



NEWPORT POLICE DEPARTMENT

ORDER	EFFECTIVE DATE	NUMBER	ISSUING DATE
GENERAL	May 26, 2021	300.01	May 26, 2021
SUBJECT TITLE		SUBJECT AREA	
USE OF FORCE		LAW ENFORCEMENT OPERATIONS	
PREVIOUSLY ISSUED DATES			
DECEMBER 12, 1989; APRIL 16, 1992; FEBRUARY 3, 2005; JULY 20, 2006; AUGUST 22, 2007; OCTOBER 28, 2009; MARCH 23, 2010; NOVEMBER 9, 2012; MARCH 9, 2012; JULY 25, 2016, July 18, 2017, DECEMBER 13, 2019; December 7, 2020			
DISTRIBUTION	REEVALUATION DATE	PAGES	
ALL	AS NEEDED	Nineteen (19)	

I. PURPOSE

The purpose of this policy is to provide police officers with guidelines on the use of force. All sworn personnel will be sent a copy of this policy through the department's policy management software, and instructed in, all aspects of this policy prior to being allowed to utilize any weapon. Documentation regarding the issuing and instruction relating to this policy will be maintained by the Administrative Services Division.

II. POLICY

It is the policy of the Newport Police Department to recognize and respect the value and special integrity of each human life. In vesting police officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required.

Therefore, it is the policy of the Newport Police Department that police officers will use only that force that is objectively reasonable to accomplish lawful objectives.

III. DEFINITIONS

- A. **ADMINISTRATIVE REVIEW:** A documented review of an incident or occurrence prepared by or for the CEO or his/her designee. The review should indicate whether policy, training, equipment, or disciplinary issues should be addressed.
- B. **ANALYSIS:** A systematic, structured process for dissecting an event into its basic parts to identify any patterns or trends. Analysis should reveal patterns or trends that could be predictive or could indicate program effectiveness, training needs, equipment upgrade needs and/ or policy modification needs.
- C. **APPROPRIATE MEDICAL AID:** Appropriate medical aid may include increased observation to detect obvious changes in condition, flushing chemical agents from the eyes, applying first aid, evaluation by rescue personnel, or for more serious or life-threatening incidents, immediate aid by medical professionals.
- D. **CHOKER HOLD:** A physical maneuver applied to the neck that restricts an individual's ability to breathe for the purpose of rendering the individual unconscious.
- E. **DE-ESCALATION:** Taking action and/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/or resources can be called upon to resolve the situation without the use of force or with a reduction of the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and/or tactical repositioning.
- F. **IMMINENT THREAT:** Such an appearance of an impending threat as would cause a reasonable police officer to immediately act to stop the threat.
- G. **LESS LETHAL FORCE:** Any use of force other than that which is considered lethal or deadly force.
- H. **LETHAL FORCE:** Any use of force that is likely to cause death or serious bodily injury. Lethal Force is also referred to as deadly force.
- I. **OBJECTIVELY REASONABLE FORCE:** Objectively reasonable force is that force which is necessary and appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same circumstances as the officer who has actually used force. Objectively reasonable force is not judged with hindsight, and will take into account, where appropriate, the fact that officers must make rapid decisions regarding the level of force to use in tense, uncertain, and rapidly evolving situations. Important factors to be considered when deciding how much force can be used to apprehend or subdue a subject include, but are not limited to:

- a.) The severity of the crime at issue;
 - b.) Whether the subject poses an imminent threat to the safety of the officers or others, and
 - c.) Whether the subject is actively resisting arrest or attempting to evade arrest by flight.
- J. **REASONABLE BELIEF:** Those facts and circumstances that would lead a normally prudent police officer to believe that his/her actions are necessary.
- K. **SERIOUS BODILY INJURY:** Physical injury that (1) creates a substantial risk of death; (2) causes protracted loss or impairment of the function of any bodily part, member, or organ; or (3) causes serious permanent disfigurement.
- L. **VASCULAR NECK RESTRAINT:** A technique that can be used to incapacitate individuals by restricting the flow of blood to their brain.

