USE OF FORCE

STANDARD NO(S): NYSLEAP: Chapters 20,21,25 ; 32.3-4
25.1,25.8,33.1-3,35.1,40.2,41.3
NYSSA #: 20,21,23,34,37,43, 73-80,90
NYSSACS#: 4-5,9-10,14,16-17

DATE: October 19, 2009
REVISED: 06/18/2010
REVISED: 01/12/2011
REVISED: 02/22/2011
REVISED: 02/18/2015
REVISED: 09/27/2019
REVISED: 12/13/2021
REVISED: 03/28/2022

REFER TO: John Cleere
Donald Borland

I. OBJECTIVE:

To establish guidelines affecting the use of force by members of the Correction and Law Enforcement Divisions of the SCSO; the authority for such action, its legal limitations, and the necessity for determining what level of force is appropriate in each and every instance.

PREAMBLE TO USE OF FORCE - The use of force by members of law enforcement is a matter of critical concern both to the public and law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, law enforcement officers are sometimes called upon to use force in the performance of their duties. It is also recognized that members of law enforcement derive their authority from the public and therefore must be ever mindful that they are not only the guardians, but also the servants of the public.

II. POLICY:

The SCSO's guiding value when using force shall be reverence for human life. When warranted, SCSO members may objectively use reasonable force to carry out their duties. Officers who use unreasonable force degrade the confidence of the community we serve, expose the SCSO and fellow officers to legal and physical hazards and violate the rights of individuals upon whom unreasonable force is used. Conversely, SCSO members have a Duty to Act and who fail to use force when warranted may endanger themselves, the community and fellow officers.

Add → The SCSO will conspicuously post the agency's current Use of Force Policy on the agency's website.

III. PROCEDURES:

A. DEFINITIONS - For the purpose of this directive the following definitions apply:

1. **Objectively Reasonable -** The legal standard used to determine the lawfulness of a use of force is the Fourth Amendment to the United States Constitution. (See Graham v. Connor, 490 U.S. 386 (1989). Graham states in part, "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application." The force must be reasonable under the circumstances known to the officer at the time the force was used. Therefore, the SCSO examines all uses of force from an objective standard, rather than a subjective standard.

2. **Dangerous instrument -** means any instrument, article or substance, including a "vehicle" as that term is defined below, which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.

3. **Deadly physical force -** means physical force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.

4. **Deadly weapon -** means any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, gravity knife, pilum ballistic knife, dagger, billy, blackjack, or metal knuckles.

5. **Correctional Facility -** means any place used for the confinement, pursuant to an order of a court, of a person charged with or convicted of an offense.

6. **Firearm -** means (a) any pistol or revolver; or (b) a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than twenty-six inches; or (c) a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

7. **Reasonable belief that a person has committed an offense -** means a reasonable belief in facts or circumstances which, if true, would constitute an offense.

8. **Serious physical injury -** means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or loss or impairment of the function of any bodily organ.

9. **Vehicle -** means a motor vehicle, trailer or semi- trailer as defined in the vehicle and traffic law, any snowmobile as defined in the parks and recreation law, any aircraft, or any vessel equipped for the propulsion by mechanical means or by sail.

It is the responsibility of each member to be thoroughly familiar with the conduct described in Article 35, and with the definitions pertinent thereto which appear in Articles 10, 35 and 265 of the Penal Law, and with SCSO policy as stated.

B. Use of Force:

1. In general terms, force is authorized to be used when reasonably believed to be necessary to effect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of one's self or another.

2. Under the 4th amendment a police officer may
   e. The risk or apparent attempt by the subject to escape;

use only such force as is "objectively reasonable " under the circumstances. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene.

3. **Factors Used to Determine Reasonableness -** The SCSO examines reasonableness using Graham and from the articulated facts from the perspective of a Seneca County Sheriff's Deputy with similar training and experience placed in generally the same set of circumstances. In determining the appropriate level of force, SCSO members shall evaluate each situation in light of the facts and circumstances of each particular case. Those factors may include, but are not limited to:

   a. The seriousness of the crime or suspected offense;

   b. The level of threat or resistance presented by the subject;

   c. Whether the subject was posing an imminent threat to officers or a danger to the community;

   d. The potential for injury to citizens, officers or subjects;

   f. The conduct of the subject being confronted (as reasonably perceived by the officer at the time);

   g. The time available to an officer to make a decision;

   h. The availability of other resources;

   i. The proximity or access of weapons to the subject;

   j. Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus subjects; and

   k. The environmental factors and/or other exigent circumstances.

