or a CEW.

³ With the exception being the authorized law enforcement use of an impact projectile (17-A, MRSA, § 101(5)(B))

⁴ See 17-A, MRSA, § 101(5)(B)

- P. **Non-Deadly Force:** Any physical force that is not deadly force. The use of less lethal force, and the threatened use of deadly force (e.g., directing or holding an un-holstered firearm in the direction of another person), is deemed non-deadly force for purposes of this policy.
- Q. **Officer Response Options:** Choices available to an officer concerning the type of force to be used in response to resistance in a given situation, including but not limited to officer / command presence, voice commands, de-escalation, compliance techniques, CEWs, chemical agents, impact weapons, canines, and deadly force.
- R. **PepperBall Projectiles:** Plastic spheres that are filled with powdered or liquid Oleoresin Capsicum (OC) and are delivered by a special launching device. With the exception of glass-breaking rounds, use of *PepperBall* projectiles is considered the use of non-deadly force.
- S. **Physical Force:** Any physical power or kinetic energy exerted by an officer to coerce, overcome, control or restrain another individual to comply or submit.
- T. **Reasonable Belief:** When facts or circumstances provided to or known to the officer are such as to cause an ordinary and prudent officer to act or think in a similar way under similar circumstances.
- U. **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 for recovery of physical health.
- V. **Situational Use of Force Options:** A dynamic process by which an officer assesses, plans and responds to situations that threaten public and officer safety and require the use of force and control. The process includes an assessment of the situation and circumstances immediately confronting the officer, including but not limited to the severity of the crime or suspected offense, the level and imminence of any threat to the officers or public, the level of resistance, the risk or apparent attempt to flee or escape; the suspect's behavior and individual actions (cooperative, resistive (passively or actively), assaultive / high risk, or posing a threat of death or serious bodily injury); and to the officer's perceptions and tactical considerations. Based on this assessment, the officer selects from the available officer response options while continuing to evaluate the evolving situation, adapting a plan and actions that are appropriate and effective in bringing the situation under control.
- W. **Weapon of Availability:** Flashlights, vehicles, tools, implements, objects or other devices that are not necessarily issued, intended or normally authorized as weapons, but that *may* be used in extraordinary circumstances when their use would be justifiable and no other adequate or suitable defensive tool is immediately available.

IV. TRAINING & PROFICIENCY:

- A. Only sworn and certified personnel, who have been trained on this SOP and demonstrate proficiency in the use of the department's authorized firearms and less lethal force options, as may be established by the department or the Maine Criminal Justice Academy, will be permitted to carry or use them on or off-duty.
- B. Initial weapons proficiency will be achieved through training and qualification during the Field Training program. Training will include instruction on safe handling, storage and maintenance procedures. Continued proficiency with all authorized firearms (both lethal and impact projectiles) and the CEW will be demonstrated by successful completion of annual training and qualification. Annual training shall also include a review of this SOP. All firearms and less lethal force response options training and qualifications will be documented and supervised by trained and / or certified instructors.
- C. Training in other less lethal response options (O.C., *PepperBall*, impact baton and defensive tactics) shall be conducted at least biennially.
- D. If an officer fails to qualify with a firearm,⁵ or demonstrate proficiency with another less lethal response, the instructor shall notify the Chief of Police, in writing, on the same date, and will develop a remedial training

⁵ See SOP #1-1-B, FIREARMS, WEAPONS & MUNITIONS

(lesson) plan, subject to approval by the Chief of Police or Training Officer, to include the type of remedial training and the timetable to address the deficiencies. The officer will be placed on an altered or administrative assignment pending successful completion of the training / qualification, and must not carry or use the firearm or less lethal response option until having demonstrated proficiency.

- E. The Chief of Police should be notified of the results of the remedial training plan. Failure to qualify following remedial training will result in further review or evaluation of fitness for duty, which may result in action up to and including termination.

V. FORCE JUSTIFICATIONS:

Officers are authorized to use force to overcome a suspect's resistance or to accomplish some other lawful law enforcement objective for which force is lawful, necessary and appropriate. Officers derive their authority to use force from applicable Maine State laws and guidelines. As such, officers should be familiar with the laws and guidelines contained in 17-A M.R.S.A. § 104, 105, 106(6), 107, 108 and 110, as well as the ARREST Chapter of the Maine Law Enforcement Officer's Manual. Officers shall only carry department-authorized weapons, and with the exception of an authorized use of a weapon of availability, should only use weapons after being trained in their use.