IV. PROCEDURES

A. GENERAL REQUIREMENTS

1. De-Escalation
 - a.) When safe and appropriate under the totality of the circumstances:
 - (1) officers will assess the situation to determine if de-escalation is appropriate in order to reduce the potential need for force;
 - (2) officers shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training and experience.
2. Duty to Intervene- All officers present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances, shall intercede to prevent the use of such force when in a position to do so safely. Officers shall report these observations to a non-involved supervisor without unnecessary delay.
3. Appropriate medical aid consistent with police officer training will be provided as soon as is practical in all lethal force and less lethal force option usage resulting in injury, or allegation of injury, to include injuries incurred during apprehension and /or custody.
4. Use of physical force shall be discontinued when resistance ceases or when the incident is under control.

5. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person.
6. A department authorized and certified weapons instructor or armorer shall perform and document an inspection of all weapons:
 - a.) Prior to issuance to an individual officer or made available for shared department use; and
 - b.) At the time of qualification or recertification of said weapon.
7. Prior to their initial assignment and at least annually, the department shall ensure that each officer receives training on the department's use of force policies, and document receipt of same.
 - a.) All definitions contained in this policy will be included in said training.
 - b.) All officers shall receive and sign for the receipt of the department's Use of Force Policy and any revisions thereto in hard copy or digital format.

B. PARAMETERS FOR USE OF DEADLY FORCE

1. A police officer is authorized to use lethal force in order to:
 - a.) Protect him/herself, another officer, or other person(s) when the officer has an objectively reasonable belief that an imminent threat of death or serious bodily injury exists to himself/herself, another officer or other person(s).
 - b.) To 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 believes that there is an imminent risk of serious bodily injury or death to the officer or another if the subject is not immediately apprehended.
2. Where feasible, police officers will identify themselves as a police officer and state their intent to use lethal force.
3. Lethal Force Restrictions: Lethal force should not be used against persons whose actions are clearly a threat only to themselves or property.
4. Police officers will adhere to the following restrictions:
 - a.) Except for maintenance or during training, police officers will not draw or exhibit their firearm unless circumstances create reasonable cause to believe

that it may be necessary to use the firearm in conformance with this policy.

b.) Warning shots are prohibited

5. Discharging a firearm **from** a moving vehicle shall be avoided. However, whenever a situation exists where an officer must consider discharging a firearm from a moving vehicle in order to stop an imminent threat of death or serious bodily injury to himself/herself or others, the use of lethal force by the officer must not constitute a greater hazard to the public than does the imminent threat, and must be the most reasonable course of action under the circumstances. Officers must weigh the need to use lethal force against the potential harm to innocent bystanders caused by such use.
6. Discharging a firearm **at** a moving vehicle shall be avoided unless a person in the vehicle poses an imminent threat of death or serious bodily injury to the officer or another person. Officers shall avoid intentionally placing themselves in a position where a vehicle may be used against them. Escape from the path of an oncoming vehicle should be considered prior to, or in lieu of, the implementation of lethal force whenever escape is possible. However, whenever a situation exists where an officer must consider discharging a firearm at a moving vehicle in order to stop an imminent threat of death or serious bodily injury to himself/herself or others, the use of lethal force by the officer must not constitute a greater hazard to the public than does the imminent threat, and must be the most reasonable course of action under the circumstances. Officers must weigh the need to use lethal force against the potential harm to innocent bystanders caused by such use.
7. In both sections 5 and 6 above, the officer's focus will be to stop that person presenting the imminent threat, and not to disable the vehicle of which the suspect is an occupant.
(This provision will not preclude tactical responses in a tactical operation)
8. A police officer may also discharge a firearm to euthanize an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured.

C. PARAMETERS FOR USE OF LESS LETHAL FORCE

1. Less Lethal Force Options:

- a.) The level of force used by an officer is directly related to the facts and circumstances encountered by that officer. Force options currently available to officers include, but are not limited to:
 - (1) Command Presence- An officer's appearance may be enough to dissuade some persons from engaging in resistive behavior
 - (2) Verbal Commands- Dialogue used by an officer can serve to diffuse potentially violent situations.
 - (3) Physical Skills- Physical techniques used by an officer to control potentially violent situations.
 - (4) Chemical Spray- Used in compliance with General Order 310.02 entitled "OC

Spray”