C. Duty to intervene:

1. Any officer present and observing another officer using force that he/she reasonably believes to be clearly beyond that which is objectively reasonable under the cirumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.

2. An officer who observes another officer use force that exceeds the degree of force as described above in sub A of this section should promptly report these observations to a supervisor.

IV. PHYSICAL FORCE -

A. A member of the SCSO, while effecting or attempting to effect an arrest, or preventing or attempting to prevent the escape from custody of a person who is reasonably believed to have committed an offense, may use physical force when and to the extent it is reasonably believed that such action is necessary to effect the arrest, prevent the escape, or to defend oneself or a third party from what one reasonably believes to be the use or imminent use of physical force.

B. A member who is charged with the duty of guarding one or more prisoners in the Detention Facility as that term is defined in the New York State Penal Law, Section 205.00, or while in transit to or from the correctional facility, may use physical force when and to the extent necessary to prevent the escape of a prisoner from the correctional facility or from custody while in transit thereto or there from.

C. A member whose assigned duties include assuring the safety and security of the Seneca County Correctional Facility may, in order to maintain order and discipline, use such physical force as is authorized by New York State Correction Law, Section 137(2) which states "The commissioner shall provide for such measures as he may deem necessary or appropriate for the safety, security and control of correctional facilities and the maintenance of order therein."

D. Concerning force other than deadly force, members will use only that degree of force necessary to the performance of their lawful duties. Such use of force must be within the limits set out in the Penal Law and must be consistent with training given or authorized by the SCSO.

NOTE - In accordance with Section 519 of the "Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990," members are prohibited from using excessive force against any individuals engaged in nonviolent civil rights demonstrations.

V. DEADLY PHYSICAL FORCE –

A. The United States Supreme Court in Tennessee v. Garner (471 U.S. 1 (1985) restricts an officer's use of deadly force – In delivering the opinion for the Supreme Court Of The

United States, Justice White opined, "We conclude that such force may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."

B. Pursuant to Section 35.30 of the New York State Penal Law, a member may use deadly physical force, when he/she believes that the offense committed by such person was;

1. a felony, or an attempt to commit a felony involving the use or attempted use or threatened imminent use of physical force against a person, or;

2. kidnapping, arson, escape in the first degree, burglary in the first degree, or any attempt to commit such crime, or;

3. the offense committed or attempted by such person was a felony and that, in the course of resisting arrest therefore or attempting to escape from custody, such person is armed with a firearm or deadly weapon, or;

4. regardless of the particular offense which is the subject of the arrest or attempted escape, the use of deadly physical force is necessary to defend the police officer or peace officer or another person from what the member reasonably believes to be the use or imminent use of deadly physical force.

C. The use of deadly physical force against a "fleeing felon" will be in accordance with the laws, directives and training governing such use of force. The "fleeing felon" will not be presumed to be an immediate danger to the member or a third person unless he poses a clear threat to the life of the member or of a third person; and, that threat demonstrates a wanton disregard for human life.

D. A "fleeing felon" in a vehicle traveling away from a member does not constitute an imminent danger to that member; therefore, the use of deadly physical force is not justified. A member of the SCSO is prohibited from discharging a firearm from or at a moving vehicle unless it is reasonably believed that the occupants of the vehicle being fired upon are using or are about to use deadly physical force against the member or another person.

E. Absent these conditions, a member is not justified in using deadly physical force against a "fleeing felon" and, therefore, such use of force is prohibited.

F. The fact that a member of the SCSO is justified in using deadly physical force under the circumstances described above does not provide justification for reckless conduct.

G. Chokeholds and Obstruction of Breathing or Blood Circulation:

1. Any application of pressure to the throat, windpipe, neck, or blocking the mouth or nose of a person in a manner that may hinder breathing, reduce intake of air or obstruct blood circulation, is prohibited unless deadly physical force is authorized.

VI. EXHIBITING & DRAWING FIREARMS -

A. A member shall not draw a firearm in any place, except in the line of duty or for inspection by a superior officer.

B. Nothing in this policy shall prohibit the drawing or exhibiting of a firearm in the line of duty when a member reasonably believes it necessary for his/her own safety or for the safety of others. Members may also draw and be ready to use a firearm anytime they have reasonable cause to believe that they or another person may be in immediate danger of death or serious physical injury.