- A. **USE OF NON-DEADLY FORCE:** An officer is justified in using a reasonable degree of non-deadly force upon another person:

1. when and to the extent the officer reasonably believes it is necessary to effect an arrest or prevent the escape from custody of an arrested person, unless the officer knows the arrest or detention is illegal; **OR** 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 escape; **OR**
2. in self-defense or to defend a 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; **OR**
3. to prevent or thwart the commission of a person's suicide, or a person's self-infliction of serious bodily injury; and / or to exercise protective custody of a person, consistent with 34-B M.R.S.A. § 3862 and SOP #4-40-C, MENTAL HEALTH CRISIS INTERVENTION / PROTECTIVE CUSTODY.

- B. **USE OF DEADLY FORCE:** An officer is justified in using deadly force only when the officer reasonably believes such force is necessary:

1. for self-defense or to defend a third person from what the officer reasonably believes is the imminent use of unlawful deadly force; **OR**
2. to effect an arrest or prevent the escape of a person when the officer reasonably believes 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 inflict serious bodily injury, unless apprehended without delay, **AND** 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 the escape from arrest and the officer has reasonable grounds to believe the person is aware of the advice (e.g., by giving a verbal warning, if feasible), or the officer reasonably believes that the person otherwise knows that the officer is a law enforcement officer attempting to effect an arrest or prevent an escape. *The mere fact that a person is a "fleeing felon" does NOT, in and of itself, justify the use of deadly force and may violate the Fourth "Amendment to the U.S. Constitution (see Tennessee v. Garner). Deadly force may not be used against an unarmed, non-violent, property crime offender;* **OR**
3. to destroy any animal that is obviously vicious or aggressive and presents a direct or potential threat of killing or seriously injuring any person or, in extreme cases, another animal. Supervisory approval must be obtained, whenever possible. Dispatching or euthanizing an animal is not considered a use of force. A Use of Force and Control Report need only be completed if the use of force was in self-defense or defense of others from an actual animal attack. In other cases, where a sick or injured animal is dispatched or destroyed, officers should follow SOP #2-16-B, ANIMAL CONTROL.

VI. SITUATIONAL USE OF FORCE / RESPONSE OPTION GUIDELINES:

- A. The department has adopted the Situational Use of Force Options concept, the underlying principle of which is threat assessment. During any incident in which force is justified, officers are expected to use good judgment in assessing a situation and determining which response option would best defuse a situation and bring it under control. The key to using the proper type of force is recognizing a threat. Consistent with the *Graham v. Connor* decision, officers must, on an ongoing basis, assess the totality of the circumstances, including but not limited to the severity or seriousness of the crime or suspected offense; the level of threat or resistance presented by the subject; the risk or apparent attempt by the subject to flee or escape; and whether the subject was posing an imminent threat to the officer(s) or others. An officer may assess or perceive a situation based, in part, on the suspect’s individual’s actions and behaviors (i.e., *cooperative, resistant (passively or actively), assaultive or posing a threat of death or serious bodily injury*); the officer’s objective perceptions and tactical considerations; the environment; the number of individuals; the perceived abilities and knowledge of the individuals; the number of officers (or availability of backup); each officer’s unique skill levels and competencies; time and distance; and any objective indicators signaling an attack.
- B. Based upon that assessment, and the officer’s training, education and experience, an officer must decide upon a proper and reasonable response option, either deadly or non-deadly force, as depicted and further described below:

Situational Use of Force Response Options

<p><u>Individual’s Actions</u> Cooperative</p> <p><u>Officer Options</u></p> <ul style="list-style-type: none"> • Professional Presence • Verbal & Nonverbal • Control / Compliance / Rest 	<p><u>Individual’s Actions</u> Passive Resistive</p> <p><u>Officer Options – Non-Deadly Force</u></p> <ul style="list-style-type: none"> • Professional Presence • Verbal & Nonverbal • Control / Compliance / Restraint 	<p><u>Individual’s Actions</u> Active Resistive</p> <p><u>Officer Options – Non-Deadly Force</u></p> <ul style="list-style-type: none"> • Professional Presence • Verbal & Nonverbal • Control / Compliance / Restraint • Strikes • Less Lethal Force Response Options • Police Canines • Weapons of Availability
<p><u>Individual’s Actions</u> Assaultive / High Risk</p> <p><u>Officer’s Options – Non-Deadly Force</u></p> <ul style="list-style-type: none"> • Professional Presence • Verbal & Nonverbal • Control / Compliance / Restraint • Impact • Less Lethal Force Response Options • Police Canines • Weapons of Availability 		<p><u>Individual’s Actions</u> Life Threatening/Serious Bodily Injury</p> <p><u>Officer Options – Deadly Force</u></p> <ul style="list-style-type: none"> • Professional Presence • Verbal & Nonverbal • Control / Compliance / Restraint • Impact • Less Lethal Force Response Options • Police Canines • Firearms • Impacting Vital Areas • Other Incapacitating Force Methods • Weapons of Availability