- (5) Impact Tools- Striking tools used in compliance with a General Order 310.03 entitled, “Police Baton”.
 - (6) Conducted Energy Weapon (CEW)- Used in compliance with General Order 310.01 entitled “Conducted Energy Weapon”
 - (7) K9 (if applicable)
2. Police officers are authorized to use department-approved less lethal force options to accomplish lawful objectives, as follows:
 - a.) To protect themselves or another from physical harm.
 - b.) To restrain or subdue a resistant individual.
 - c.) To bring an unlawful situation safely and effectively under control.
 - d.) To maintain control of a person or situation
 3. It is not the intent of this policy to direct officers to try each of the force options before moving to another. The officer may employ that force option which they believe is objectively reasonable to accomplish lawful objectives.
 4. Choke holds and vascular neck restraints are prohibited unless lethal force is authorized.
 5. It is understood that when requesting mutual aid assistance, the available force options of the responding agency may differ from those of the requesting agency. Officers shall be subject to the policies and procedures of their employing agencies at all times.
 6. Authorized less lethal options are those with which the police officer has received department approved training on proper and safe usage.
 7. Nothing contained in this policy limits an officer’s ability to use those means objectively reasonable for self-defense or to accomplish a lawful objective, including but not limited to items of opportunity.

D. TRAINING AND QUALIFICATIONS REGARDING LETHAL FORCE-FIREARMS

1. While on and off-duty, police officers, acting within the course and scope of their employment with the Newport police department, will carry and use only firearms and ammunition authorized by and documented with the department armorer
2. At least annually and in accordance with Rhode Island General Laws, the department shall conduct training and qualifications for all department authorized duty firearms to include specialized firearms.
3. Authorized firearms are those with which the police officer has qualified and received departmental training on proper and safe usage, and that are documented and comply

with departmental specifications.

4. The department shall have a separate policy addressing the authorization of duty, off-duty and specialized firearms, weapons and ammunition. (Refer to Policy # 300.02 Firearms and Ammunition Police Annex A & B.)
5. Unsafe or defective department-issued firearms shall be replaced or repaired
6. All recent hires of the department shall be qualified by the hiring agency's certified firearms instructor using that agency's POST certified qualification course. This qualification shall take place prior to the officer carrying their department authorized duty firearms in any official capacity.
7. Police officers who are unable to qualify with their duty firearm(s), in accordance with department testing procedures will be given individual training by the department's authorized and certified firearms training officer.
 - a.) Upon successful completion of this training, the officer will be retested.
 - b.) If after a second attempt, the officer does not qualify, a report will be forwarded to the Chief of Police by the certified firearms training instructor
 - c.) The Chief of Police will then take such action, as he/she deems necessary, not inconsistent with this policy.
8. A police officer will not be permitted to carry or use any firearm, while acting within the course and scope of their employment with the Newport police department, with which he/she has not been able to qualify during the most recent qualification period.
9. A police officer that has suffered an illness, injury or absence that could affect his/her ability to use a department authorized firearm will be required to requalify before returning to enforcement duties.
10. Officers who carry personally owned firearms and ammunition off-duty must demonstrate proficiency and safe handling techniques to a department certified firearm's instructor. Prior to carrying an off-duty firearm, officers will qualify with an equal or greater caliber in accordance with policy.

E. TRAINING AND QUALIFICATIONS REGARDING LESS LETHAL FORCE

1. At least biennially, each sworn officer is required to demonstrate proficiency with Newport Police approved less lethal force options, which he/she is authorized to use. In the case of conducted energy weapon (CEW), said demonstration will be on an annual basis. Proficiency standards are established as follows:
 - a.) Attainment of minimum qualification requirements in accordance with performance standards as determined by current training doctrine, methods, and/or trends;

- b.) Proper demonstration of recognized physical skills; and
 - c.) Demonstrated knowledge of department policies pertaining to the use of less lethal force options;
2. The program of instruction will be conducted by a qualified instructor who has achieved and maintained certification in the respective less lethal force option(s).
 3. The training division will maintain training documentation to include lesson plans, attendance sheets, and proficiency records.
 4. Proficiency standards shall be satisfied prior to an officer being authorized to carry and/or utilize the less lethal force option(s).
 5. Police officers who are unable to show proficiency with a less lethal force option in accordance with department testing procedures will be given remedial training by the department's less lethal force training instructor.
 - a.) Upon successful completion of this training, the officer will be retested
 - b.) If after a second attempt the officer does not evidence proficiency, a report will be forwarded to the Chief of Police by the department's less lethal force training instructor.
 - c.) The Chief of Police will then take such action as he/she deems necessary and not inconsistent with this policy.