C. Any member drawing a weapon in a public place must be able to articulate the reasons for doing so consistent with this policy. Firearms shall not be displayed without justifiable cause.

D. When a member determines that the danger is eliminated, the weapon will be holstered or in the case of a shotgun or rifle the shoulder weapon will be held in a safe condition and position. If the person is not arrested, the member will tell the individual the reason the weapon was pointed at him/her if the circumstances permit.

VII. MEMBER MEDICAL REQUIREMENTS IN USE OF FORCE INCIDENT -

A. Whenever any member of the SCSO uses force in discharging one's duties, the member will take the following action:

1. Evaluate the need for medical attention or treatment for the subject and, if necessary;

2. Arrange for such attention or treatment when:

a. subject has a visible or apparent injury,

b. subject complains of an injury, discomfort or requests medical attention,

c. a chemical agent was used, or,

d. the Taser was deployed.

B. In the event medical attention is refused by a subject who is considered to be in need of such medical assistance, the member will summon medical assistance. The subject can either refuse or accept such medical assistance in the presence of such medical personnel.

VIII. MEMBER REPORTING REQUIREMENTS –

A. Officers shall prepare and submit a Use of Force report when:

1. Physical resistance is encountered – and the officer has to physically respond.

2. Any act such as striking, punching, kicking or pressure point , arm /wrist / etc.

3. Any injury occurs or a subject complains of an injury or death occurs as the result of

physical force.

4. The use of force involves the use of a taser , impact weapon or chemical spray.

5. The force was a display of a taser / firearm / or other weapon in the direction of another person to control him.

6. The force involves the discharge of a firearm whether or not a person was struck.

7. If a member is directed to do so by a supervisor.

B. The member will as soon as practical, notify the on-duty Supervisor that a "Use of Force" Incident occurred. If the supervisor is not available the Division lieutenant shall be notified. In the case of off-duty incidents, the member will notify Division duty sergeant.

C. The member shall attempt to locate and identify any witnesses to the incident and obtain or cause to be obtained their signed sworn statements where possible.

D. Corrections Division members involved in a "Use of Force" incident will prepare and submit to the on-duty supervisor an "Incident Report" (SCSO-CF-009) and a "Subject Resistance Report" (SCSO-LE-001) containing the details of one's own activity by the end of the member's tour of duty. Other members involved in a use of force incident, will complete an "Incident Report" containing the details of their respective actions and activity concerning the use of force incident and will submit the completed report(s) to the on-duty supervisor by the end of their tour of duty.

E. Law Enforcement Division members involved in a "Use of Force" incident will prepare and submit to the on-duty supervisor a "Subject Resistance Report" (SCSO-LE-001) and prepare a SPILLMAN entry containing the details of one's own activity by the end of the member's tour of duty. Other members involved in any such incident shall each prepare a SPILLMAN Supplemental Report containing the details of their respective action and activity concerning the use of force incident and will submit the completed report(s) to the on-duty supervisor by the end of their tour of duty.

F. In the event that any member involved in a use of force incident is unable due to injury or incapacitation to complete the required reports the member may be assisted in the completion of the required reports by a supervisor.

IX. LAW ENFORCEMENT DIVISION – SUPERVISORY RESPONSIBILITY-

A. Upon first learning that a use of force incident has occurred, the on-duty supervising sergeant on the road will take the following action:

1. Proceed immediately to the scene of the incident.

2. Provide necessary assistance to members involved including arrangements for medical attention or treatment, bearing in mind that any injuries to members must be fully documented.

3. Ensure that any injuries to subject(s) are evaluated and receive appropriate medical attention as described in VII(B) above.

4. Determine if the services of an investigator are required and to what extent, e.g. photographs, measurements and diagrams and cause such notification to be made to the CID Division Lieutenant. In cases of an injury or complaint of pain, photographs are required to be taken utilizing the road patrol sergeant's camera.

   NOTE - A photograph showing no injury may be as important as one in which an injury is clearly depicted.

5. Cause Administrative Notifications to be made pursuant to "**Administrative Notifications**", this manual.

6. Ensure that a thorough investigation is conducted and that all reports, including a "Subject Resistance Report" (SCSO-LE-001) are prepared and submitted in accordance with this directive. In the event that a member is unable to complete a report due to injuries, the sergeant will act on the member's behalf, submitting the required reports along with the Sergeant's own report through the chain of command.