- C. Consistent with State and Federal laws and the situational use of force options, and notwithstanding the justified use of any Weapon of Availability, in response to a given situation, officers justified to use force may consider the reasonableness, appropriateness and necessity to use the following authorized non-deadly or less lethal force response options:

1. **Officer Presence (Non-Verbal):** The appearance of an officer who is willing and able to handle a situation. Officers should use tactical de-escalation techniques, such as distance, cover, and tactical re-positioning to gain time, as appropriate. Remember the tactical resolution equation of *Distance + Cover = Time*.
2. **Professional / Command Presence (Verbal):** The presence of identifiable officers who speak clearly and authoritatively. Officers should make every attempt to achieve control through the use of tactical de-escalation techniques, to include advisements, warnings, persuasion, appeals, and the use of clear, concise and direct advice or commands while using a tone that reflects control and professionalism, without the

undue use of profanity or argument. Whenever possible or feasible, an officer will allow the subject an opportunity to comply with the officer's verbal commands prior to resorting to the use of force.

3. **Control / Compliance Techniques & Restraints:** Includes the use of empty hands, impact tools and / or mechanical restraints (e.g., handcuffs and / or leg cuffs, consistent with SOP #7-71, PRISONER HANDLING / TRANSPORTATION), and may include the application of strength, leverage, takedowns, control holds, and / or come-alongs, using hands, feet, fists, knees or baton. The purpose of these options is to gain control, forcing the suspect's compliance while minimizing the risk of injury to the officer, bystanders, or the person being taken into custody. A CHOKEHOLD, CAROTID HOLD, VASCULAR NECK RESTRAINT, OR OTHER TECHNIQUES INVOLVING THE APPLICATION OF PRESSURE ON A PERSON'S THROAT, AND / OR RESTRICTION OF THE AIRWAY OR BLOOD CIRCULATION IN THE NECK ARE PROHIBITED, UNLESS DEADLY FORCE IS JUSTIFIED.
4. **Chemical Agents (OC Spray):** The department will equip and train officers in the use of O.C. as a personal chemical agent. All trained, uniformed officers shall have O.C. available while on duty. Trained, non-uniformed officers may also utilize O.C., as needed. Although not universally effective, chemical agents have displayed a high level of effectiveness and low potential for lasting injury and may be used to supplement other means of controlling a subject:
 - a. **AUTHORIZED USE:** OC spray may be a response option:
 - 1) When physical force is justified to control or subdue a person *actively resisting* arrest; a person exhibiting *active aggression*; or whose individual actions are *assaultive* (high risk) or *life threatening*, leading to a reasonable belief that the person poses an immediate threat to the officer or another person and it would be unsafe, ineffective or impractical for officers to approach within contact range, or attempt to subdue the person by other conventional tactics.
 - 2) When physical force is justified to control or subdue a person who overtly poses an *imminent* and *substantial* threat of harm to him/herself.
 - 3) To defend oneself or another from a vicious or aggressive animal.
 - b. **RESTRICTIONS:** Consideration should be given as to whether the use of chemical agents will help or hinder the operation because of the physical limitations and / or the need for decontamination. The use of chemical agents should be avoided where it would affect children or innocent bystanders, unless the exigency of the situation dictates otherwise. Chemical agents shall not be used on a cooperative or passively resistant person; on a person solely due to belligerence or verbal defiance; on anyone under effective restraint; to punish, intimidate or coerce a subject; for purposes of demonstration, experimentation or horseplay against any person, even a volunteer, unless as part of department sanctioned training; to rouse an unconscious, impaired, disabled or intoxicated person; or to elicit information or to threaten or intimidate, without legal justification.
 - c. **POST APPLICATION:** As soon as practical after a chemical agent application, officers should begin decontamination by providing fresh air and water. Officers must monitor the exposed person's health and should counsel and / or give an "O.C. Spray Information Card" to any exposed person.
5. **Canine (K-9):**
 - a. **AUTHORIZED USE:** Further governed by SOP #4-41-F, CANINE POLICY, a trained and certified police canine may be a response option for instances in which non-deadly force is justified to control or subdue a person *actively resisting* arrest, to include any person suspected of fleeing after having committed a violent or other serious crime; a person displaying *active aggression*; or a person whose individual actions are *assaultive* (high risk) or *life threatening* towards the officer or another person present, leading to a reasonable belief that the person poses an immediate threat to the officer or another person and it would be unsafe, ineffective or impractical for officers to approach within contact range, or attempt to subdue the person by other conventional tactics; OR when physical force is justified to control or subdue a person who poses an *imminent* and *substantial* threat of physical harm to that person, the officer, or another.
 - b. **RESTRICTIONS:** Unless otherwise justified, reasonable, necessary and appropriate based upon the circumstances, a police canine shall not be deployed to apprehend a *cooperative* or *passively resistant*

person; a person solely due to belligerence or verbal defiance; a person fleeing from a property or other non-violent crime; a person the officer knows or reasonably believes to be pregnant; elderly and / or visibly frail, to include persons known or believed to be over the age of sixty-five (65), or a juvenile under the age of eighteen (18); or a person who is handcuffed and under effective restraint.

