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<b>Policy Number:</b>	<b>107.022</b>
<b>Title:</b>	<b>Office of Special Investigations – Use of Force – Fugitive Apprehension</b>
<b>Effective Date:</b>	<b>5/1/18</b>

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**PURPOSE:** To provide guidelines for the office of special investigations (OSI) fugitive apprehension unit member (FAUM) regarding the proper use of deadly and non-deadly use of force.

**APPLICABILITY:** Minnesota Department of Corrections (DOC), OSI – fugitive apprehension unit

**DEFINITIONS:**

Chemical munitions – aerosol irritant projectors. Hand-held pressurized devices containing less than five grams of active chemical irritant that deliver (as a stream, spray, or fog pattern) small amounts of irritants directly to a specific target individual.

Deadly force – force which the actor uses with the purpose of causing, or which the actor should know, creates a substantial risk of causing, death or great bodily harm. The intentional discharge of a firearm in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force.

Notwithstanding the provisions of Minn. Stat. §§ 609.06 or 609.065, the use of deadly force by a peace officer in the line of duty is justified only when necessary:

1. To protect the peace officer or another from apparent death or great bodily harm;
2. To effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force; or
3. To effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person may cause death or great bodily harm if his/her apprehension is delayed.

Great bodily harm – (serious physical injury) – bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes permanent or protracted loss or impairment of the function of any bodily member or organ.

Justified use of force – Minn. Stat. § 609.06 authorizes police officers, or those assisting them, to use reasonable force toward the person of another without the other's consent when the following circumstances exist or the actor reasonably believes them to exist:

1. In effecting a lawful arrest; or
2. In the execution of legal process, or
3. In enforcing an order of the court; or
4. In executing any other duty imposed upon the public officer by law.

Non-deadly force – the level or amount of force used by an officer which does not have a purpose of causing or creating a substantial risk of causing death or great bodily harm. This includes physically

subduing, controlling, capturing, restraining, or otherwise physically managing any person when resistance is encountered during control tactics, handcuffing, arrest, etc. It also includes the actual use of chemical agents and impact weapons.

Reasonable belief – facts or circumstances which an officer knows, or should know, which are sufficient to cause an ordinary and prudent person to act and think in a similar manner under similar circumstances.

X-2 Taser – a two shot electronic control device designed to provide the operator the capability to immediately follow-up with an additional cartridge deployment without reloading. This device has automatic video recording when the device is deployed.

X-26P/X-2 Advanced Taser System® – handheld, less lethal, conducted-energy weapon using nitrogen-propelled wires to conduct energy at 26 watts and 50,000 volts, overriding a person’s central nervous system (see Policy 107.012, “Fugitive Apprehension Unit Use of X-26P/X-2 Taser”).

## **PROCEDURES:**

### **A. Justified use of force**

1. Minn. Stat. § 609.06 authorizes police officers, or those assisting them, to use reasonable force toward the person of another without the other’s consent when the following circumstances exist or the actor reasonable believes them to exist:
  - a) In effecting a lawful arrest; or
  - b) In the execution of legal process; or
  - c) In enforcing an order of the court; or
  - d) In executing any other duty imposed upon the public officer by law.
2. FAUMs must only use force which is necessary to effectively bring an incident under control, while protecting the lives and safety of the officer or another, and as defined in Minn. Stat. §§ 609.06, 609.065, and 609.066.
3. This provision must not be construed, however, to require officers to first attempt using types and degrees of force which reasonably appear to be inadequate to accomplish the intended objective, see Use of Force Continuum (attached).
4. FAUMs must successfully complete an approved MN DOC course on use of force, deadly use of force, and use of firearms during phase 1 of the Field Training Officer (FTO) training, before being issued a firearm provided by the MN DOC.

### **B. Use of deadly force**

1. The use of deadly force by a FAUM in the line of duty is justified only when reasonably necessary:
  - a) To protect the peace officer or another from apparent death or great bodily harm;
  - b) To effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force; or
  - c) To effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person may cause death or great bodily harm if his/her apprehension is delayed.
2. Deadly force is not limited to the use of a firearm and FAUMs must use great care in all actions that create a substantial risk of causing death or great bodily harm.