7. The complete file consisting of, but not limited to, reports, statements, photographs and attachments shall be forwarded to the Chief Deputy's for review without delay. (See "**Professional Conduct**") this manual.

X. CORRECTIONS DIVISION – SUPERVISORY RESPONSIBILITY-

A. Upon first learning that a use of force incident has occurred, or if a "code" is called where a use of force is used the supervising sergeant on duty in the Correctional Facility will take the following action:

   1. Proceed immediately to the scene of the incident with all other available staff.

   2. Provide necessary assistance to members involved including arrangements for medical attention or treatment, bearing in mind that any injuries to members must be fully documented.

   3. Ensure that any injuries to subject(s) are evaluated by the facility nurse if on duty. In the event that the facility nurse is not on duty, the Supervisor will follow the guidelines set forth in Section VII(B) above.

   4. Determine if the services of a CID Investigator are required and cause such notification to be made the CID Division Lieutenant. In cases of an injury or complaint of pain, photographs are required to be taken utilizing the Corrections Division camera

NOTE - A photograph showing no injury may be as important as one in which an injury is clearly depicted.

5. **Cause Administrative Notifications to be made pursuant to "Administrative Notifications", this manual.**

6. **Ensure that a thorough investigation is conducted and that all reports, including an "Incident Report" (SCSO-CF-009) and "Subject Resistance Report" (SCSO-LE-001) are prepared and submitted in accordance with this directive. In the event that a member is unable to complete a report due to injuries, the sergeant will act on the member's behalf, submitting the reports along with the Sergeant's own report or comments through the chain of command.**

7 **The complete file consisting of, but not limited to, all reports, statements, photographs and if such case demands, a Reportable Incident Report, pursuant to Section 7022 of the NYS Minimum Standards, Commission of Correction and attachments will be forwarded to the Chief Administrative Officer's office for review without delay. The Chief Administrative Officer will ensure reports required to be filed with the NYS Commission of Correction in connection with the incident are in fact filed and will forward a complete file to the Chief Deputy for review without delay. (See "Professional Conduct Unit") this manual.**

XI. DISCHARGING A FIREARM -

A. **Any member who discharges a firearm other than for training or recreational purposes, whether intentionally or accidentally, shall immediately notify the on duty Division supervisor. The notification will include information concerning the requirement for** such action, how many times the firearm was discharged, and whether death or injury resulted to any person or animal.

B. Also included should be an account of any resulting property damage whether it be public or private. The member discharging a firearm may be required to surrender it along with any spent cartridges for later examination.

C. The firing of warning shots by members of the SCSO is strictly prohibited.

D. Members and Division Supervisors will comply with the Member Reporting and Division Supervisory Responsibility sections of this directive in the event of a discharge of a firearm.

XII. DEADLY PHYSICAL FORCE INCIDENTS-

All police or peace officer related deaths, including Corrections Incidents, will be reported by the ranking on duty supervisor to the Office of Special Investigation—(O.S.I), of the New York State Attorney General's Office as soon as practable. All efforts to preserve the

scene for the responding O.S.I. personnel will be made. Officers will assist personnel of the O.S.I. as directed. The above applies to off duty incidents as well.

A. The following additional procedures will be followed as applicable in all deadly physical force incidents as described below:

1. Officer-involved shooting incidents regardless of whether any person is injured or killed, including every intentional discharge of a firearm except those done for the purpose of destroying an animal in accordance with this Order, or done for authorized Department training;

2. Any accidental discharge of a firearm that results in injury to any person or damage to any property or premises; or

3. Any police-involved death or serious physical injury, including cases in which a subject is killed or seriously injured by the police, dies or sustains serious physical injury in police custody, or dies or receives serious physical injury fleeing from the police.

B. These procedures will commence as soon as feasible once the situation has been brought under sufficient control to ensure the safety of all persons involved.

C. These procedures will be followed in all on-duty deadly physical force incidents and all off-duty deadly physical force incidents in which the officer was acting pursuant to his or her authority as a SCSO Officer.

D. In the event that a SCSO Officer is involved in a shooting or other deadly physical force incident outside Seneca County, these procedures will be followed to the greatest extent feasible in coordination and cooperation with the responsible investigating jurisdiction.