- c. **DEPLOYMENT:** A warning should be given prior to the deployment of a canine, unless it would be tactically unsafe to do so. The handler shall cause the canine to disengage immediately when it becomes reasonably apparent that the suspect has surrendered, readily complies with the officers' directions, is no longer a threat, and / or when sufficient law enforcement personnel are available to safely take the suspect into custody.

6. **Conducted Electrical Weapon (CEW):**

- a. **READINESS:** The department will equip and train officers in the use of CEWs, which are intended - and have the ability - to reduce officer and suspect injury. All trained, uniformed officers shall carry a CEW in an approved support side holster while on duty. Trained, non-uniformed officers may also utilize CEW units, as needed. No changes, alterations, modifications or substitutions shall be made to CEWs or cartridges. Officers are responsible for immediately reporting any issues (e.g., missing or damaged equipment) to the Shift Commander, who will be responsible for the overall accountability of the department's CEW units.
- b. **AUTHORIZED USE:** A CEW may be a response option:
 - 1) To control or subdue a person *actively resisting* arrest, exhibiting *active aggression*, or whose individual actions are *assaultive* (high risk) or *life threatening*, leading to a reasonable belief that the person poses an immediate threat to the officer or another person and it would be unsafe, ineffective or impractical for officers to approach within contact range, or attempt to subdue the person by other conventional tactics.
 - 2) To control or subdue a person who overtly poses an *imminent* and *substantial* threat of harm to him / herself, and it would be unsafe, ineffective or impractical for officers to approach within contact range, or attempt to subdue the person by other conventional tactics.
 - 3) To defend oneself or another from a vicious or aggressive animal.
- c. **RESTRICTIONS:** Unless otherwise justified, reasonable, necessary and appropriate upon the circumstances, officers SHALL NOT use a CEW:
 - 1) On a *cooperative* or *passively resistant* person, or a person who is solely belligerent or verbally defiant;
 - 2) On a person merely because that person is fleeing or attempting to escape;
 - 3) On a person the officer knows or reasonably believes to be pregnant, elderly and / or visibly frail, to include persons known or believed to be over the age of sixty-five (65), or young children, to include persons known or believed to be under the age of fourteen (14); or on a person who is handcuffed and under effective restraint;
 - 4) On a person in a position where a fall would likely cause serious bodily injury or death (e.g., edge of a bridge, or body of water, in a body of water, or on top of a staircase, roof, tree, or other elevated structure), unless deadly force is otherwise justified;
 - 5) On a person in control of a mode of transportation (e.g., automobiles, motorcycles, bicycles, etc.) if the CEW use could reasonably result in the uncontrolled movement of the transport vehicle;
 - 6) To punish, intimidate or coerce a subject, or to rouse an unconscious, impaired, disabled or intoxicated person;
 - 7) In the presence of potentially flammable, volatile or explosive materials, including alcohol-based OC Spray, gasoline, natural, and / or propane gas;
 - 8) For purposes of demonstration, experimentation or horseplay against any person, even a volunteer. Officers shall not be voluntarily or involuntarily "exposed" to a CEW discharge.
- d. **DEPLOYMENT:**
 - 1) Officers responding to or at an incident where a CEW is used - or is anticipated - shall notify dispatch, the on-duty supervisor and EMS.

