



ORONO POLICE DEPARTMENT

STANDARD OPERATING PROCEDURES

Protect with Vigilance & Serve with Compassion and Excellence

Subject:	Deadly Force Incident Procedures	Policy #	A-12
Effective Date:	June 17, 2024	Review Cycle:	2 Years
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MLEAP:	6.08		
	<i>Rescinds All Previous Policies Related To This Current Policy</i>		
Issuing Authority:	Chief of Police Daniel Merrill		

I. **POLICY:**

Law enforcement duties often expose officers and support personnel to highly stressful situations that cannot be resolved through normal stress-coping mechanisms. It has been found that deadly force incidents may precipitate stress disorders that can be disabling to the affected officer. It is the responsibility of this department to assist involved personnel in coping with the stress caused by a deadly force incident and to reduce the risk of post-traumatic stress disorder. It is the policy of this department to take immediate action after such incidents to safeguard the continued health and welfare of all involved personnel.

Procedures outlined in this policy shall be in accordance with the Office of the Attorney General "*Protocol for Reporting and Investigation of the Use of Deadly Force*". (*Appendix 1*)

Officers must abide by this policy, which applies to all standards of the Maine Criminal Justice Academy Board of Trustees.

II. **PURPOSE:**

The purpose of this policy is to establish guidelines that shall be uniformly applied following any deadly force incident in order to reduce the risk that involved personnel may develop or suffer from post-traumatic stress disorder and to ensure a thorough and timely investigation of the incident.

III. **DEFINITIONS:**

Administrative Review: A broad assessment conducted by an agency to evaluate compliance with its policies, procedures, and regulations. Unlike an Internal Affairs Investigation, which focuses on narrow and specific allegations of misconduct, an Administrative Review is often proactive and may be triggered by various factors such as the use of deadly force. The term Administrative Review is interchangeable with Internal Review, or Internal Review Team.

Attorney General's Investigation: The Office of the Attorney General has the exclusive responsibility for the direction and control of any criminal investigation of a law enforcement officer who uses deadly force while acting in the performance of the officer's duties. The sole purpose of the investigation is to determine if a criminal prosecution is warranted or if self-defense or defense of a 3rd party was reasonably generated by the facts of the incident.

Deadly Force: Physical force, that a person uses with the intent of causing, or which the person knows to create a substantial risk of causing, death or serious bodily injury. Except as provided in *17-A M.R.S. §101(5)* the intentional, knowing, or reckless discharge of a firearm in the direction of another person or at a moving vehicle constitutes deadly force. (*17-A M.R.S. §2(8)*)

Internal Affairs Investigation: A formal inquiry conducted within an organization tasked specifically and narrowly with investigating allegations of misconduct or violations committed by members of that organization.

Post-Traumatic Stress Disorder (PTSD): A psychiatric disorder that may occur in people who have experienced or witnessed a traumatic event, series of events or set of circumstances. An individual may experience this as emotionally or physically harmful or life-threatening and may affect mental, physical, social, and/or spiritual well-being.