F. REPORTING USES OF FORCE

1. A reportable use of force is defined as any incident in which a sworn department member exercises his/her police powers and uses a force option or any force option except for those actions set forth in Subsection 3 below.
2. Reportable uses of force also include:
 - a.) Drawing and pointing a firearm or CEW at a person for the purpose of obtaining and/or maintaining control of that person.
 - b.) Taking an action that results in, or is alleged to have resulted in, either injury to or the death of another person.
3. Exceptions to reportable force:
 - a.) Command presence

- b.) Verbal commands
 - c.) Physical skills which does not result in injury, the appearance of injury, or the complaint of pain (ex. Soft empty-hand control techniques).
 - d.) Compliance handcuffing which does not result in injury, the appearance of injury, or the complaint of pain.
4. Officers will notify a supervisor, who is not involved in the incident without unnecessary delay and in accordance with department policy whenever a reportable use of force incident occurs either on-duty or off-duty. The supervisor notified of a reportable use of force will comply with investigative procedures as required by the department.
 5. An officer who has used force shall articulate in writing the force used and the facts, circumstances, and reasons for the use of said force.
 6. All reportable uses of force resulting in death, serious bodily injury, or allegations of serious bodily injury shall be investigated by trained personnel.
 - a.) All other reportable uses of force shall undergo a documented initial review by the officer's immediate supervisor. Said documentation shall be forwarded through the chain of command for administrative review and to determine whether further action, including but not limited to a follow-up investigation is necessary.
 7. Where officers respond to an incident involving reportable use of force, a "response to resistance/non-compliance" form must be completed for that incident setting forth the specific use of force actions taken by each officer (*Refer to Appendix I for sample*). A single form will be submitted for the incident by the Supervisor that was notified of the use of force. The form will identify all officers applying a reportable use of force during this incident. Incidents of this nature will include:
 - a.) Discharges, or displays a firearm or CEW on a person for the purpose of obtaining and/or maintaining control of that person.
 - b.) Takes an action that results in, or is alleged to have resulted in, injury or death of another person
 - c.) Applies force through the use of lethal or less lethal weapons
 - d.) Applies weaponless physical force at a level as defined by the agency.
 - e.) For the purpose of this policy Weaponless physical force shall include any

techniques in which any form of impact strike or takedowns are used.

- f.) Supervisors will digitally sign all completed forms along with any other documentation and forward it to the appropriate Division Commander for review, who will then forward the completed package to the Office of Professional Standards.
 - g.) It should be noted that the digitally signed form is your acknowledgment that the force used is in conformance, unless otherwise noted, with all departmental rules and regulations.
 - h.) A form will be completed for each subject with injuries and if for any reason there are more than three officers involved a new form will be started.
 - i.) Except for SRT operations where a written addendum will be utilized to articulate each officer's involvement.
8. In lieu of a "response to resistance/non compliance" form, an officer shall be required to prepare a written report in accordance with departmental procedures whenever any of the following actions have occurred:
- a.) The officer discharges a firearm under circumstances that are not otherwise classified as a reportable use of force, except for those times when said discharge occurs either during a weapons training or during lawful recreational activities where no report is necessary.
 - b.) The officer discharges a firearm to euthanize an animal, as set forth in Section IV (B) (8).
 - c.) Exceptions to reportable force: command presence; verbal commands; physical strength and skills which do not result in injury, the appearance of injury or complaint of pain (e.g., the use of a grip to control a suspect's hand while searching or handcuffing); or, that force objectively reasonable to overcome resistance due to physical disability or intoxication, which does not result in injury, the appearance of injury or complaint of pain (e.g., lifting an intoxicated person to a standing position).

G. DEPARTMENTAL RESPONSE

1. Use of Force resulting in death or serious bodily injury:

- a.) In accordance with the Rhode Island Attorney General's Protocols, all police incidents involving the use of deadly force, excessive force, custodial deaths and vehicular accidents resulting in serious injury or death will be reported to the Attorney General's office for review (**See Appendix II**).