E.. First Responder Procedures:

1. Officers will notify the 911 Center of the situation and request any necessary emergency medical assistance.

2. Officers will obtain and broadcast the description of any suspect(s) who are not yet in custody.

3. Any uninjured suspect(s) will be taken into custody and removed to the LEC as soon as possible. Injured suspect(s) will be transported to the hospital under the guard of an officer. The officer should be alert to secure any items of potential evidentiary value and to note any statements made by the suspect.

   a. **Note:** The officer(s) who have used deadly physical force should not be assigned to transport or guard the person(s) against whom such force has been used, unless no other officers are available. In such cases, the Supervisor should

relieve the involved officer(s) from transport or guard duty as soon as other officers are available.

4. The CID Lt if available, will respond to the scene as quickly as possible and personally assume command of the situation. If unavailable, the duty Supervisor will assume command, assess the situation and request such other assistance and personnel as are required under the particular circumstances. The Supervisor will ensure that all officers and other persons receive any needed medical assistance.

5. Officers will secure the scene as quickly and effectively as possible consistent with safety needs and the need for medical treatment of any victims.

6. If feasible, officers will photograph the scene before anything is moved.

7. Officers will attempt to identify and secure any witnesses to the incident. As soon as possible, the witnesses will be separated and not allowed to discuss the incident.

8. In the event any officer(s) or other person(s) are injured and are transported for medical treatment, officers will be assigned to accompany them to the hospital. If officers are not immediately available the Supervisor will make arrangements to secure additional officers for this duty as soon as possible.

    a. In the event that officers are not immediately available to accompany injured persons to the hospital the Supervisor will ensure that ambulance personnel, EMTs, and other medical personnel are interviewed regarding any statements overheard or other observations of potential evidentiary value.

9. The Supervisor will initiate and coordinate a preliminary investigation of the incident following directives given by the contacted O.S.I. member.

10. The Supervisor will brief other Supervisory Officers of the situation.

11. The Supervisor will ensure that all officers with involvement or knowledge of the incident are identified and that the necessary reports are completed.

12. If appropriate under the circumstances the Supervisor will commence to establish a Command Post.

F. Notification Procedures:

1. As soon as possible the following persons in addition to the O.S.I. will be notified of a deadly physical force incident:

    a. Sheriff / Undersheriff

    b. Chief Deputy

    c. Lieutenant/ Road

d. Lieutenant/CID

e. PBA Union President

2. Upon being advised of the circumstances the CID Lt will arrange for the call-in of such CID personnel as deemed necessary.

3. Depending upon the circumstances the Ranking Officer may also notify such other persons as deemed appropriate. These may include:

a. District Attorney;

b. Coroner

4. Upon being notified of the circumstances of the incident the Sheriff, or in his absence the Sheriff's designee, may also notify, or arrange for the notification of, other persons as appropriate, including:

a. County Manager;

b. County insurance (risk management)
c. County Attorney

G. Evidence Procedure:

1. Responding Officers and supervisors will take necessary steps to secure and protect the scene of the incident and all potential items of evidence. The area should be sealed off and civilians and non-essential personnel removed. This should be done as soon as possible.

a. Officers should bear in mind that it might be necessary to secure areas beyond the immediate scene. For example, if the incident involved a moving exchange of gunfire, officers should attempt to secure the entire route of the incident.

2. Officers should not touch or move firearms or other weapons involved unless it is necessary to do so for safety reasons or to prevent their removal by unauthorized persons.

3. The Supervisor will ensure that the instrument of deadly physical force (e.g., officer's firearm), all ammunition, all related leather goods, and other uniform or equipment items that may constitute evidence, are secured by an Evidence Technician if available or by the supervisor who will turn the evidence over to a technician as soon as practicable.

Note: Any weapon or other equipment taken from an officer as evidence will be replaced as soon as possible unless otherwise ordered by the Sheriff.

4. Upon arrival, CID personnel will assess the situation and assume responsibility for further processing of the scene. If possible all evidence will remain secured until

O.S.I. arrival.

5 All items of evidence associated with a deadly physical force incident must be held as directed by the O.S.I.

H. Procedures for Officers Involved in Deadly Physical Force Incidents:

1. Officer(s) involved in the use of deadly physical force will remain at or near the scene pending the arrival of a supervisor, unless injured, further pursuit of suspects is required, or removal from the scene is necessary for the officer(s)' safety.

2. Involved officer(s) will describe to a supervisor the basic facts and circumstances of the incident.

3. Another officer should be assigned to accompany the involved officer for support and to attend to his or her immediate needs.

