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Joel Faxon
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Neil Chaudhary
Joan Plouffe

TOWN OF NEWTOWN

BOARD OF POLICE COMMISSIONERS

The Board of Police Commissioners

Special Meeting June 15, 2020

This meeting was held remotely due to COVID-19 mandates and precautions

MINUTES ARE NOT FINALIZED UNTIL APPROVED BY THE BOARD OF POLICE COMMISSIONERS

Present: Joel Faxon, Scott Cicciari, Neil Chaudhary, Joan Plouffe

Absent: Andy Sachs

Also Present: Chief Viadero, Paul Mangiafico, one member of the press.

Chairman Faxon called the meeting to order at 6:03p.m. noting the purpose of the meeting is to amend the Use of Force Policy.

1. New Business

Discussion & Possible Action

Use of Force Policy Update (att.): Chief Viadero said the CT POSTC (Police Officers Standard and Training Council) dictates policies. The Town of Newtown adopted mandated CLESP standard from POSTC. The policy was consistent to requirements prior, however, items are more emphatically emphasized now. The policy has more restrictions including prohibiting any action that would restrict breathing, including choke holds and other holds that would restrict carotid blood flow.

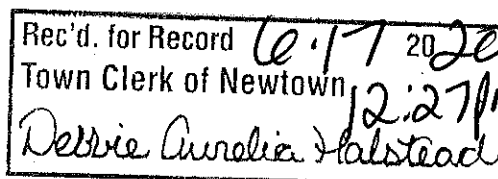
The policy revision was issued on Thursday due to the importance of getting the changes pertaining to banning choke holds, intervention on behalf of an officer witnessing excessive force, no retribution language for those who report such violations and a number of additional standards outlined in the CLESP mandate. Newtown has Tier 1 accreditation with 127 standards adhered to in policies and procedures that are best practices. Chief Viadero will be seeking Tier 2 and Tier 3 accreditation as well.

Chairman Faxon commented that of nine years on the Police Commission there has never been a report on an officer having to discharge his/her weapon in any manner other than to euthanize an animal.

Appendices will be added relative to weapons and POSTC curriculum. Newtown is in compliance with the recent Governor reforms; they are identical to the CLESP standards.

Commissioners Cicciari voiced how pleased he is by the effort and work that went into the policy. He is very proud of the men and women on the force. Commissioner Plouffe commended the leadership of Chief Viadero.

In searching a five year history of complaints there were no complaints filed involving use of force or racial profiling. All Newtown officers are very proficient in de-escalation and mental illness calls.



Commissioner Chaudhary had questions on use of force involving moving vehicles; discharging a weapon to disable a vehicle is prohibited should be stated more clearly. He believes the policy should be reviewed annually. Chief Viadero said the policy is expected to change over the next few months, and will be revisited, due to reforms. The POST Council will have a subcommittee tasked with writing a model policy on Use of Force for the state; Chief Viadero will sit on this subcommittee.

Chairman Faxon thanked Chief Viadero for taking the time to see that everything in the policy is responsive and immediately put into operation. He looks forward to the task force model policy for municipal use. The policy is an excellent set of rules in which to operate.

Commissioner Plouffe moved to approve the Policy and Procedure related to the Use of Force (att.).
Commissioner Cicciari seconded. All in favor.

Paul Mangiafico, 44 Copper Square Drive, Bethel, commended the Police Commission, and especially Chief Viadero for reacting to the changes needed and showing the community the department is stepping up and addressing these issues.

Adjournment: Having no further business to report the police commissioners adjourned their regular meeting at 6:46p.m.

Att: Policy and Procedure Use of Force, 6/15/20

Respectfully submitted,
Susan Marcinek, Clerk

Distribution:
Sworn Personnel: X
Civilian Personnel: X
NECC: X

P & P # 3.04
Adopted: 06/07/88
Revised: 09/05/89
07/01/90
08/06/91
02/07/95
04/01/03
06/01/04
06/15/20

Chapter 3
Enforcement

POLICY AND PROCEDURE
USE OF FORCE

I. PURPOSE:

To establish a set of procedures for the use of force by authorized personnel of the Newtown Police Department.

II. THE POLICY:

The policy of the Newtown Police Department is to provide for the reasonable use of lethal and less lethal force by authorized department personnel, within the parameters of State and Federal laws. The use of force must be objectively reasonable. Officers shall evaluate each situation in light of the known circumstances including, but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject and the danger to the community. Officers shall use only that level of force that "reasonably appears necessary to effectively bring an incident under control, while protecting the lives of the officer and others." The Officer must only use that force which a reasonably prudent officer would use under the same or similar circumstances. All department members are obligated to ensure compliance by themselves and other members with department regulations, policies, and state and federal law.