- b.) Where a police officer's use of force causes death or serious bodily injury or vehicular pursuits resulting in serious injury or death, the Chief of Police and Division Commanders will be immediately notified. The officer will be placed on a non-punitive administrative leave pending completion of an administrative review, and until a post-incident evaluation is conducted by a licensed mental health professional preferably experienced in working with law enforcement personnel.
 - c.) The department will conduct both an administrative and criminal investigation of the incident.
- 2. Allegations of excessive use of force shall be reported to the department's Office of Professional Standards or its equivalent in accordance with the department's protocols.
- 3. FBI's CJIS National Use of Force Data Collection*
 - a.) Any use of force meeting the following criteria shall be reported to the CJIS database:
 - i. Force resulting in death or serious bodily injury to a person; or
 - ii. Where an officer discharges a firearm at or in the direction of a person
 - iii. Where in a given month there are no use of force incidents meeting this criteria, the department shall make a report of "0" incidents in the CJIS database.
- 4. Administrative review of use of force incidents:
 - a.) All reported uses of force will be reviewed by the ***Patrol Division Commander*** to determine whether, at a minimum:
 - i. Departmental rules, policy, or procedures were violated;
 - ii. The relevant policy was clearly understandable and effective to cover the situation;
 - iii. If department training is currently adequate.
 - iv. If department equipment needs to be addressed.
 - b.) All findings of policy violations or training inadequacies will be reported to the appropriate unit for resolution and/or discipline.
- 5. All "response to resistance/ noncompliance" reports will be retained as required by department policy and a documented annual analysis of those reports will be compiled by the Administrative Services Division.

6. This analysis shall, at a minimum, identify the following:
 - a.) Date and time of incidents;
 - b.) Types of encounters resulting in use of force;
 - c.) Trends or patterns related to race, age and gender
 - d.) Trends or patterns resulting in injury to any person; and
 - e.) Impact of findings on policies, practices, equipment, and training.
7. Each calendar year an annual summary report of this analysis will be made available to the public.



Ryan G. Duffy
Chief of Police

Appendices I & II

WARNING

This directive is for Departmental use only and does not apply in any criminal or civil proceeding. The Department policy should not be construed as a creation of higher-level standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive will only form the basis for Departmental administrative sanctions

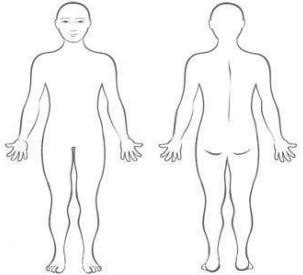
OFFICER #3 **FORCE OPTION(S) USED: (Check all that apply)**

Presence: Uniformed Plainclothes
 Compliance Techniques: Force used to gain control (restraint, takedowns, hands, arms, feet, legs)
 O.C. Spray
 Number of Bursts: _____ Duration of Bursts: _____ Distance from Subject: _____
 Impact Location: _____ Time between application/decontamination: _____
 Desired Effect Achieved: YES NO Complications: (Describe in narrative): YES NO
 ASP/IMPACT WEAPON
 Taser CEW: Probe Deployment Drive Stun
 Impact Location: _____ # of cycles: _____ # of cartridges fired: _____
 Taser Serial #: _____ Cartridge Type used: _____ Distance from Subject: _____
 Probe Contact: YES NO Probe Contact Penetrate Skin: YES NO Drive Stun Contact: YES NO
 Firearm (presented)
 Firearm (discharged) *NOTE: If a firearm was discharged, a firearm discharge report must be completed.*
 K-9 Other (List)

WAS SUBJECT INJURED? YES NO

Subject Visibly Injured Subject Complained of Injury
 Photos Taken Subject Treated Subject Refused
 Transported to Hospital (name): _____
 Admitted to Hospital (name): _____
 Physical Injuries Psychiatric Evaluation

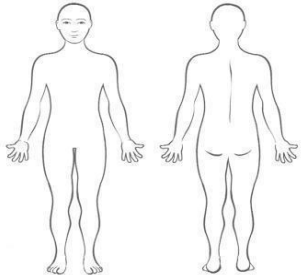
Mark injuries with an "X" on diagram



ANY OFFICER(S) INJURED? YES NO

Officer Visibly Injured Officer Complained of Injury
 Photos Taken Officer Treated Officer Refused
 Transported to Hospital (name): _____
 Admitted to Hospital (name): _____
 Officer(s) Name: _____

Mark injuries with an "X" on diagram



WITNESS(ES):	ADDRESS:	PHONE #:	CONNECTION TO INCIDENT:

AUDIO/VIDEO RECORDING OF THE INCIDENT

Yes No Unknown **If Yes, was the video/audio secured?** Yes No Unknown

Source of the video/Audio Recording:

SUPERVISOR REVIEW:

NAME: _____ **RANK/BADGE #:** _____

SUPERVISOR REVIEW: Use of Force in compliance with Policies and Procedures: YES NO
The supervisor or Officer-In-Charge must submit a separate memorandum concerning the use of force when it is not in compliance with the department policy and procedure describing the variations and corrective action to be taken. The memorandum will be submitted to Professional Standards/Internal Affairs.