4. While near the scene the officer should be afforded privacy to the greatest extent possible under the circumstances. The involved officer(s) shall remain near the scene so long as necessary to relate the basic facts and circumstances necessary to guide the preliminary stages of the investigation, the securing of the scene, and the location of witnesses and evidence.

5. The supervisor will ensure that involved officer(s) are provided appropriate assistance in contacting family members or other support persons.

6. When relieved by a supervisor, return to the Law Enforcement Center and prepare a written report of the incident. The involved officer must be accompanied by a Supervisor or senior officer.

7. In the event the involved officer(s) are injured, the following procedures will be followed:

   a. Injured officers will be transported to the hospital for treatment.
   Note: In the event both injured suspect(s) and injured officer(s) are taken to the same hospital, the Supervisor must be alert to the possibility that family members and friends of both parties may be in close proximity, leading to the possibility of a confrontation. The Supervisor will ensure that sufficient police personnel are present to maintain order and security of all persons.

   b. The Supervisor will ensure that the injured officer(s) receives any necessary assistance in contacting family members or other support persons and in facilitating arrangements for them to come to the medical facility.

   c. The Supervisor will ensure that the officer's firearm and any other equipment of possible evidentiary value is secured as soon as feasible.

8. In the event an injured officer in a deadly physical force incident is admitted to a hospital, at least one officer will be assigned guard detail during the officer's stay to

ensure the safety and security of the injured officer. This guard detail will continue for the duration of the officer's stay in the hospital unless the Sheriff or the Sheriff's designee authorizes its discontinuation.

9. Confidential trauma counseling will be provided through the EAP Program, in all cases of use of deadly physical force as follows:

   a. On-scene, at the LEC, and/or at the Medical facility as soon as possible;

   b. Immediate follow-up;

   c. Six-month follow-up;

   d. One-year follow-up;

10. Other counseling will be provided as requested by the officer or directed by the Sheriff.

11. The Department will also make trauma debriefing available to the family members of involved officers.

XIII. INVESTIGATION OF DEADLY FORCE-

A. The CID will be responsible for follow-up investigation of the deadly physical force incidents under the overall direction of the Sheriff and his designee. This investigation will comply with SCSO policies and procedures. In the event that the incident involves A police or peace officer involved death the O.S.I. will assume control of the over all investigation while the Sheriff's CID will assume control of the internal investigation.

B. The assistance of other law enforcement agencies may be requested by the Sheriff, or the.

C. Involved officer(s) will be given an opportunity to consult with legal counsel and/or Union representatives prior to being subjected to formal interviews and statements.

a. The involved officer(s) will be kept apprised of the status of the investigation to the extent that it does not compromise the investigation or O.S.I. directives. The District Attorney will be consulted in lieu of the O.S.I. if the Deadly Force Incident does not involve death of a citizen(s).

D. All deadly physical force incidents not involving death will be referred to the District Attorney's Office for review and such further action as deemed appropriate by the District Attorney, (e.g., presentation to Grand Sheriffs designee, in cases where such assistance is deemed necessary or appropriate Jury). This will be a standard procedure. Review by the District Attorney and any presentation to the Grand Jury will not imply misconduct by the involved officer(s).

E. In the event another agency initiates an investigation of the incident, (e.g., the Federal

Bureau of Investigation), commences a civil rights investigation, the following procedures will be followed:

1. The Sheriff will determine what information will be made available to the other agency and set up a procedure to forward information to the other agency and to coordinate the investigations. No employee will share information with the other agency unless pursuant to such a procedure or otherwise authorized by the Sheriff.

2. The Sheriff will designate an officer to serve as a liaison to facilitate communication and coordination with the other agency.

F. The CID Lt will conduct an internal investigation of all deadly physical force incidents and accidental discharge of firearms.

1. If the CID Lt is either involved in, or witnesses the incident, the Sheriff will designate a supervisory officer to conduct the internal investigation.

G. The CID Lt shall review the incident to ensure that the Use of Force was necessary, reasonable and justified and shall determine whether the Use of Force was:

1. Within department policy and applicable laws; or

2. Out of department policy and/or in violation of applicable laws.

H. The CID Lt shall report his findings along with any recommendations to the Sheriff.

I. When an officer is involved in a shooting, or other use of force incident that results in serious physical injury or death, the Sheriff or his designee will assign that officer to temporary administrative leave/duty. The temporary assignment to administrative leave/duties does not imply any misconduct on the part of the officer. Such assignment is standard **procedure.**

J. The administrative assignment will not place the Officer in a position where the potential for resistance incidents may occur due to the nature of the assignment.

