

**NEW SMYRNA BEACH POLICE DEPARTMENT
NEW SMYRNA BEACH, FLORIDA**

POLICY AND PROCEDURE DIRECTIVE

TITLE: USE OF FORCE

NUMBER: 4-1

EFFECTIVE: 4/14

REFERENCE:

RESCINDS/ AMENDS: 4-1-09

REVISED: 9/22

ATTACHMENTS: [FSS 776.pdf](#) [FSS 828.05.pdf](#) [FSS 943.1735.pdf](#), [FSS 943.1740.pdf](#)

A. PURPOSE

The most important principle of law enforcement is the protection of human life. The use of deadly force must be limited to situations of a strong and compelling need to protect human life to be consistent with this purpose.

The purpose of this directive is to establish guidelines to govern the use of force, including deadly force, by officers of the New Smyrna Beach Police Department (NSBPD) and to define the procedure for reporting and notification in incidents regarding the use of force as well as establishing guidelines for training.

Further, the purpose of this directive to provide guidelines for the investigation of officer-involved use of deadly force. The guidelines also provide guidance for investigation of in-custody deaths.

B. POLICY

It is the policy of this law enforcement agency to value and preserve human life. Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others. Officers shall use force only when no reasonably effective alternative appears to exist and shall use only the level of force which a reasonably prudent officer would use under the same or similar circumstances.

It is also the policy of this department that officer-involved use of deadly force, whether on or off duty, be investigated by the Florida Department of Law Enforcement (FDLE) to determine whether officer actions conform to Florida law. This policy also applies to the investigation of situations in which a person dies while in police custody or while an officer is attempting to effect custody and other serious uses of force.

An administrative investigation will be conducted by NSBPD to determine compliance with department policy, procedures, rules and training. This investigation will be conducted by the Office of Professional Standards (OPS) or Police Chief's designee. The administrative investigation shall be conducted concurrent with FDLE's criminal investigation.

C. DEFINITION

APPROVED FIREARM: Shall mean any department issued firearm or personally owned firearm approved by appropriate departmental authority as defined in [Directive 4-3 Authorized Weapons](#).

CHOKER HOLD: The intentional and prolonged application of force to the throat, windpipe, or airway of another person that prevents the intake of air. The term does not include any hold involving contact with another person's neck that is not intended to prevent the intake of air. [FSS 943.1735](#)

DEADLY FORCE: [FSS 776](#) provides the following definition of deadly force: "The term 'deadly force' means that force that is likely to cause death or great bodily harm and includes, but is not limited to:

- The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and
- The firing of a firearm at a vehicle in which the person to be arrested is riding.

DE-ESCALATION: Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

EXCESSIVE USE OF FORCE: Use of force that exceeds the degree of force permitted by law, policy, or the observing officer's employing agency.

EXIGENT CIRCUMSTANCE: Those circumstances that would cause a reasonable officer to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.

GREAT/SERIOUS BODILY HARM: A bodily injury that creates a substantial risk of death, causes serious permanent disfigurement, or results in long-term loss or the impairment of the functioning of any bodily member or organ.

IN-CUSTODY DEATH: The death of an individual while in law enforcement custody or occurring while attempts to effect custody are being made.

INVOLVED OFFICERS: Unless otherwise indicated, refers to sworn personnel, on-duty or off-duty, who discharge a firearm while engaged in a law enforcement activity, accidentally or while arresting an individual who dies or who are witnesses to such incident(s).

NON-DEADLY/LESS LETHAL FORCE: is the use of force that is neither likely nor intended to cause death or great bodily harm.

OBJECTIVELY REASONABLE: The determination that the necessity for using force and the level of force used is based upon the officer's evaluation of the situation in light of the totality of the circumstances known to the officer at the time the force is used and upon what a reasonably prudent officer would use under the same or similar situations.

OFFICER-INVOLVED SHOOTING: An officer's discharge of a firearm that results in injury or death and includes incidents involving shooting at or in the direction of an individual and accidental firearm discharges.