- 2) Officers may consider using the CEW, consistent with this SOP and their training, in any of the following modes:
 - a) **Laser Only** – with verbal warning (non-contact)
 - b) **Spark Check** – with verbal warning (non-contact)
 - c) **Probe Deployment** – temporary incapacitation (primary / preferred option).
 - d) **Drive (Touch) Stun** – pain compliance (secondary / non-preferred option). This is primarily a pain compliance option, making it less effective than probe deployment, and is more likely to leave marks on the subject's skin.
 - 3) Unless it would be unsafe to do so, prior to deploying the CEW, officers should verbally announce, "Taser-Taser" so that other officers are aware that a CEW is about to be deployed. This will also provide the suspect an additional opportunity to cease the conduct that has given rise to the intended CEW deployment.
 - 4) The primary aiming point is a person's back. Since it is not always possible to get behind a person, secondary targeting areas may include lower, front center mass / torso or legs. Officers shall not target the face, neck, groin or upper chest areas, where possible.
 - 5) Only one officer should activate a CEW on a person at any one time, deploying the CEW for one standard cycle (5 seconds) and then re-assessing. Officers must use the minimum number of cycles necessary to accomplish the legitimate operational goal. If a CEW remains ineffective after three (3) cycles, or after a continuous cycle of more than 15 seconds, officers should avoid continued cycling and consider alternative response options.
 - 6) Verbal commands should be provided throughout the contact. Back-up officers should begin to take control of the subject while temporarily incapacitated.
 - 7) Any accidental CEW deployments, or other unusual occurrences, should be documented in an unusual incident report. That report must be forwarded through the Chain of Command to the Lead CEW Instructor for consideration of future training needs.
- e. **POST-DEPLOYMENT:** After appropriate medical aid and clearance, whenever a person has been exposed to a CEW:
- 1) If that person is transported to a detention facility, the transporting officer shall advise that facility's staff of the CEW exposure.
 - 2) The CEW cartridge, lead wires and probes shall be collected and submitted as evidence, consistent with SOP #8-84, EVIDENCE / PROPERTY. The probes should be treated as a biohazard and handled according to SOP #9-94, UNIVERSAL PRECAUTIONS / INFECTIOUS DISEASES. The serialized confetti (AFIDs) can also be collected as evidence.
 - 3) The supervisor shall notify the Lead CEW Instructor of a CEW deployment and provide the instructor with a copy of the Use of Force and Control Report. The Lead CEW Instructor will download the discharge information from the involved CEW and forward that report as part of the Command / Administrative review.
7. **Pepperball Projectiles:** In addition to the above Chemical Agent guidelines:
- a. The department has authorized *PepperBall* launchers as a less lethal force system, combining chemical agents (O.C.) and kinetic energy (impact force), which may be a response option:
 - 1) To control or subdue any person being taken into custody who is exhibiting active aggression, or whose individual actions are *assaultive* (high risk) and / or *life threatening*, leading to a reasonable belief that the person poses an immediate threat to the officer or another person and it would be unsafe, ineffective or impractical for officers to approach within contact range, or attempt to subdue the person by other conventional tactics.
 - 2) To control or subdue a person who overtly poses an *imminent* and *substantial* threat of harm to him / herself, and it would be unsafe, ineffective or impractical for officers to approach within contact range, or attempt to subdue the person by other conventional tactics.
 - 3) To defend oneself or another from a vicious or aggressive animal.

- b. O.C. projectiles are considered target accurate at up to 60 feet and can create a cloud of O.C. powder at up to 150 feet. There is no minimum deployment stand-off distance. Officers should target center mass and the extremities and shall not target the face, neck, groin or spine.
 - c. The *PepperBall* launcher may also be used to deploy specialized glass-breaking rounds. Such rounds shall not be deployed at a human being, unless deadly force is otherwise justified.
 - d. *PepperBall* deployment should be part of a coordinated response. Officers should advise other officers prior to deployment in order to prevent sympathetic reactionary fire.
 - e. The department's *PepperBall* trainer, in conjunction with the SWAT Commander, will coordinate appropriate training and keep the *PepperBall* training records for all qualified officers. Officers shall not be impacted by the *PepperBall* system during training.
8. **Impact Force:** Impact force, including the use of hands, feet, fists, knees and the department approved baton, provides officers defensive options to defend themselves or others from injury:
- a. **AUTHORIZED USE:** *Active resistance, active aggression, assaultive* (high risk) and / or *life threatening* circumstances may warrant impact-type force.
 - b. **APPLICATION:** The baton may be used as a response option in either open or closed mode. Strikes may be delivered to the person's Weapon Delivery System. The Weapon Delivery System is the center mass of the presented threat, which is the center mass of the arm, center mass of the leg and center mass of the body. The arms and the legs are vehicles which transport force against the officer and are the preferred targets in open mode at a downward 45-degree angle. The preferred target for closed mode is the center mass of the body. A straight strike can also be used to create distance by grabbing the baton at both ends and striking with the middle shaft of the baton.
 - c. **RESTRICTIONS:** The baton shall not be used to strike any cooperative or passively resistant person; on a person solely due to belligerence or verbal defiance or any person who is under effective restraint; nor to rouse an unconscious, impaired, disabled or intoxicated person, or to punish, intimidate or coerce a subject, elicit information or to threaten or intimidate, without legal justification. Blows to the head, neck, spine, groin, solar plexus or rib cage may cause death or serious injury and should not be used, unless deadly force is otherwise justified.
9. **Impact Projectiles:** To the extent that the law enforcement use of impact projectiles deployed from a firearm is considered non-deadly force under Maine law,⁶ it shall also be considered non-deadly force under this SOP:
- a. **READINESS:**
 - 1) Dedicated firearms, as authorized in SOP #1-1-B, WEAPONS, FIREARMS & MUNITIONS, may be used to deploy impact projectiles.
 - 2) Deploying officers are responsible for verifying the weapon is loaded only with less lethal impact projectiles. Any officer who discovers lethal rounds in a designated less lethal firearm shall immediately take corrective action and report the discrepancy to their supervisor.
 - 3) The SWAT Commander will be responsible for coordinating the appropriate annual training.
 - b. **AUTHORIZED USE:** Impact projectiles are intended to provide officers with another less lethal response option. Impact projectiles may be appropriate:
 - 1) To defend against what the officer actually and reasonably believes is the imminent use of deadly force; and / or a person who is armed or appears / alleges to be armed and / or is attempting to arm themselves with a potentially deadly weapon, and refuses to comply with or submit to the officer's lawful authority.
 - 2) On a person who overtly poses an *imminent* and *substantial* threat of harm to him / herself, and it would be unsafe, ineffective or impractical for officers to approach within contact range, or attempt to subdue the person by other conventional tactics.