A. Lethal Force:

1. Lethal force will be employed only when objectively reasonable based on the officer's training, experience and ability.
2. Authorized Department personnel will only use the force necessary to effect lawful objectives.
3. Authorized Department personnel will keep in mind that any use of lethal force has the potential to present a threat to the community.
4. Authorized Department personnel will constantly weigh the advantages and disadvantages of lethal force usage and will ensure that any use of lethal force meets the test of reasonableness.

B. Less Lethal Force:

1. Authorized personnel of the Newtown Police Department will only use less lethal force when necessary to effect lawful objectives.

III. DEFINITIONS:

- A. "Death": The cessation of life; permanent cessation of all vital functions and signs.
- B. "De-escalation": Defusing a volatile situation or aggressive behavior.
- C. "De-escalation technique": The use of verbal and non-verbal communication or actions to defuse a volatile situation or aggressive behavior.
- D. "Imminent": On the point of happening.
- E. "Less Lethal Force": Force which has the potential to cause bodily harm (physical injury), or pain.
- F. "Lethal Force": Physical force which can be reasonably expected to cause death or serious physical injury
- G. "Physical Injury": Bodily harm or hurt which has the potential to physically disfigure, impair health or cause temporary impairment of a bodily part. This excludes mental distress, fright, or emotional disturbance.
- H. "Reasonably Believes": Denotes the fact that the actor believes that a given fact or combination of facts exists and that the circumstances which he/she knows, or should know, are such as to cause a reasonable person so to believe.
- I. "Serious Physical Injury": Physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health, or serious impairment of loss of function of any bodily organ.

IV. PROCEDURES:

- A. The following members of the Newtown Police Department are authorized to use Lethal Force and the circumstances under which it may be used:
 - 1. Sworn Personnel (includes within this policy all certified reserve officers):
 - a. To defend or protect the officer, others, or third person from what the officer reasonably believes to be the use or imminent use of lethal force.
 - b. To effect an arrest or prevent the escape from custody of a person whom the officer reasonably believes has committed, or attempted to commit, a felony which involved infliction or threatened infliction of lethal force; and where practical, the officer has given warning of his/her intent to use lethal force, and the officer reasonably believes that the person still poses a significant threat to the officer, others, or third person through the use of lethal force to the officer, or third person.
 - c. To shoot an animal in self-defense, or to prevent serious harm to the officer or another person, or when the animal is so badly injured that humanity requires its relief from further suffering, except dogs per Connecticut General Statute 22-332.
 - d. A restraint or hold known or reasonably expected to restrict the flow of oxygen or blood is considered lethal force and subject to the standards set forth in Connecticut General Statutes 53a-22.

B. Sworn Personnel and certified reserve officers are NOT permitted to use lethal force when discharging a firearm at or from a moving vehicle, except:

1. as the ultimate measure of self-defense, or
2. in defense of another when a suspect is using lethal force from a vehicle by any means including the vehicle itself
 - a. Officers shall not discharge their firearms at a moving vehicle or its occupants unless the occupants are using, or threatened the use of, deadly physical force against the officer or another person present by means other than the vehicle.
 - i. This does not preclude exigent circumstances such as, but not limited to, where the officer reasonably believes there are no other means available to avert the threat of the vehicle, or if such vehicle is being utilized as a weapon against the officer(s), or another person, such as in a vehicle ramming attack.
 - ii. No officer should intentionally position his or her body into the path of a fleeing motor vehicle. Whenever possible, the involved officer should make an effort to move to an area of safety if the vehicle becomes a threat, including retreating from the threat, if practical.

C. **THE USE OF WARNING SHOTS IS STRICTLY PROHIBITED**

D. When safe, feasible, and without compromising law enforcement priorities officers shall use de-escalation techniques to reduce the need for force.

E. The intentional use of a chokehold or other method of restraint applied to the neck area of another person is prohibited unless lethal force is justified as authorized in Connecticut General Statutes 53a-22.

F. **Notification of Supervisor**

An officer will summon a supervisor to the scene of an incident when any use of force results in death or serious injury, when the officer either accidentally or purposefully discharges a firearm in other than training capacities or for the euthanasia of animals, or when a subject complains of being injured during the use of force.