IV. PROCEDURES:

A. ON SCENE:

1. Whenever an officer uses deadly force, the officer shall immediately:
 - a. Ensure the involved person(s) no longer poses a threat.
 - b. Determine the physical condition of any injured person(s) and render first aid, if appropriate.
 - c. Request necessary emergency medical aid.
 - d. Request that a supervisor respond to the scene; and provide the supervisor with a brief description of the incident and the identities of any involved persons, if known.
 - e. If the incident involves the discharge of the officer's firearm, refrain from altering the firearm in any manner.
 - f. Refrain from altering any firearms in the possession of or used by the involved person(s).
2. A supervisor shall be dispatched to the scene of the incident and shall assume primary responsibility for caring for involved personnel and securing the scene. Unless there is an immediate danger that evidence will be lost, damaged, or destroyed the scene shall not be disturbed, and no evidence shall be removed until such removal is authorized by the Attorney General's Office.
3. The supervisor shall make appropriate arrangements for all necessary medical treatment. If an officer needs to be transported to the hospital for treatment, a supervisor or officer will accompany the officer. At the hospital, the accompanying supervisor/officer should ensure that any clothing or personal effects of the injured officer are not discarded, but are preserved for evidence collection.
4. The scene supervisor shall notify the Chief of Police or designee of the incident as soon as possible by the most confidential means possible. A union executive board member shall also be notified, if applicable.
5. The Chief of Police or designee shall notify the Attorney General's Office and the Office of Chief Medical Examiner (*if a death has occurred*), as soon as possible.
6. If the incident's circumstances require that the officer's duty weapon be secured, the supervisor shall discreetly secure the firearm and advise the officer that the firearm will be returned as soon as possible. The officer shall immediately be provided with a replacement weapon. The firearm should then be turned over to the assigned investigator.
7. Unless transported for medical treatment, the officer should remain at the scene until given permission to leave by the supervisor. While the involved officer(s) remains at the scene, they should be taken to a quiet area away from the incident. A fellow officer should remain with the officer(s), but shall not discuss the details of the incident. If possible, an officer who has been through a similar incident may be asked to speak with the officer.
8. The supervisor should arrange for the officer(s) directly involved in the incident to leave the scene as soon as possible, and to be taken by a supervisor to the agency. A fellow officer may accompany each officer involved. However, involved officers shall remain separated until the conclusion of subsequent interviews.
9. The supervisor should meet briefly with each of the involved officers at the scene and ask for a brief, preliminary explanation of the incident. The supervisor shall also advise the officers that:
 - a. They should refrain from drinking any beverages containing stimulants or depressants unless administered by medical personnel and should refrain from altering potential evidence (i.e. cleaning, removing clothes, smoking).

- b. The officers may seek legal counsel to assist them.
 - c. The Attorney General's Office will be notified of the incident and will, likely investigate the incident. Officers may be asked to submit to an interview by the Attorney General's Office investigators. Officers should be aware that an Attorney General's interview is not associated with the department's administrative review and that it is not the intent of the department to require an officer involved in this type of incident to make a statement to the Attorney General's Office. The decision whether to be interviewed by the Attorney General's Office is within the officer's sole discretion. An officer cannot be disciplined for refusing to participate in an Attorney General's interview.
 - d. Officers should not discuss the incident with anyone except an attorney, a union representative, and/or the Attorney General's Office investigator.
10. Involved officers should notify their families about the incident as soon as possible. When an officer is unable to do so, a supervisor shall be assigned to notify family members and arrange their transportation to the appropriate location, if necessary.
11. Involved personnel may be given an opportunity for a period of "recovery time" before detailed interviewing begins. Depending on the circumstances of the incident, this may range from a few hours to overnight. Personnel may also be asked to prepare written reports, as appropriate.

B. POST INCIDENT:

- 1. The involved officer(s) will be assigned to administrative duties or placed on administrative leave pending the Attorney General's Office investigation of the incident. The Chief of Police or designee will determine the duration of the assignment or leave. The temporary placement of an officer on administrative leave is not evidence that an officer acted improperly. **MLEAP 6.08**
- 2. All officers involved in the incident shall be afforded the opportunity to attend a Critical Incident Debriefing. (See XXXXX Police Department policy *A-30 Critical Incident Stress Management*)
- 3. To minimize psychological trauma such as PTSD, the involved officer(s) will undergo a psychological assessment as soon as practicable by a licensed psychologist who specializes in dealing with public safety personnel. After six months from the incident and at the discretion of the Chief of Police, officer(s) may be directed to have to be reevaluated by the same psychologist.
- 4. The officer(s)'s family members shall be offered counseling or other assistance through the Employee Assistance Program.
- 5. Public comment on the incident shall be limited to the Chief of Police or designee and the Attorney General's Office. Personnel involved in the incident will refrain from speaking with the media and should refer all press inquiries to the Chief of Police. The officer must be notified before their name is released to the media. The officer's interests shall be considered in any statement made to the media.
- 6. The Chief of Police or designee shall brief agency staff regarding the facts of the incident and the progress of the Attorney General's investigation at the appropriate time and shall keep the involved officer(s) apprised of the progress of both the Attorney General's investigation and any administrative review.
- 7. All officers involved in the shooting shall be required to qualify with a firearm as soon as practical after the incident.
- 8. Supervisors are responsible for monitoring the behavior of the officer(s) for signs and/or symptoms of PTSD and for seeking assistance for the officer(s), if needed.