3. Minn. Stat. § 609.066 expressly includes in the definition of deadly force, the intentional discharge of a firearm at a vehicle in which another person is believed to be. Consequently, such action is statutorily prohibited other than when deadly force is authorized.
4. FAUMs are discouraged from discharging a firearm at, or from, a moving vehicle. However, such action may be permissible in situations in which the use of deadly force is authorized and the FAUMs reasonably believe such action is necessary to successfully resolve the deadly force situation.
5. FAUMs must give some warning when reasonable and prudent before using deadly force.
6. Warning shots must not be fired by FAUMs.
7. Neck restraints or choke-holds may only be used in life-threatening situations or if the officer is justified in the use of deadly force.

C. Use of non-deadly force

1. When deadly force is not authorized or required, FAUMs must assess the situation in order to determine what level of force is required. FAUMs may respond with superior force, utilizing techniques and/or weapons to best de-escalate the situation and bring it under control quickly.
2. FAUMs are authorized to use department-approved non-deadly weapons and force techniques for the resolution of incidents as follows:
  - a) To protect themselves or another from physical harm; or
  - b) To restrain or subdue a person resisting apprehension/arrest; or
  - c) To bring an unlawful situation under effective control.
  - d) As defined in Minn. Stat. § 609.06
3. FAUMs may use chemical munitions or the X/2/X-26P/X-26 Taser® after a failure to comply with a verbal command takes place in situations governed by non-deadly force responses. Only department authorized chemical munitions and the X-2/X/26P/X-26 Taser are to be used.

D. Justifiable use of firearms and reporting

1. FAUMs may discharge their firearms only when deadly force is authorized by Minn. Stat. § 609.66.
2. FAUMs also have the following restrictions for firearm use:
  - a) Warning shots must not be fired.
  - b) Before discharging a firearm, FAUMs must identify themselves, and state their intention to shoot when feasible.
  - c) FAUMs may discharge their weapons during range practice or competitive sporting events.
  - d) FAUMs may discharge their weapon to destroy an animal that represents a threat to the safety of the FAUM or another.

- e) FAUMs must avoid firing weapons from, or at, a moving vehicle, except in circumstances permitting the use of deadly force and after careful consideration of the possibility of collateral injury or death.
  - f) FAUMs must complete a report and document use of force any time they remove their handgun from its holster and point the barrel in any direction other than in a controlled low ready safe direction.
  - g) FAUMS must complete a report and document use of force any time they use a long gun and the barrel of the gun is pointed in any other direction than in a controlled low ready safe direction.
3. Justification for the use of firearms must be limited to what reasonably appears to be the facts known or perceived by a FAUM at the time of a shooting.
4. Nothing in this directive or any other department directive must be construed as preventing a FAUM from drawing a firearm or being prepared to use a firearm in a threatening situation.
5. Notification and report writing
- a) Any FAUM who discharges a firearm whether on or off duty (not including range training), must notify
    - 1) The director of OSI/designee when it is tactically safe to do so; and
    - 2) A law enforcement supervisor from the jurisdiction in which the event took place.
    - 3) The director of OSI notifies
      - (a) The commissioner;
      - (b) Deputy commissioner; and
      - (c) The Minnesota Bureau of Criminal of Apprehension (BCA), who is responsible for the criminal investigation.
  - b) At any officer-involved shooting scene, the FAUM involved must maintain possession of the firearm until directed by the director of OSI as to when and to whom the firearm must be surrendered.
  - c) When a FAUM's use of force has resulted in death, the FAUM must be placed on a mandatory three-day paid administrative leave.
    - 1) The FAUM must remain on a desk assignment until all internal investigative requirements are completed and a mental health professional has approved the FAUM for full duty.
    - 2) The director of OSI determines when the FAUM is ready to return to full duty.
  - d) In the event a FAUM is involved in a critical incident, the director of OSI/designee may place the FAUM on a three-day mandatory administrative leave.
    - 1) Leave must be designated as such on the employee's timecard.
    - 2) The department must conduct an administrative investigation into the incident.
    - 3) A criminal investigation is the responsibility the BCA.
  - e) All firearm discharges that require notification must be reported on a fugitive apprehension unit augmented criminal investigation support system (ACISS) report

to include a written statement by the officer involved to the director of OSI. If the involved officer is unable to make an immediate statement, the statement must be completed by the immediate supervisor.