⁶ 17-A MRSA, § 101(5)

- 3) As a "door knocker" or window opener during high-risk tactical incidents.
 - c. **RESTRICTIONS:** Impact projectiles should generally be used after other conventional tactics have been, or likely will be, ineffective or impractical under the circumstances. Without legal authority, justification and / or exigent circumstances, officers SHALL NOT use impact projectiles:
 - 1) On a cooperative or resistant person; a person solely due to belligerence or verbal defiance; or on any person whose actions are not life threatening to that person or another person; or on any person the officer knows or reasonably believes to be pregnant, elderly and / or visibly frail, to include persons known or believed to be over the age of sixty-five (65), or persons known or believed to be juveniles under the age of eighteen (18).
 - 2) In a crowd or crowd control situation, including against subjects who are physically engaged with other officers or not isolated from bystanders.
 - 3) On a person in a position where a fall would likely cause serious bodily injury or death (e.g., edge of a bridge or body of water or top of a staircase, roof, tree, or elevated structure), unless deadly force is otherwise justified.
 - 4) On a person in control of a mode of transportation (e.g., automobiles, motorcycles, bicycles, etc.), if the deployment could reasonably result in the uncontrolled movement of the vehicle.
 - 5) If there are any impediments (e.g., windows, trees, fencing) in the line of fire that may rupture any flexible sock material of the impact projectile.
 - 6) To punish, intimidate or coerce a subject.
 - 7) Against any person, even a volunteer, for purposes of training, demonstration or horseplay.
 - d. **DEPLOYMENT:** With supervisory approval, impact projectiles may be used as part of a coordinated and planned effort and response to a critical incident:
 - 1) Officers responding to - or at - an incident where impact projectiles might be used shall notify dispatch to request an officer trained in its use to respond. The on-duty Shift Commander shall also be notified and shall respond. EMS should also be requested to stand-by.
 - 2) Additional personnel, including a designated contact team and a lethal cover fire officer should be available with alternative response option(s), as appropriate. The intended deployment of impact projectiles should be communicated to other officers within the area of the incident in order to avoid sympathetic reactionary fire.
 - 3) Unless deadly force is justified, impact projectiles should be deployed within their optimal range, generally between 15 feet and 75 feet.
 - 4) When deploying impact projectiles, officers should target the extremities, specifically including the thigh, lower leg, buttock or lower arm. If impacts to these areas are ineffective, inappropriate or too dangerous, and the circumstances justify a potentially higher risk of injury, officers may target the lower abdomen. Officers shall not target the head, neck, center mass, spine or groin.
 - 5) In order to reduce the likelihood of injury, only one officer should deploy impact projectiles on a person at any one time. Deploying officers should attempt verbal dialogue, sight a proper target location, fire a single round and then assess the results. This sequence should be repeated, as deemed reasonably necessary and appropriate under the circumstances, with consideration being given to alternative tactics when it appears that the technique is not working, and the injury risk of multi volleys outweighs the value of continuing the deployment.
10. **Deadly Force:** Consistent with State and Federal laws and the situational use of force concept depicted above, and notwithstanding the justified use of any incapacitating force method, to include any weapon of availability, officers may need to resort to the use of deadly force and may use departmental firearms, as trained, and consistent with state and federal laws, this SOP, and SOP #1-1-B, WEAPONS, FIREARMS & MUNITIONS. It should be noted that any officer otherwise justified in using deadly force is not required to consider or attempt the use of any alternative, less lethal or non-deadly force response option prior to the appropriate and reasonable application of deadly force.