PHYSICAL FORCE: is defined as the necessary employment of police restraint holds and/or other force not utilizing weapons but employed in self-defense, or the defense of others by a police officer or taking an uncooperative suspect into custody. Officers shall use appropriate techniques learned in departmental physical force training.

SERIOUS BODILY INJURY: Injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.

TOTALITY OF THE CIRCUMSTANCES: While the U.S. Supreme Court identified three (3) factors that should be evaluated in determining whether an officer's use of force was objectively reasonable, this list was not

intended to be all inclusive. The totality of the circumstances at the time that led an officer to believe force was needed is critical. Other factors such as whether an individual is violent, the possibility that the individual is armed, and the number of persons with whom the officer must contend with at the time are all relevant factors to consider. Individual factors alone would not give a reasonable officer the belief that deadly force is necessary. For example, resisting arrest or flight alone would not justify the use of deadly force.

WARNING SHOT: The intentional discharge of a firearm for the purpose of warning or seeking compliance from an individual, but not intended to cause physical injury.

D. PROCEDURES

4.1.1 An officer has a duty to intervene to prevent or stop the use of excessive force by another officer when it is safe and reasonable to do so.

4.1.2 Objective Reasonableness:

It is the duty of individual officers to determine the appropriate level of force based upon facts and circumstances of each situation. In *Graham v. Conner*, 490 U.S. 386 (1989), the United States Supreme Court held that law enforcement use of force cases are to be judged by an objective reasonableness standard based upon the Fourth Amendment. The use of force is to be judged from the perspective of a reasonable officer under the same circumstances without the benefit of hindsight. The Court clearly considered that officers are often required to make split-second, sometimes deadly decisions, in circumstances that are “tense, uncertain, and rapidly evolving.”

Objective reasonableness requires the officer’s action to be reasonable and necessary. The Court concluded that the objective reasonableness test is not a precise or clear rule but requires careful review of the facts and circumstances of each case, including the severity of the crime, whether the suspect posed an immediate threat to the safety of officers or others, and whether the suspect was actively resisting arrest or at-tempting to evade arrest by flight.

4.1.3 De-Escalation:

1. An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever practicable and appropriate before resorting to force and to reduce the need for force.
2. Whenever practicable and when such delay will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.
3. Officers are responsible for being aware of the option to de-escalate to the point of disengaging contact with a person if circumstances indicate that such action is appropriate.

4.1.4 Critical Decision-Making Model (CDM): The CDM is a five-step critical thinking process. The five steps are built around the core values of the NSBPD and the policing profession. The CDM guides officers through a process of collecting information; assessing the situation, threats, and risks; considering police powers and agency policy; identify options and determining the best course of action; and acting, reviewing and reassessing the situation. (Illustration 1: Critical Decision-Making Model)

4.1.5 Response to Resistance

1. Police officers will use the least amount of force necessary to accomplish lawful objectives and achieve control when executing their legal authority.
2. When response to resistance is necessary, officers shall assess each incident, based on policy, training and experience, to determine which response to resistance control option is believed to be appropriate for the situation and could bring it under control in a prudent manner.

4.1.6 Prohibition of choke holds (Vascular Neck Restraints)

1. The use of choke holds is prohibited, except in situations where the use of deadly force is allowed by law.

4.1.7 Use of Deadly Force

1. It shall be the policy of the department to use only that degree of force that is reasonable to accomplish lawful objectives. The use of deadly force is authorized when there is reasonable belief that such force is necessary and if feasible, a warning is given.
 - Protect the officer or others from what is reasonably believed to be an immediate threat of death or serious bodily injury
 - Prevent the escape of a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit a felony involving serious bodily injury or death, and the officer reasonably believe that there is imminent risk of serious bodily injury or death to the officer or another if the subject is not immediately apprehended.

4.1.8 Termination of Use of Force

1. When it is objectively reasonable that a subject is fully in law enforcement's control, then the force must terminate.