G. **Duty to intervene and report misconduct**

A Department member who directly observes a use of force that is excessive or otherwise in violation the department's use of force policy and/or a violation of state or federal statute, shall contact a supervisor as soon as practicable. Except in extraordinary circumstances, the officer will act to intervene and stop the unreasonable, or illegal use of force by another police officer. Such action will include, but is not limited to, verbally intervening to try to stop the violation, or physically intervening on the subject's behalf to protect that person's safety. If the officer is a supervisor, he or she will issue a direct order to stop the violation. The department prohibits any retaliation against any officer who acts in accordance with this subsection of the policy.

H. **Post Lethal Force Investigation:**

1. A post lethal force investigation shall be conducted when any sworn member of the Newtown Police Department uses lethal force upon another person. Officer involved lethal force investigations shall include, but are not be limited to the following lethal force incidents:
 - a. The use of lethal force upon a sworn member of the department, the results of which are death or injury,
 - b. The use of lethal force by a sworn member of the department upon another person, the results of which are death or injury,
 - c. The unintentional discharge of a firearm by a sworn member of the department.

2. Investigative Rules and Responsibilities:

a. First non-involved officers on the scene:

- i. Render medical aid to the injured
- ii. Secure, control and preserve the scene without the removal or relocation of evidentiary material, including motor vehicles. Once the scene is "frozen" the following activities shall take place:
 - Setting up an inner and outer perimeter to protect the incident scene from unauthorized entry and contamination,
 - Implementing a written log to keep track all authorized persons entering or leaving the inner perimeter. In addition to names, the log shall also document the dates and times authorized persons entered and left the inner perimeter.
 - Locating and taking names of witnesses and potential witnesses, as well as noting registration marker numbers of involved motor vehicles.
 - Conducting interviews,
 - Performing or assisting with other appropriate investigative activities to the extent that the passage of time would inhibit such activities
 - Completing a comprehensive departmental report on all activities performed in relation to the post lethal force investigation.

b. First non-involved supervisor on the scene:

- i. As soon as possible after the lethal force incident, a supervisor not directly associated with the incident shall make a preliminary inquiry to determine the scope and seriousness of the incident. Based on the results of this inquiry, the supervisor will provide notification to the persons listed below. Emergency telecommunicators will be advised to make an entry in the screen of CAD indicating the time of each notification.
 - Chief of Police
 - Captain
 - Shift Commander
 - State's Attorney Office (Note the State's Attorney shall be notified immediately when an officer has used lethal force upon another person and such person dies or is likely to die.
 - State Medical Examiner's Office (when death has occurred)
 - Chief State's Attorney (when the use of lethal force by an officer upon another person and such person dies), when so ordered by the State's Attorney Office

- Police Union Representative
 - Other police agencies having a direct interest in the subject officer(s) involved in the lethal force incident (when applicable).
 - EAP.
- ii. Assume command of the incident scene, ensuring security, control and preservation. Note: The incident scene must be preserved without the removal or relocation of evidence, including motor vehicles, unless failure to do so would detract from the evidentiary value.
 - iii. Safely remove the officer from the incident, as soon as possible.
 - iv. Ensure that another department member remains with the officer at all times.
 - v. Secure the officer's implement of lethal force and all other equipment and clothing worn at the time of the incident, as evidence. These items shall not be altered unless such is required for the safety of the officer securing said equipment.
 - vi. Issue a replacement weapon to the officer, as soon as practical.
 - vii. Notify the officer's next of kin about the incident in a timely and appropriate manner when the officer has used lethal force upon another person or sustained a lethal force injury. A ranking member of the department, and/or EAP shall be assigned this responsibility.
 - viii. Notify the officer's and/or other person's next of kin about the incident when the use of lethal force has resulted in death of the officer and/or other person. A ranking member of the department, EAP and a member of the clergy shall be assigned this responsibility. Note: Next of kin shall be informed about the availability of resources and services to assist them.
 - ix. Interview involved personnel separately, as soon as possible, Note: The State's Attorney's Office shall be in charge of the officer interview process when an officer has used lethal force upon another person and such person dies or is likely to die.
 - x. Complete a comprehensive departmental report on all activities performed in relation to the post lethal force investigation.

c. Non-involved Detective Division Personnel on the Scene:

- i. Assume command, in the absence of ranking officers, of the lethal force investigation when the lethal force incident does not involve the use of lethal force upon another person who dies or likely to die,
Note: The State's Attorney's Office shall direct all investigative activities when an officer uses lethal force upon another person and such person dies or is likely to die. In this situation, the State's Attorney's Office shall decide whether or not to use department detectives to aid in investigating the lethal force incident.
- ii. Non-involved department detectives shall be available to conduct or assist with officer involved lethal force incident investigative tasks. This includes, but is not limited to, the following:
 - Interview of witnesses
 - Processing the incident scene
 - Collecting and securing evidence
 - Photographing and diagramming the scene.
 - Identifying and locating suspects.