SUPERVISOR SIGNATURE: _____ **DATE/TIME:** _____

Appendix II

State of Rhode Island and Providence Plantations OFFICE OF THE ATTORNEY GENERAL

Peter F. Neronha, Attorney General



THE ATTORNEY GENERAL'S PROTOCOL FOR THE REVIEW OF INCIDENTS INVOLVING THE USE OF DEADLY FORCE, EXCESSIVE FORCE AND CUSTODIAL DEATHS

June 17, 2020

BACKGROUND

It has been the long-standing practice in this State that when a police officer uses deadly force, or where there has been a custodial death, the law enforcement agency reports the incident to the Office of the Attorney General for review and joint investigation. This Protocol updates and expands upon the Attorney General's Protocol Regarding The Review Of Incidents Involving The Use of Deadly Force and Custodial Death (last revised in 2007). It is designed to promote greater uniformity, accountability and impartiality in the investigation of police use-of-force incidents where deadly force was employed, where there has been an allegation of excessive use of force by police, and where a custodial death occurs. **It is applicable to all Rhode Island state and municipal law enforcement agencies.** For convenience, the terms "police officer" and "police department" are used in this Protocol.

A police officer's use of deadly force, alleged use of excessive force and the death of a person in police custody are some of the most sensitive matters that law enforcement agencies investigate. These investigations frequently pose complex factual and legal issues and are closely followed by the public we serve. It is critical that the public have confidence that when police use force, and deadly force in particular, that that use of force was reasonable and lawful. This Protocol sets forth the policies and practices of the Office of the Attorney General for the investigation of deadly force and custodial death incidents and for the investigation of allegations of the use of excessive force. It also provides guidance on potential *Garrity* issues.

Appendix II (continued)

USE OF THE PROTOCOL

The Protocol shall be followed whenever:

A police officer uses deadly force, whether or not death or injury of any person results.

A person dies while in police custody or dies during the apprehension or attempted apprehension of a person.

A police officer uses less than deadly force that results in serious bodily injury to any person.¹

A police department receives a complaint alleging that a police officer used excessive force during his/her interaction with a person, and there is evidence, including but not limited to video or other electronic evidence, to warrant additional investigation.

This Protocol may also be followed:

Whenever a person dies or is injured as a result of a police interaction even if the police did not intentionally use force or deadly force. For example, motor vehicle accidents involving the police where there is a fatality or serious injury.

In any situation, not explicitly addressed above, where the police department and the Attorney General jointly agree that review by the Attorney General would be in the public interest.

OBLIGATIONS OF THE EMPLOYING POLICE DEPARTMENT

The police department employing the police officer whose action prompts the application of this Protocol ("Employing Police Department") shall immediately notify the Office of the Attorney General (after hours, an Assistant Attorney General may be reached through the Bureau of Criminal Identification at 401-732-7629) and, in situations involving the use of deadly force or a custodial death, the Rhode Island State Police (401-444-1000). Where the action of a member of the Rhode Island State Police prompts the application of this Protocol, notification shall include the police department of the city or town where the action occurred.

¹ Serious bodily injury" means physical injury that: (1) creates a substantial risk of death; (2) causes protracted loss or impairment of the function of any bodily part, member, or organ; or (3) causes serious permanent disfigurement

Appendix II (continued)

The Employing Police Department shall limit the investigative steps taken prior to assembly of the multi-agency investigative team (see “Investigative Team” section below) to those measures necessary to secure the scene, preserve evidence, identify witnesses, and any other measures necessary to address exigent circumstances.

The Employing Police Department shall immediately collect, preserve, and turn over to the multi-agency investigative team all video and audio recordings that pertain to the incident in question. Any public release of video and audio recordings in the possession of law enforcement shall be done in accordance with the law and in a manner that preserves the integrity of the criminal investigation, protects the rights of the accused, and respects the privacy of civilians captured on the recording. Absent extraordinary circumstances, video and audio recordings should not be released until all witness statements have been collected and the criminal investigation has concluded.