4.1.9 Firearms shall not be discharged at a moving vehicle unless:

1. A person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle
2. The vehicle is operated in a manner intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.

4.1.10 Firearms shall not be discharged from a moving vehicle except in exigent circumstances. In these situations, an officer must have an articulable reason for this use of deadly force.

E. FIREARM GUIDELINES

4.1.11 Officers are justified in removing firearms from holsters and/or gun cases/mounts and pointing the firearm if the member reasonably believes:

1. That a person or a situation poses or may pose an immediate threat of death or serious physical injury either to themselves or another person.

4.1.12 Warning shots are prohibited. The discharge of a firearm at or in the direction of a person constitutes deadly force.

F. REPORTING USE OF FORCE OR DISCHARGE OF FIREARM

4.1.13 When an Officer discharges a firearm, whether on or off duty, other than for training, legal hunting, or target practice, or uses physical force with any instrument, he will immediately notify the on-duty supervisor and submit the required reports following guidelines.

1. If a firearm discharge is accidental or unintentional and did not injure anyone:
 - The Officer's supervisor will respond to the scene and ensure that an Incident Report documenting the particulars is completed.
 - Notify the Operations Division Commanding Officer.

- Conduct a preliminary investigation into the incident and complete a Firearms Discharge Report in Blue Team

NOTE: If response to the scene is inappropriate due to the distance from the City of New Smyrna Beach, the Officer's Division Commanding Officer will obtain preliminary information from the case coordinator of the investigating agency.

- Notify the Deputy Chief of the Office of Professional Standards (OPS) and Chief of Police.
2. The Chief of Police and/or Deputy Chief will:
 - Make a determination based on the circumstances of the situation as to whether to respond to the scene.
 3. All reports will be immediately forwarded to the Chief, a copy of which will be forwarded to OPS.

4.1.14 Officer Involved Shooting (OIS)/In-Custody Deaths (ICD)

If the discharge of a firearm, which includes the less lethal shotgun, is directed at a person (whether or not that person is struck), or if as a result of any discharge, a person is injured or a death occurs:

1. The Officer's Responsibility:
 - The officer involved in an officer involved shooting incident will immediately notify the Communications Center, if possible, requesting the on-duty supervisor to respond to the scene.
 - When practical, the officer will attempt to render first aid to the injured person after a physical assessment without jeopardizing their own health or safety. The officer will then call for medical assistance if required.
 - The officer should attempt to secure the crime scene perimeter as best as possible, so as not to destroy any evidence which will be of importance to the investigation.
2. The Officer's supervisor will:
 - Respond to the scene and assume supervisory control of the situation.
 - Provide appropriate medical care consistent with their training, to include basic first aid, requesting emergency medical services, and/or arrange for transportation to a medical facility.
 - Secure the scene and any evidence.
 - Ensure that the firearms used in the incident remains secured in the officers holster. Long-rifles used in an incident will be secured in the officer's vehicle if possible.
 - A member of the Command Staff will contact FDLE for response.
 - The supervisor will assign an officer to manage the scene by controlling access and ensuring that the names of personnel entering the crime scene are recorded.
 - Access is limited to:
 - Supervisory personnel
 - FDLE
 - OPS personnel
 - State Attorney's Office personnel
 - Medical Examiner
 - Crime Scene Investigators (Technicians)

NOTE: All others will be restricted and only allowed entry with the permission of the Chief of Police or Deputy Chief of Police.