- f) Minn. Stat. § 626.553 requires the chief law enforcement officer (CLEO) to report to the State Commissioner of Public Safety whenever a peace officer discharges a firearm in the course of duty, other than for training purposes or when killing an animal that is sick, injured, or dangerous.
    - 1) Written notification of the incident must be filed within 30 days of the incident.
    - 2) The notification includes information concerning the reason for, and circumstances surrounding, discharge of the firearm.
    - 3) This contact must be documented in the internal affairs investigation.
  - g) Minn. Stat. § 626.53 subd. 2 requires that the CLEO forwards any information regarding a report of a wound caused by or arising from the discharge of a firearm to the Minnesota Department of Health.
    - 1) This statute is not limited to incidents involving peace officers.
    - 2) Due to the fugitive apprehension unit's limited scope of authority, any report of a wound not involving a FAUM must be directed to the law enforcement agency of jurisdiction where the injury occurred.
6. If the use of a firearm results in a serious injury or death to another, the FAUM is placed on a leave of absence with pay by the CLEO.
- a) This leave of absence with pay must not be interpreted to imply or indicate that the officer has acted improperly.
  - b) The FAUM must see a person who has knowledge and expertise in post-trauma stress reactions within 48 hours of the shooting.

E. Use of force/injury reporting

- 1. For purposes of this directive, injuries may be non-visible but suspected or claimed.
- 2. Force is defined as
  - a) Physical subduing, controlling, capturing, restraining, or otherwise physically managing any person when resistance is encountered during control tactics, handcuffing, arrest, or person searches;
  - b) The actual use of authorized weapons or other devices such as chemical agents, X-2/X-26P/X-26 Taser, firearms, flashlights, vehicles, etc.
- 3. Whenever a FAUM contact results in the actual or claimed use of force and/or injury; when persons in custody injure themselves or are otherwise injured; or when persons have (or claimed to have) injury prior to FAUM contact, the FAUM involved must
  - a) Complete the Fugitive Apprehension Report/Supplement;
  - b) Document any use of force;
  - c) Documents any injuries (non-visible or visible) claimed or prior injuries; and
  - d) Reports the incident immediately to the deputy director-fugitive apprehension unit.
- 4. If an incident results in medical attention being required, FAUMs must contact EMS and render first aid when it is safe to do so.

5. FAUMs must complete a fugitive apprehension unit incident/supplemental report in ACISS for all incidents in which actual force is used and an arrest is not made.
  - a) Include in the narrative portion of the ACISS incident report, a description of the force used, which FAUM applied the force, circumstances, weapons, extent of injuries to any parties involved, charges, and other relevant factors to include resistance given by suspect or defendant.
  - b) All FAUMs participating in the use of force must complete a report detailing their involvement.

**INTERNAL CONTROLS:**

- A. Reports are maintained in ACISS.
- B. Administrative leave is documented and retained in the payroll system.

**ACA STANDARDS:** 4-4203

**REFERENCES:** Minn. Stat. §§ [243.52](#); [609.06](#); [609.065](#) and [609.066](#)  
[Division Directive 107.012 “Fugitive Apprehension Unit Use of X-26 Taser”](#)

**REPLACES:** Division Directive 107.022, “Office of Special Investigations – Use of Force – Fugitive Apprehension Unit,” 5/2/17. All memos or other communications whether verbal, written or transmitted by electronic means regarding this topic.

**ATTACHMENT:** [Use of Force Continuum](#) (107.022B)  
[OSI – Supervisor Critical Incident Checklist](#) (107.022C)

Deputy Commissioner, Community Services  
Deputy Commissioner, Facility Services  
Assistant Commissioner, Facility Services  
Assistant Commissioner, Operations Support