VII. EMS RESPONSE / MEDICAL AID:

- A. Whenever an officer uses force, either deadly or non-deadly, that results in injury, or otherwise requires an EMS response or hospital transport, as outlined below, the officer shall ensure that appropriate medical aid is rendered as soon as practical. Appropriate medical aid may include increased observation, decontamination of chemical agents, applying first aid, EMS evaluation or transport and / or, for more serious or life threatening incidents, immediate aid by emergency room medical staff.
- B. Officers shall request that EMS respond and evaluate any subject after the following uses of force:
 1. Any application of deadly force, or deployment of a firearm or impact projectile;
 2. Any chemical agent application, including O.C. and *Pepperball*, for purposes of both decontamination and / or medical assessment and treatment;
 3. Any police K-9 bite;
 4. Any baton strike to any sensitive area, or resulting in injury or complaint of injury, or as otherwise deemed appropriate by the officer or supervisor;
 5. Any CEW deployment or contact, including probe or 'drive stun' use:
 - a. In general, the on-scene supervisor, or another officer not involved in the use of force, is authorized to remove CEW probes from a person's body. If the person was struck in the eyes, head, genitals, female breasts, or another sensitive area, the person must be transported to the hospital, as only medical personnel will be authorized to remove such probes.
 - b. The Shift Commander or on-scene supervisor shall ensure that any person who falls into one of the restricted / vulnerable classes (e.g., pregnant woman, elderly or visibly frail person, or young child), OR who is believed to have been exposed to a consecutive or cumulative CEW application of fifteen (15) seconds or more, OR who is believed to have been exposed to simultaneous applications by more than one CEW, is transported to the hospital for a medical evaluation.
 6. Any other time an officer or supervisor deems it to be appropriate and / or prudent under the circumstances, to include if requested by the subject, if the subject is exhibiting signs of excited delirium,⁷ or if the subject does not appear to fully recover – or maintains symptoms of physical distress – shortly after any use of force / control application.

VIII. FORCE REPORTING:

- A. After any use of deadly, non-deadly or physical force, the involved officer(s) shall notify the on-duty Shift Commander from the scene without unnecessary delay, specifically advising the type and nature of the use of force incident and response options used, as well as any injury or complaint of injury.
- B. Officers are required to report ALL uses of deadly, non-deadly and / or physical force in writing, to include even minor applications of force (e.g., anything greater than un-resisted handcuffing), any application of force through the use of lethal or less lethal weapons, and any actions that resulted in, or are alleged to have resulted in injury, serious bodily injury, or death of another person:
 1. Officers who use force must file a Use of Force and Control Report and attach a copy of their case narrative report detailing the occurrence, including the subject's action(s) and their response(s). This requirement includes any use or deployment of a CEW in probe or drive stun modes. Any other use of a CEW (e.g., laser mode or spark check) shall be documented in a narrative report and submitted through the Chain of Command to the Office of Professional Standards.
 2. Officers who witness the use of any deadly, non-deadly or physical force must complete a written case supplement detailing their observations. These witness officer statements are to be attached to the Use of Force and Control report(s).

⁷ See SOP #4-40-D, ICDS / In-Custody Death

3. Officers shall attach any related statements to their Use of Force and Control report and submit it to the Shift Commander before completion of the officers' tour of duty in which the force was used.

IX. SUPERVISORY RESPONSE / ON-SCENE INVESTIGATION / COMMAND REVIEW:

- A. The on-duty supervisor or Shift Commander is encouraged to respond to all reported use of force incidents and SHALL respond if any of the following conditions exist:
 1. Any use of deadly force;
 2. Use of a less lethal response option, including any O.C. application, baton strike, *PepperBall* deployment, CEW probe deployment or drive stun or impact projectile;
 3. Any police K-9 bite;
 4. Any use of force resulting in any injury or complaint of injury;
 5. Any use of force used at the termination of a foot or vehicle pursuit or failure to stop incident;
 6. Any other time requested by an officer or deemed appropriate by a supervisor.
- B. It shall be considered good practice for all use of force incidents, but for incidents requiring a supervisory response, an on-duty supervisor, or an uninvolved designated officer(s) if the only available supervisor was involved in the use of force, will be responsible for taking all reasonable steps to ensure the proper investigation and documentation of the scene. This will include, but not be limited to, taking photographs and / or video footage of the area, the officer(s), and / or the subject(s) upon whom the force was used (in order to document injury or lack thereof), and identifying and obtaining oral and / or written statements from non-police witnesses, including the subject(s) upon whom the force was used. If the person is in custody at the time, they should be advised of their *Miranda* warnings. If the person received medical treatment, completion of a medical release should also be sought and submitted to the Office of Professional Standards.
- C. All use of force incidents shall be reviewed by the on-duty Shift Commander, who shall collect all reports of these incidents before the end of the tour of duty in which the incident took place, along with any audio / video footage or other evidence, ensuring completeness. Unless actively involved in the use of force, the Shift Commander will then review the incident, noting their Findings on the Supervisory / Review portion of the Use of Force & Control form. For use of force incidents that require a supervisory response to the scene, the Shift Commander, or investigating supervisor, will also complete a narrative report of their review, supporting their findings, critiquing the incident, and making any recommendations.
- D. The on-duty Shift Commander will then ensure that all use of force review packets are reviewed by at least one (1) other uninvolved staff officer, preferably from within the involved officer(s)' chain of command. Supervisors shall note any potential policy or law violations, and also assess the officers' actions, response and tactics, discussing their findings and taking prompt corrective action and / or providing training, as appropriate and consistent with other departmental directives.⁸ Command review findings may include: 1) *no further action (consistent with policy and procedure)*; 2) *possible or apparent SOP violation*; and / or 3) *possible SOP, training or equipment issues and recommendations*.
- E. For use of force reviews, supervisors will attempt, in part, to determine if the force used was *objectively reasonable* under the circumstances. As guidance, the reasonable application of force should be judged from the perspective of a reasonable officer on the scene at the time of the incident. Consistent with the *Graham v. Connor* decision, in evaluating the reasonableness or excessiveness of an application of force, the following factors must be considered: *severity or seriousness of the crime or suspected offense; the level of threat or resistance presented by the subject; the risk or apparent attempt by the subject to flee or escape; and whether the subject was posing an imminent threat to the officer(s) or others*. Additional factors may include: *the suspect's age, relative size, strength and numbers of suspect(s) and officer(s); availability of – and skill level with – available weapon systems; suspect's state of health; the need for the force and the relationship or proportionality between the need and the amount of force that was used; the extent of any injuries; and whether the force was applied in a good faith effort to maintain and restore order or maliciously with the intent of causing harm*.