- Notwithstanding the need for medical attention, isolate and secure the involved member(s). Until directed to another location by a supervisor of the rank of Corporal, Sergeant, or higher, keep the involved Officer(s) at the scene or near the scene, out of view of the public, but accessible to responding Command Officers.
 - Gather preliminary information from the involved member(s) as to circumstances of the incident.
 - Obtain the names and addresses of all civilian witnesses, if any, and the names of any other agency members present or involved, their rank, division and duty assignment.
 - Establish an Incident Command (IC) post and staging area.
 - Provide a summary to the Commanding Officer.
 - Immediately prepare and submit an Incident Report, Blue Team report, and any other reports so directed by the NSBPD within 24 hours, notwithstanding any circumstances that would prevent this task of getting accomplished. The Officer's supervisor, will notify the Operations Division Commanding Officer.
 - Ensure that the involved Officer will complete and submit the appropriate reports related to the incident
3. FDLE will assume operational direction of investigations and forensic analysis. FDLE may request the assistance of NSBPD personnel or personnel from other law enforcement agencies during the investigative process.
 4. At the completion of the investigation, all investigative materials will be accessible for Administrative Review and Investigation.
 5. Involvement of The State's Attorney Office
 - FDLE will provide an investigative case file to the State Attorney's Office, 7th Judicial Circuit for their independent review of the OIS or ICD.

4.1.15 OIS Outside the City of New Smyrna Beach

If the scene is located outside the City of New Smyrna Beach, the Operations Division Commanding Officer will determine whether to respond to the scene after considering:

- Apparent surrounding circumstances;
 - Injuries to police and/or non-police personnel;
 - Distance from the City.
1. The Operations Division Commander will:
 - Ensure the immediate notification of the Chief of Police, the Deputy Chief, and the Officer's Division Commanding Officer.
 - Ensure that the involved Officer(s):
 - Receives medical assistance, if needed.
 - Is afforded privacy from inquiries from the public and all Departmental personnel not involved in the actual investigation of the incident?
 - Receives trauma crisis counseling as required.
 - Initiate and coordinate a preliminary investigation of the circumstances surrounding the incident (unless otherwise directed by established authority) and promptly report the results of the preliminary investigation to the Chief of Police.
 - Appoint supervisory personnel to notify/transport of the involved Officer's significant others.
 - Be responsible for ensuring the notify/transport functions, to include periodic dispatch updates.

NOTE: Only the appointed supervisor will conduct the notification/transport and periodic updates.

- Except as directed by the Chief of Police, ensure that the firearm used (and any related equipment), other than the less lethal shotgun when used in an incident in which there was no serious physical injury or death, is secured by a supervisor.

NOTE: If necessary, the officers firearm and duty belt will be submitted to evidence until the completion of any internal or legal proceedings; or, in the case of an accidental/unintentional discharge not resulting in damage or injury, until said firearm is examined by a Firearms Training Unit armorer and found to be functioning properly. The Firearms Training Unit staff will replace the weapon and equipment as directed by the Chief of Police.

2. The reports will be forwarded to the Chief of Police prior to the conclusion of the tour of duty on which the incident occurred by the Officer or if the Officer is incapacitated, by their on-duty supervisor.
3. After a completed review, the Office of the Chief of Police will forward:
 - The original case package to OPS.

4.1.16 Critical Incident Counseling is mandated in all cases of use of deadly physical force.

1. In all cases when any person has sustained great bodily harm or been killed as a result of the use of deadly force by an officer, the involved officer(s) will be required to attend one or more counseling sessions with a departmentally-approved psychologist. A report on the officer's suitability for full duty status will be requested from the psychologist before the officer returns to regular duties.

G. USE OF FORCE ON AN ANIMAL

4.1.17 The use of deadly force on an animal is justified under the following guidelines:

1. When attacking or presenting an imminent danger to any person.
2. Injured or diseased domestic animals imminently near death may be destroyed, in conformance with [FSS 828.05](#). Police Officers are authorized under certain conditions to humanely destroy an injured or diseased animal without unconscionable delay.
3. Wildlife and Exotic Animals (Raccoons, Deer, Wild Hogs, Opossums, Foxes, Etc.)
 - Injured wildlife that is imminently near death may be destroyed with the exception of Panthers and Bears which they are protected in Florida.
 - FWC must be contacted for injured Panthers or Bears. AN FWC biologists may respond to evaluate the animal's condition.
 - Deer that are destroyed may be taken by an adult as deer meat. A case number must be provided to the individual. FWC will accept the case number as a 'permit' to possess the deer meat.
 - If not removed the animal may remain in its location for nature to dispose of its waste.