K. The work schedule of the administrative duty assignment will be set by the Sheriff consistent with the best interests of the Department and the officer.

L. Officers assigned to administrative duty will:

1. Refrain from routine exercise of police arrest and intervention duties except to the extent that such action is necessary to protect the officer or another person;

2. Refrain from any public discussion of the administrative assignment or circumstances related to the incident.

3. Retain all rights, privileges, and employee benefits; and

4. Retain responsibility for compliance with all laws, Department Rules and

Regulations, General Orders, policies and procedures, and directives governing Department personnel that are not specifically exempted by this order.

M. The administrative duty assignment will continue at least until the completion of the internal investigation and final Grand Jury action if any, unless the administrative assignment is terminated sooner by the Sheriff. It may be continued longer on a case-by-case basis by the Sheriff. Any such extension of the administrative duty assignment will not imply any misconduct on the part of the involved officer.

N. Officers assigned to administrative leave shall remain available at all times for official department interviews and statements, and shall be recalled to duty at the discretion of the Sheriff.

O. The Sheriff or his designee will insure that any appropriate, mandatory notifications are made to the New York State Attorney General's Office Office of Special Investigation.

XIV. USE OF FORCE REVIEW -

A. Upon receipt of a of a "Subject Resistance Report", or "Citizen Comment Form" indicating unlawful or excessive use of force by any member or employee either through the use of a weapon or other means, the Chief Deputy will review all such reports for policy compliance. If after a review by the Chief Deputy determines that further investigation is warranted, then the Undersheriff and Chief Deputy shall assign the necessary and appropriate personnel to review and investigate the incident (See "**Professional Conduct Unit**"), this manual. Any complaint received by the SCSO by way of a "Citizen Comment Form" or any other means alleging excessive force shall be investigated to the fullest extent

B. Upon review and investigation of a use of force incident, it is required that all intermediate reporting and reviewing personnel insure that a report of their findings be submitted to the Sheriff as soon as possible after the incident.

C. In an effort to protect the community's interest when a member may have exceeded the scope of authority in the use of deadly physical force, and, conversely, to shield a member from possible confrontation with the community when acting within the scope of authority, the member may be reassigned from line-duty assignment to an administrative assignment pending an administrative review.

D. Such review may include a Grand Jury investigation or any other process needed to insure a full investigation of the facts and circumstances of the incident. If deemed necessary, other members who may have been involved, however indirectly, may also be reassigned. Following such reassignment under this provision, the return to line-duty assignment shall be only with the express permission of the Sheriff.

E. In the event a member is reassigned from duty under any of the above provisions, consideration shall be given to providing stress counseling in order to assist the member in coping with the critical or traumatic incident. Seneca County has contracted with a professional organization to provide this service. The Sheriff or his designee may require mandatory attendance on the part of the member for such stress counseling.

F. For reporting purposes, Executive Law 837-t requires each police department, county sheriff, and the state police to report any occurrence in which a police officer or peace officer employs use of force as listed below:

1. When an officer engages in conduct which results in the death or serious bodily injury to another person. Serious bodily injury is defined as bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

2. When one of the following is initiated by an officer:

a. Brandishes, uses or discharges a firearm at or in the direction of another person;

b. Uses a chokehold or similar restraint that applies pressure to the throat or windpipe of a person in amanner that may hinder breathing or reduce intake of air.

c. Displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas;

d. Brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy;

e. Brandishes, uses or deploys an electronic control weapon, including, but not limited to an electronic stun gun, flash bomb, or long range acoustic device.

3. The Sheriff or his designee will submit such reports to the Department of Criminal Justice Services.

XV. PROHIBITED USES OF FORCE –

A. In addition to previously stated restrictions force shall not be used by an officer for the following reasons:

1. To extract an item from the anus or vagina of a subject, without a warrant, except where exigent circumstances are present;

2. To coerce a confession from a subject in custody;

3. To obtain blood, saliva, urine, cells, other bodily fluid, or cells, from an individual for the purposes of scientific testing in lieu of a Court Order where required;

4. Against persons who are handcuffed or otherwise restrained unless it is used to prevent injury, escape or overcome active or passive resistance posed by the subject.