- Conducting follow-up interviews.
 - Preparing and serving search and seizure warrants.
 - Preparing and serving arrest warrants,
 - Notifying the State's Attorney's Office (when applicable).
 - Notifying the Connecticut State Police Major Crime Squad (when applicable).
 - Performing any other tasks necessary to complete the investigation,
 - Completing a comprehensive departmental report on all activities performed in relation to the post lethal force investigation.
- iii. Department detectives shall be used for investigative purposes when a lethal force incident involves only the death or injury of an officer or when no injuries or deaths have occurred.
- d. State's Attorney's Office:
- i. Once notification has been made, a representative of the State's Attorney's Office will respond (by protocol) to the incident scene within timely fashion.
Note: Per Connecticut General Statute 51-277a, the State's Attorney's Office shall be charged with directing the lethal force investigation and all associated investigative activities, when an officer has used lethal force upon a person and said person has died or is likely to die.
- ii. Upon arrival of a representative from the State's Attorney's Office, the representative shall discuss the incident with the Supervisor who is in charge of the incident scene. Through this discussion, the State's Attorney's representative may do the following:
- Determine what agency or agencies shall be responsible for processing the incident scene
 - Determine what agency or agencies shall be responsible for analyzing the evidence, and if necessary,
 - Determine what agency or agencies shall be responsible for reconstructing the event and scene.
- iii. The State's Attorney's Office shall be responsible for requesting law enforcement agency assistance (e.g., CSP Major Crime Squad). This assistance shall be used in determining the circumstances of the lethal force incident.

3. Internal Affairs Investigation of Lethal Force Incidents

- a. An internal affairs investigation shall be performed whenever an officer uses lethal force upon another person. The Chief of Police or his designee shall oversee all internal affairs investigation activities. REFERENCE: IA POLICY

4. Lethal Force Incidents Without Death or Injury

- a. In the event a lethal force incident does not involve death or injury, the first non-involved supervisor shall notify the following:

- Chief of Police
- Operation Commander
- Shift Commander
- Police Union Representative
- Department EAP Personnel

- b. The responsibility for the investigation shall rest with a Supervisor higher in rank than that of the subject employee. The Chief of Police, or his designee shall designate the investigating Supervisor.

Note: If applicable, the Supervisor may utilize Detective Division personnel to assist with the investigation.

- c. Any officer involved in a use of lethal force incident that does not involve death or injury shall be aware of Subsection 2.b.v of this policy and its possible application to this Subsection.

5. Advisements

- a. Any officer whose use of lethal force results in death or injury shall be advised about the following:

- i. The officer shall be advised of his rights with regards to both a criminal and internal investigation
- ii. The officer shall be advised that a criminal investigation shall be conducted,
- iii. The officer shall be advised that the Chief or his designee shall conduct a separate internal affairs investigation,
- iv. The officer shall be advised about the role of the State's Attorney's Office shall take with regard to an officer's use of lethal force,
- v. The officer shall be advised that they shall be temporarily reassigned. The length of the reassignment will be determined by completion of the investigation and the officer's desire to return to normal duty.
- vi. The officer shall be advised that he may be enrolled in a mandatory employee assistance program.

6. Lethal Force Incident Reporting

- a. Department personnel assigned to an officer involved lethal force incident shall complete comprehensive reports on all activities performed in relation to the investigation. Upon request all department reports related to the lethal force incident shall be made available to the State's Attorney's Office.
- b. When an officer has used lethal force upon another person and said person dies, or is likely to die, the State's Attorney's Office shall investigate the incident and file a report with the Chief State's Attorney's Office. The Chief State's Attorney's Office shall forward a copy of the

State's Attorney's Report to the Chief of Police. A copy of this report shall be maintained with all other reports related to the lethal force incident.

7. Lethal Force Incident Press Releases

- a. Authorized Department personnel can issue press releases to the media only when an officer involved lethal force incident does not involve the death or likely death of another person.
- b. The State's Attorney's Office must approve all department press releases to the media when an officer has used lethal force upon another person and such person has died, or is likely to die.

I. Less Lethal Force:

1. An officer may use less lethal force upon another person when and to the extent he reasonably believes it necessary to:
 - a. Effect an arrest or prevent the escape from custody of a person whom he reasonably believes to have committed an offense, OR
 - b. Defend himself or a third person from the imminent use of less lethal force while effecting or attempting to effect an arrest, or while preventing or attempting to prevent an escape, OR
 - c. Maintain order of prisoners OR
 - d. Restrain persons who are mentally ill and dangerous to themselves others, OR are gravely disabled and in need of immediate care and treatment, OR
 - e. Bring an unlawful situation safely and effectively under control, OR
 - f. Protect the officer or others from physical injury, OR
 - g. Restrain or subdue a resistant individual.
2. Less lethal force may include:
 - a. Department approved less lethal weapons,
 - b. Hard strikes delivered by hand, arm, leg or foot.
 - c. Implied use of force with a weapon in order to gain compliance.