4.1.18 Supervisory approval shall be obtained prior whenever time allows, officers will;

1. Prior to destruction;
 - Make reasonable and concerted efforts to locate the owner, owner's agent or a veterinarian, and
 - If the owner or owner's agent is located the member will notify them of the animal's location and condition; or
 - If only a veterinarian is located the destruction of said animal will occur only upon advice of the veterinarian.

2. The destruction of the animal will be done in a manner that;
 - Ensures the firearms discharge is done in a safe manner; and
 - Occurs outside the view of the public whenever possible.
3. Subsequent to the destruction of the animal;
 - Arrange for proper disposal of the carcass; and
 - Prepare a report that documents the incident
4. The Officer shall not be relieved of his firearm, nor is there any requirement to impound the weapon
5. There is no requirement to file a Blue Team Force report.
6. The Officer's supervisor will respond to the scene of the incident, and direct a thorough investigation.

4.1.19 If a firearm discharge is directed at an animal:

1. The Officer's supervisor will respond to the scene of the incident, and direct a thorough investigation.
2. Notify the Operations Division Commanding Officer.
3. Notify the Deputy Chief who will:
 - Make a determination based on the circumstances of the situation as to whether to respond to the scene and/or make further notifications.
 - Document any non-response to the scene by OPS and make it a part of the incident file.
4. The supervisor will ensure that:
 - As part of the preliminary investigation provide for photographs of the scene and recovery of any on-scene evidence.
 - Animal Control personnel are called to the scene, if available, of any animal shot in the City or which appears to be suffering from disease (e.g., rabies).
5. If the animal has suffered a fatal wound and does not appear to be diseased:
 - The animal can be released to the owner for proper disposal; or
 - If the owner cannot be located or does not request custody of the animal, the supervisor will ensure appropriate disposal.

NOTE: Owners may be allowed, if requested, to transport the animal. Officers will not transport the animal.

6. If the animal has suffered a non-fatal wound:
 - Allow the owner to transport the animal to his veterinarian for treatment; or
 - Animal Control personnel will transport the animal to:
 - The owner's veterinarian of choice within Volusia County if the animal has a treatable injury.
 - An approved emergency veterinarian service if the owner does not have a veterinarian of choice and the animal has a treatable injury.
 - The Incident Report or Crime Report is forward through the normal distribution process, a copy of which will be forwarded to OPS.
 - If the owner inquiries about reimbursement for veterinarian fees or compensation for the animal, the supervisor will instruct the owner to contact the City Attorney's on the next business day to receive instructions on how to file a claim against the City.

H. ASSIGNMENT TO ADMINISTRATIVE LEAVE / DUTY

4.1.20 When any Officer is involved in a shooting or other action that results in serious physical injury to or death of a person the Chief of Police or designee will:

1. Place the officer on Administrative Leave with full pay and benefits.
2. Pending:
 - Final determination by the Chief of Police
3. Officers placed on Administrative Leave will cooperate fully with the investigation, consistent with constitutional, state and agency legal restrictions.
4. Officers returned to duty may be placed in a temporary assignment until completion of the States findings and/or OPS investigation.

4.1.21 The Chief of Police may assign that officer to administrative duty during the preliminary administrative review.

1. The Chief of Police will not assign the Officer to duties that have a high potential for arrest and subject resistance incidents.
2. Administrative duty assignment will be made in the best interest of the Department and the member.
3. The intended purpose of this relief from duty is to:
 - Address the emotional and personal needs of the officer involved in the use of deadly force, and
 - Assure that verification of all the facts surrounding such incidents is fully and professionally explored.
4. When an Officer is assigned to administrative duty, they will:
 - Refrain from routine exercise of patrol function arrest and intervention powers.
 - Refrain from any public discussion of his administrative assignment or circumstances related to the incident.
 - Retain all rights, privileges and employee benefits.
 - Retain responsibility for compliance with all laws, Departmental Rules and Regulations, General and Administrative Orders, and directives governing Department personnel.
 - An Officer's return to full-duty status will be based upon the results of relevant investigations and the Chief's decision regarding these matters.