⁸ SOP #3-26, DISCIPLINE

- F. The on-duty Shift Commander is responsible for ensuring the above command level review process is completed and forwarded to the Office of Professional Standards within five (5) days of the incident.
- G. The Office of Professional Standards shall receive and compile all command level review reports and log them sequentially. Based on the general facts and initial supervisory Findings, Professional Standards will then, on a regular basis, determine the need for any additional administrative review. At a minimum, any use of force incident requiring a supervisory response to the scene, and any supervisory review indicating a possible or apparent SOP violation, shall be referred to the Administrative Review Board for further review, consideration and resolution. All command level reviews not requiring further review by the Board shall be forwarded to the Chief of Police for final review and disposition.

X. ADMINISTRATIVE REVIEW:

- A. The Chief of Police will appoint a standing Administrative Review Board, consisting of three command and / or supervisory personnel. On a case-by-case basis, the Chief may appoint, or the Review Board may seek, input and assistance from any officer or person with relevant experience or qualifications (e.g., EVOC, CEW, Firearms instructor, etc.).
- B. The Review Board will review all incidents referred to it by the Office of Professional Standards, determining if department personnel acted in compliance with existing laws and departmental policies. This will include whether the force used was *objectively reasonable* under the circumstances, using the same *Graham v. Connor* guidance outlined above. The Review Board will review all reports, statements and other related evidence (e.g., A/V recordings) associated with each incident assigned to it. The Review Board will also assess the officers' actions, response and tactics and report on any identified training needs and recommendations; equipment needs or failures; and / or policy failures or recommendations. The scope of the review will include the role of the involved officers, witnessing officers, as well as supervisory or command officers, including their actions at the scene and their reporting and review of the incident. Review Board members should recuse themselves from the review of any use of force in which they were actively involved.
- C. Upon conclusion of their review, the Review Board will return their findings, in writing - on a standardized form used for that purpose - to the Office of Professional Standards. The Review Board's findings and actions may include: 1) *no further action (actions consistent with law & SOP)*; 2) *providing or direction to provide remedial training, counseling or progressive disciplinary action for minor and first time SOP violation(s)*; 3) *possible SOP, training or equipment issues and recommendations*; and / or 4) *referral for administrative investigation for possible SOP violation, which shall include any repeat or significant violations, to include, for purposes of this SOP, any potential or apparent use of excessive force.*
- D. The investigation and review of any use of *deadly force* by an officer will be in accordance with SOP #1-1-G, OFFICER-INVOLVED DEADLY FORCE: CRITICAL INCIDENT PROTOCOLS AND REVIEW. If a use of force results in an investigation by the Office of the Attorney General, the department's Administrative Review will generally not occur until after the decision from the Attorney General is rendered, unless circumstances dictate otherwise.
- E. The Office of Professional Standards will forward all reviewed cases, whether reviewed by the Review Board or not, to the Chief of Police for final review and resolution, noting any actions or recommendations already taken or provided. The Chief of Police retains the right to final resolution of any use of force review.
- F. No later than February 28 of the following year, the Office of Professional Standards will also compile annual statistics and complete an annual analysis of the department's use of force reporting activities, policies and practices, in compliance with applicable accreditation standards, for submission to the Chief of Police and Command Staff.

By Order Of:

Timothy B. Sheehan
Chief of Police