Example – 1: an officer taking his/her sidearm out and aiming at another person in order to gain the individual's compliance with the officer's commands.

Example – 2: an officer taking his/her capstun out and aiming at another person in order to gain that individual's compliance with the officer's commands.

- d. Any other means at the officer's disposal based upon the officer's training and experience.

J. Use of Force Reports and Reviews

1. An incident report is used to detail the circumstances and facts of the criminal case. The use of force report is used to detail the circumstances and facts of the use of force. Incident reports will be submitted with any use of force report.
2. A separate use of force report with a new case number will be submitted whenever an officer or an assisting officer uses lethal or less lethal level of force on another person.
3. In addition a use of force report will be submitted when an officer or an assisting officer use a level of force that includes physical touching or holding, pain compliances measures, handcuffing physical control measures or any force that results in an injury or injuries or the complaint of an injury or injuries.
4. An officer or an assisting officer will submit a use of force report when they point any firearm at a person in an effort to gain or maintain control over a person.
5. The use of force as described in sections 2 through 4 will be completely documented in writing on department-approved forms in the use of force report as to necessity, instrumentalities and related circumstances by the officer utilizing such level of force.
6. In addition the narrative of the use of force report should at a minimum detail the circumstances of the incident, contain an explanation of what force was used, why it was used and the extent of the injury sustained.
7. Department members who have knowledge of excessive, unreasonable or illegal use of force against a person shall as soon as practical, notify a supervisor and shall submit a written incident report to a supervisor before the end of the officer's shift.
8. The department prohibits any form of retaliation against a department member for:
 - a. Reporting a use of force that is allegedly in violation of department policy
 - b. Cooperating with any internal investigation of a complaint of excessive force
9. The exception to filing use of force reports under this section will be based upon the following circumstances:
 - a. The Officer's mere presence at an incident or scene,
 - b. Verbal commands with or without an implied use of force with a firearm or weapon,
 - c. Training,
 - d. Recreational activity,
 - e. Nonresistant handcuffing with no complaint of injury
 - f. Control and searching of a person with no complaint of injury.
10. Supervisors will review all use of force (reports) incidents and they will:
 - a. Determine whether the use of force conforms to current department policy and procedures.
 - b. Document their findings in writing concerning police compliance and their review of the use of force incident. Supervisors may document their finding directly on a photocopy of the use of force report or the findings may be documented in memorandum form.
 - c. Notify the Operations Commander about use of force incidents within (24) hours of their occurrence.
 - d. Send a copy of each use of force of incident to the Administrative Lt.
11. The Operations Commander will:

- a. Review supervisory use of force reviews to ensure compliance with the use of force review process.
- b. Notify the Chief of Police about all uses of force incidents in a timely fashion.
Note: all reviews of use of force incidents will be maintained under the control of the Chief of Police and will be disposed of in accordance with State of Connecticut Records Retention Schedules.

K. Use of Force Analysis

On an annual basis the Department's Administrative Lt. will conduct an analysis of all use of force incidents employed by the Newtown Police Department. The analysis shall be used to identify patterns or trends, which could indicate training needs and/or policy modifications. A copy of the use of force analysis will be forwarded to the Chief of Police, Board of Police Commissioners, Operations Commander and Lieutenants.

L. RENDERING MEDICAL AID

1. When police personnel use lethal or less lethal force or any level of force upon a subject and an injury is observed or the subject complains of discomfort, pain or injury, police personnel shall ensure that appropriate medical aid is rendered. Medical aid may be provided through, but is not limited to, the following:

- a. Self initiated,
- b. Paramedic,
- c. Hospital.

Note: Medical aid will only be rendered after the subject's ability to implement less lethal or lethal force has been neutralized and it is safe to render medical aid.

2. All injury and medical aid information will be clearly documented in the use of force report.

M. Authorized weapons and training:

1. Refer to the following policies for the department authorized weapons and training:
 - a. 3.02 Sidearms and accessories equipment
 - b. 3.05 Weapons
 - c. 3.10 Pepper Aerosol Restraint Spray
 - d. 3.14 Firearms Qualifications
 - e. Training is performed in accordance with industry standard and in accordance with POST curriculum standards.