I. MANDATORY TESTING

4.1.22 Mandatory drug and/or alcohol testing shall occur under the following circumstances:

1. All duty related uses of deadly force.
2. All incidents of force involving an in-custody death.

J. TRAINING

4.1.23 All Officers shall receive training, at least annually, on the use of force policy and related legal updates.

4.1.24 All sworn personnel, both full and part time, and non-sworn officers if authorized, shall be issued copies of, and be instructed in this directive and [Directive 4-3](#) Authorized Weapons, and Training policies prior to being authorized to carry lethal and/or less lethal weapons, or being placed into any position or training situation

which could result in the use of deadly force. The issuance and instruction on these policies shall be documented.

4.1.25 In addition, training shall be provided on an annual basis and designed to

1. Provide techniques for the use of and reinforce the importance of de-escalation
2. Simulate actual shooting situations and conditions
3. Enhance officers' discretion and judgment in using less-lethal and deadly force in accordance with this policy.

Revised: BSS 9/22

Approved: Signature on File
Chief Mike Coffin

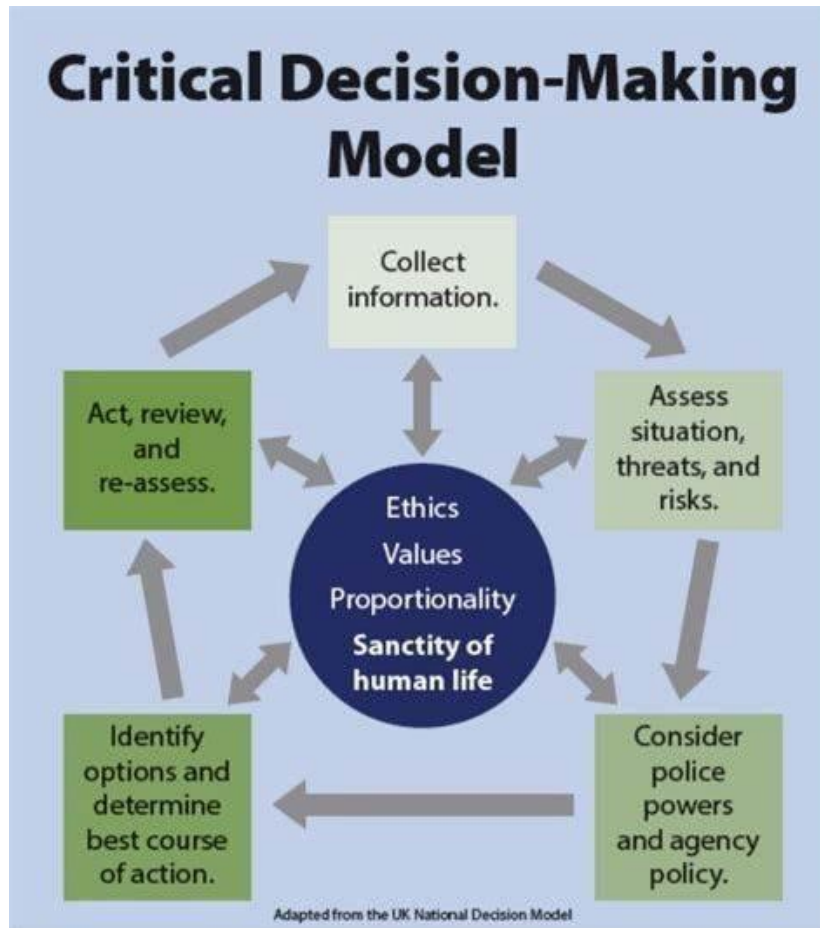


Illustration 1: Critical Decision-Making Model