C. POST INCIDENT REVIEW:

- 1. The Chief of Police or designee shall convene an Incident Review Team to conduct an administrative review of the incident.
- 2. The Incident Review Team shall consist of members appointed by the Chief of Police or designee to include, but not limited to:
 - a. Chief Law Enforcement Officer from another agency.
 - b. Maine State Police Supervisor.

- c. A public citizen who is not and has not previously served as a sworn law enforcement officer.
 - d. A licensed mental health or substance abuse clinician.
3. The Incident Review Team shall review the use of deadly force to determine the following:
- a. The facts of the incident.
 - b. Whether relevant policy was clearly understandable and effective in covering the situation.
 - c. Whether changes are necessary to incorporate improved procedures or practices demonstrated to increase public safety or officer safety.
 - d. Whether training protocols should be reviewed or revised.
 - e. Whether equipment or other resources should be modified.
 - f. In conducting its review, the Incident Review Team shall abide by any applicable contractual provisions regarding officers' contractual rights.
 - g. If the Incident Review Team finds that the officer(s) violated policy and/or procedure during the administrative review, the Chief of Police will decide whether to commence disciplinary proceedings. Determining disciplinary actions falls outside the purview of the Incident Review Team.
4. The Incident Review Team shall generate a written report of its findings. That report may be made public as provided under 5 M.R.S. § 7070-A (*State*), 30-A M.R.S. § 503(1-A) (*County*), and 30-A M.R.S. § 2702(1-A) (*Municipality*). However, the Incident Review Team may brief the Chief of Police, or designee, on the team's work at any time before the final written report is issued.

The findings and reports of the Incident Review Team may be confidential under the applicable state statute until the conclusion of the Attorney General Investigation and any related criminal case.



Maine Office of the Attorney General

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

Authority. The Attorney General has exclusive jurisdiction for the direction and control of any criminal investigation of a law enforcement officer who, while acting in the performance of that officer's duties, uses deadly force.¹ Such use of deadly force will be the subject of an investigation or review and legal analysis by the Office of the Attorney General to determine if its use complied with the applicable provisions of law. Detectives from the Office of the Attorney General will conduct or supervise the investigation, with the assistance of the State Police or other agencies as circumstances require.

Definitions. For purposes of this protocol, "deadly force" has the same meaning as in 17-A M.R.S. § 2(8). "Deadly force" means physical force that a person uses with the intent of causing, or that a person knows to create a substantial risk of causing, death or serious bodily injury.² Except as provided in section 101, subsection 5,³ intentionally, knowingly, or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force.

¹ 5 M.R.S.A. § 200-A

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

³ For purposes of this chapter, use by a law enforcement officer, a corrections officer or a corrections supervisor of the following is use of nondeadly force:

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

Requirement. A law enforcement agency whose officer uses deadly force while acting in the performance of that officer’s duties shall make notification of the event, as soon as practicable, to the Investigation Division of the Office of the Attorney General. The following circumstances in which physical force is used requires reporting by the agency whose officer uses such physical force while acting in the performance of that officer’s duties:

1. Physical force that in fact causes death or serious bodily injury.
2. Physical force under circumstances that in fact create a substantial risk of causing death or serious bodily injury, regardless of whether death or injury results.
3. Physical force when it is the officer’s intent to cause death or serious bodily injury, regardless of whether death or injury results.
4. Discharge of a firearm in the general direction of another person or at a moving vehicle, regardless of whether the projectile strikes the person or vehicle. (It is not necessary to report the discharge of a firearm if the discharge is that of a “less-than-lethal munition,” as defined in law. See Footnote 3 above. Also, it is not necessary to report the pointing of a firearm at another person.)
5. A chokehold, strangehold, carotid hold, or any other technique that physically compromises the airway or blood flow to the head, regardless of whether death or injury results.
6. Ramming or striking an occupied vehicle, except when the Precision Immobilization Technique (PIT maneuver) is used in the manner trained and under the circumstances intended for its use and no serious bodily injury or death results.
7. A roadblock set up to terminate a vehicular pursuit when the roadblock in fact creates a substantial risk of causing death or serious bodily injury to the occupants of the fleeing vehicle or other persons and that results in serious bodily injury or death.

Procedure for reporting. The use of physical force identified above must be reported as soon as practicable by the officer’s agency to the Investigation Division of the Office of the Attorney General.

<p style="text-align: center;">Contact Investigation Division of the Attorney General’s Office through RCC</p>

Preservation of the scene, electronic media, and witnesses. The scene shall be preserved and cordoned, and involved officers separated by available law enforcement officials until the arrival of a detective from the Office of the Attorney General or a designee whose responsibility is to coordinate the investigation and/or to process the scene. Preserve as soon as possible any electronic media, such as cruiser or body camera video recordings. Other than what is necessary to identify and preserve such recordings, no involved officers may view such recordings prior to the officers giving a statement. **Do not disturb the scene.** In the case of a death, the body of the deceased is not to be moved or disturbed in any way until authorized by the Attorney General’s Office or the Office of Chief Medical Examiner, unless the body is in immediate danger of destruction or further damage. Other personnel authorized to access the scene are evidence technicians of the State Police or other agencies or other personnel designated and dispatched under the authority of the Attorney General.

Interviews of officers. During the Attorney General’s investigation, no member or representative of an involved law enforcement officer’s agency may be present during interviews of the officer, unless previously authorized by the Attorney General’s Director of Investigations or the Director’s designee. No agent of an involved law enforcement officer’s agency may issue any order or instruction of any type concerning whether the officer should or should not speak with a detective from the Office of the Attorney General.⁴

Public Statements. No media statements or other public comments regarding a determination of an involved officer’s legal justification or criminal culpability may be made or given except by the Office of the Attorney General. Other public comments, particularly as they relate to the facts of a particular event, may not be made or given without prior authorization and coordination with the Office of the Attorney General. Release of the name of an involved officer will be postponed until the officer and the head of the officer’s employing agency are notified that the information will be released.⁵ The name of a decedent or injured person may be released after the notification of next of kin.

The following guidelines govern the public release of information during the pendency of the investigation.

Examples of information that *may* be released:

1. The fact that an incident involving the use of deadly force occurred and, pursuant to statutory requirements, is being investigated by the Office of the Attorney General.
2. The fact that the investigation is focused upon a determination of whether deadly force was in fact used and whether the use complied with the applicable provisions of law.
3. Whether person(s) were injured or killed.
4. The identity of person(s) injured or killed to include name, age, residence, occupation, and family status, but only after notification of next of kin.
5. The time and place of the incident under investigation.
6. The identity of an involved law enforcement officer, to include name, age, and agency affiliation.
7. A brief description of the circumstances of the particular incident, e.g., the nature of a call for service, an arrest, a vehicle stop, etc.

⁴ This section is necessary to maintain the appropriate legal distinction between the Attorney General’s criminal investigation and an administrative or internal affairs investigation.

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

Examples of information that *may not* be released:

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

Dated: April 15, 2021

AARON M. FREY
Attorney General