The Chief of Police of the Employing Police Department, or, where the matter involves the conduct of a member of the Rhode Island State Police, the Colonel of the State Police, shall serve as the primary point of contact for media inquiries, coordinating all responses with the Attorney General and other members of the multi-agency investigative team. The Chief of Police, or, where applicable, the Colonel of the State Police, may also refer such inquiries to the Attorney General.

ROLE OF THE ATTORNEY GENERAL

The Attorney General shall assign a senior prosecutor (or prosecutors) to work with and provide legal advice to investigators throughout the course of the investigation.

As a general rule, the Attorney General will present every police-involved use of force incident resulting in death or serious bodily injury to a grand jury for its review and consideration.

Incidents involving use of force that did not result in death or serious bodily injury and where the undisputed facts indicate that the use of force was objectively reasonable under the law may be concluded without a formal grand jury presentation.

The Attorney General may, however, present any matter to a grand jury where doing so is necessary to obtain evidence, develop the testimony of witnesses, and otherwise conduct a full and complete investigation.

Appendix II (continued)

INVESTIGATIVE TEAM

Matters Involving the Use of Deadly Force and Custodial Death

Where a police officer uses deadly force, regardless of whether death or injury results, or where a person dies in police custody or during apprehension or attempted apprehension by police, the investigative team will be comprised of members of the Attorney General's Office, the Rhode Island State Police and the Employing Police Department.

Where a member of the Rhode Island State Police uses deadly force, regardless of whether death or injury results, or where a person dies in State Police custody or during apprehension or attempted apprehension by the State Police, the investigative team will be comprised of the Attorney General's Office, the Rhode Island State Police, and the municipal police department of the city or town where the incident occurred.

The investigative team will respond to the scene immediately after notification of the incident initiating application of this Protocol.

Matters Involving Less than Deadly Force and Allegations of Excessive Use of Force

Whenever a police officer uses less than deadly force that results in serious bodily injury to a person, or is alleged to have used excessive force and the evidence supporting such allegation, including but not limited to video or other electronic evidence is sufficient to warrant additional investigation, the Employing Police Department shall:

- Promptly notify the Attorney General; and
- Provide the Office of the Attorney General with copies of all non-compelled statements and any other evidence pertaining to the matter.

The Attorney General and the Employing Police Department will jointly review the evidence pertaining to the matter and pursue any follow up investigation as necessary. It is strongly preferable that members of the Employing Police Department's Professional Standards Unit or equivalent be assigned to the investigation.

The Attorney General will determine whether criminal charges are appropriate, and, if charges are appropriate, the nature of such charges, including whether the appropriate charge or charges constitute a misdemeanor or felony or both. The Attorney General will determine whether presentation to a grand jury is necessary to obtain additional evidence or develop the testimony of witnesses.

Appendix II (continued)

GARRITY ISSUES

Pursuant to the United States Supreme Court's decision in *Garrity v. New Jersey*, 385 U.S. 493 (1967), when a police officer is compelled by a supervisor to make a statement in the course of an administrative or internal investigation or face termination, such statement and any evidence derived from that statement cannot be used in any subsequent criminal investigation or prosecution of that officer.

If a police officer agrees to provide a voluntary statement, the officer's statement may be shared with all investigators and prosecutors assigned to the matter.

If an officer is not willing to provide a voluntary statement, the investigative team, in consultation with the Attorney General, must determine whether a statement should be compelled by a supervisor. If the decision is to compel a statement, under *Garrity*, his or her statement and evidence derived from that statement cannot be used in any subsequent prosecution. Accordingly, under these circumstances, the investigative and prosecution team must be divided into two groups. The first group will be allowed access to the compelled statement and any evidence obtained as a result. The second group must be walled off from the contents of any compelled statement and the evidence derived from such statement.

The first group will be assigned to investigate any administrative and departmental violations allegedly committed by the police officer providing the compelled statement. They may also participate in the criminal investigation and/or prosecution of any other individual, including a police officer, whose statement was not compelled.

The second group will be assigned to pursue the criminal investigation and/or prosecution of any officer whose statement was compelled.



PETER F. NERONHA
ATTORNEY GENERAL