DEPARTMENT OF CORRECTIONS

Policy Number:	**107.022**
Title:	**Office of Special Investigations – Use of Force – Fugitive Apprehension**
Effective Date:	**9/16/24**

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:

Authorized device – a device an officer has received permission from the agency to carry and use in the discharge of that officer's duties, and for which the officer has:

1. Obtained training in the technical, mechanical and physical aspects of the device; and
2. Developed a knowledge and understanding of the law, rules and regulations regarding the use of such a device.

Bodily harm – physical pain or injury.

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.

Chief law enforcement officer – for the Minnesota Department of Corrections (MN DOC), the director of the office of special investigations (OSI) who is a full-time licensed peace officer serving in the classified services and responsible for the management of the MN DOC fugitive apprehension unit (FAU).

Choke hold – a method by which a person applies sufficient pressure to a person to make breathing difficult or impossible and includes such examples as any pressure to the neck, throat, or windpipe that may prevent or hinder breathing or reduce intake of air. Choke hold also means applying pressure to a person's neck on either side of the windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the carotid arteries.

Critical incident – any incident that has caused or is likely to have caused serious bodily harm or death to any person.

Deadly force – force which the actor uses with the purpose of causing, or which the actor should know creates, a substantial risk of 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 their apprehension is delayed.

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

Fugitive apprehension unit member (FAUM) – a licensed peace officer at the Minnesota Department of Corrections (MN DOC), office of special investigations (OSI).

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.

Leg Restraints – devices for limiting movement of legs, used to prevent the infliction of harm to self or others.

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 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.

Taser 7 – A two-shot conducted energy weapon (CEW) with rapid arc and adaptive cross connect technology that has the capability to immediately follow-up with an additional cartridge deployment without reloading. This device has cartridges with the wire spooled into the body of the dart with stand-off (3.5 degrees) and close quarters (12 degrees) distance cartridges.

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. Fugitive apprehension unit members (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 an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary:
   a) To protect the peace officer or another from death or great bodily harm, provided that the threat:
      (1) Can be articulated with specificity;
      (2) Is reasonably likely to occur absent action by the law enforcement officer; and
      (3) Must be addressed through the use of deadly force without unreasonable delay; or

   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 and the officer reasonably believes that the person will cause death or great bodily harm to another person under the threat criteria in procedure B.1.a) sections (1) to (3), above, unless the person is immediately apprehended.

   c) A peace officer must not use deadly force against a person based on the danger the person poses to self if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that the person does not pose a threat of death or great bodily harm to the peace officer or to another under the threat criteria in procedure B.1.a) sections (1) to (3), above.

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. In cases where deadly force is authorized, less than lethal measures must be considered first by the officer.

8. 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 use de-escalation techniques in 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; and
   d) As defined in Minn. Stat. § 609.06.

3. FAUMs may use chemical munitions or the X-2/X-26P/X-26/Taser 7 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 7 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 weapons to destroy an animal that represents a threat to the safety of the FAUM or another.

e) 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.

f) 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. Critical incidents can occur during a discharge of a firearm. Any FAUM present during a critical incident should be provided services according to Policy 103.090, "Critical Incident Stress Management." The on-scene supervisor must also complete the OSI – Supervisor Critical Incident Checklist (attached).

6. 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.

   b) The director of OSI notifies
      (1) The commissioner;
      (2) Deputy commissioners; and
      (3) The Minnesota Bureau of Criminal of Apprehension (BCA), who is responsible for the criminal investigation.

   c) 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.

   d) 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.

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 Minnesota 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.

7. 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. <u>Use of force/injury reporting</u>
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; or

   b) The actual use of authorized weapons or other devices such as chemical agents, X-2/X-26P/X-26/Taser 7 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) Document any injuries (non-visible or visible) claimed or prior injuries; and
d) Report the incident immediately to the deputy director-fugitive apprehension unit.

4. If an incident results in medical attention being required, FAUMs must contact emergency medical services (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 including resistance given by the suspect or defendant.

   b) All FAUMs participating in the use of force must complete a report detailing their involvement.

F. Use of force/Justified use of leg restraint devices

1. Leg restraints may be used to restrain the legs of a violent or potentially violent person when it is necessary and reasonable to do so during the course of detention, arrest, or transportation. Only restraint devices authorized to be trained by a MN DOC use of force instructor may be utilized.

2. In determining whether to use the leg restraint, officers must consider:
   a) Whether the officer or others could be exposed to injury due to the assaultive or resistant behavior of a suspect;

   b) Whether it is reasonably necessary to protect the suspect from their own actions (for example, hitting their head against the interior of the vehicle unit, running away from the arresting officer while handcuffed, kicking at objects or officers); and

   c) Whether it is reasonably necessary to avoid damage to property (for example, kicking at windows of the vehicle unit).

3. When applying leg restraints, the following guidelines must be followed:
   a) Once applied, absent a medical or other emergency, restraints should remain in place until the officer arrives at the jail or other facility or the person no longer reasonably appears to pose a threat.

   b) While outside of a secure area or vehicle, the individual required to be placed in leg restraints must be placed in a recovery position by officers once the restraint is applied.

   c) Once secured in a vehicle, the person must be placed in a seated or upright position, secured with a seat belt, and must not be placed on their stomach while in a vehicle, as this could reduce the person's ability to breathe.

d) The restrained person must be continually monitored by an officer while in the leg restraint. The officer must ensure that the person does not roll onto and remain on their stomach.

e) The officer must look for signs of labored breathing and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.

G. Duty to intercede

Regardless of tenure, rank, or jurisdictional authority an officer must intercede when:

1. Present and observing another officer using force in violation of section 609.066, subdivision 2, or otherwise beyond that which is objectively reasonable under the circumstances; and

2. Physically or verbally able to do so.

H. Duty to report

An officer who observes another officer use force that exceeds the degree of force permitted by law has the duty to report the incident in writing within 24 hours to the chief law enforcement officer of the agency that employs the reporting officer.

INTERNAL CONTROLS:

A. Reports are maintained in ACISS.

B. Administrative leave is documented and retained in the payroll system.

REFERENCES: Minn. Stat. §§ 243.52; 609.06; 609.065 and 609.066
Policy 107.012 "Fugitive Apprehension Unit Use of X-26P/X-2 Taser"

REPLACES: Policy 107.022, "Office of Special Investigations – Use of Force – Fugitive Apprehension," 5/1/18.
All memos or other communications whether verbal, written or transmitted by electronic means regarding this topic.

ATTACHMENT: Use of Force Continuum (107.022B) (public pdf 107.022B)

Deputy Commissioner, Chief of Staff
Deputy Commissioner, Client Services and Supports
Assistant Commissioner, Agency Services and Supports
Assistant Commissioner, Facilities
Assistant Commissioner, Facilities
Assistant Commissioner, Community Services and Reentry
Assistant Commissioner, Health, Recovery, and Programming