



STATE OF NEW HAMPSHIRE
DEPARTMENT OF SAFETY
DIVISION OF STATE POLICE
PROFESSIONAL STANDARDS OF CONDUCT



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CHAPTER 1-C
REVIEW OF USE OF FORCE

1-C.1.0 Discussion

It is the policy of the Division that all use of force resulting in death or serious **bodily injury**, as defined in RSA 625:11, VI, and any reportable discharge (as outlined in 1-C.2.1) of a firearm other than authorized testing in a properly controlled environment by a Division Armorer or forensic laboratory employee or ordinary discharge at a range during an authorized training program, shall be investigated as determined by the Director.¹

1-C.1.1 Type of Investigation

An administrative review shall determine compliance with the Division's rules and regulations, written directives or oral orders. A separate use of force review may be required to objectively settle any doubts whether criminal conduct did or did not occur. Primary jurisdiction for such criminal use of force review resides with the Attorney General. If the Attorney General declines to conduct a criminal review it may be conducted by the County Attorney.

Depending on the circumstances, the administrative investigation and the Attorney General's use of force review may be conducted concurrently or in a sequence to be determined by the Director, the Attorney General or the County Attorney.

Division members providing information in an administrative or criminal investigation shall be accorded all rights of legal representation and against self-incrimination required under *Garrity v. New Jersey* and *Miranda v. Arizona* and other applicable statutory and case law. If a criminal investigation is being conducted no statements or information obtained under *Garrity v. New Jersey* may be shared with the criminal investigation.

If it is determined that a Division member is to receive disciplinary or corrective action a

¹ See separate policy for K-9 Use of Force.

tracking number shall be issued by the Professional Standards Unit.

1-C.1.2 Investigative Response

The Major Crimes Unit and forensic laboratory personnel shall assist the Attorney General or County Attorney in the use of force review upon request.

If the use of force involves a member of the uniformed Division the Commander of the Investigative Services Bureau shall be in charge of the administrative review. If the use of force involves a detective or undercover Trooper the Field Captain in charge of the geographic area where the use of force occurred shall be in charge of the administrative review. The remainder of the team shall consist of additional commissioned officers or investigative personnel assigned by the Director.

1-C.2.1 Use of Force – Division Member’s Report

A Division member who discharges a firearm for other than training or recreational purposes, has an unintended discharge of a firearm, or applies force greater than verbal direction and normal application of handcuffs or takes an action that results in, or is alleged to have resulted in, bodily injury or death to any person, shall file a DSSP 307 USE OF FORCE REPORT. If a DSSP 102 report has been filed by the member in the same incident it is permissible for the narrative section of the DSSP 307 report to simply indicate a reference to the narrative in the DSSP 102.

- A. Other written reports required by this section shall be in the form specified by a superior officer.
- B. The USE OF FORCE REPORT is in addition to the CRIMINAL REPORT of the incident filed pursuant to the criminal reports manual.
- C. Each Division member who uses force shall complete a USE OF FORCE REPORT even if other members also used force in the same incident. For example, if three Troopers were required to subdue a suspect, each shall submit a report detailing what they observed and what force they used.
- D. A separate USE OF FORCE REPORT shall be completed for each person against whom force is used. Use of force can only be justified in relation to each individual’s actions.
- E. USE OF FORCE REPORTS along with copies of all associated INCIDENT REPORTS and CRIMINAL REPORTS shall be submitted to the Division member’s Troop or Unit Commander and copies routed by such Commander to the Commander of the Professional Standards Unit. The Commander of Professional Standards shall review the reports and take any necessary appropriate action such as initiation of a Personnel Complaint or referral to the Training Unit, Division Armorer, Defensive Tactics Coordinator, or other appropriate Division member.

EXCEPTION: In cases where the firearm was used to destroy a dangerous animal or destroy an animal which is so badly injured that humanity required its removal from further suffering and upon approval from a supervisor, the report may take the form of a log entry at the Division member's dispatch center.

1-C.2.2 On-Scene Responsibilities

- A. Members involved at the scene of a shooting incident or in-custody death shall take those measures that are reasonably possible and appropriate to protect their safety and to preserve evidence essential to a review of the incident.
1. This includes, in the order appropriate, (1) ensuring that the threats to officer safety and the safety of others have ended, (2) securing and separating suspects, (3) administering emergency first aid and self help if possible, (4) administering emergency first aid to suspects and others if necessary, (5) identifying witnesses to the event, (6) informing Communications of the incident and relaying information on any fleeing suspects, (7) requesting emergency medical services if necessary, (8) requesting any other assistance required immediately, and (9) requesting a supervisor and any additional backup.
 2. Members involved shall holster any involved handguns. Once the tactical situation has ended and it is safe to do so, members shall secure involved handguns in place as evidence. Any long guns involved shall be secured in the prescribed manner or secured in place as evidence. At the onset of the investigation, officers shall surrender involved weapons to the appropriate arriving supervisor or investigators. The surrender of weapons shall occur out of public view at the scene or an appropriate facility and unless a replacement weapon is immediately available the member shall be informed that a replacement weapon will be provided as soon as practicable.
 3. Involved members should avoid discussing the incident with anyone except arriving supervisory and assigned investigative personnel.
 4. Members should (1) take note of the time, (2) survey the area for relevant facts, (3) identify and record contact information on witnesses who were present including any that have departed the scene, and (4) request that witnesses remain on hand in order to speak with arriving investigators.
 5. If time and capabilities permit, members shall establish a scene perimeter and limit access to unauthorized persons and protect evidence from loss, destruction or damage. If any evidentiary items have been moved or removed, the original location and positions of persons, weapons and other relevant objects and evidence shall be noted.

- B. The first arriving ranking Supervisor shall ensure the safety and condition of the members, suspects and third parties. If emergency medical services have not yet been requested and are necessary, ensure that they are summoned. He or she shall also:
1. If a member has been shot or seriously injured, ensure that a Trooper or other sworn officer accompanies and remains with the member at the medical facility, ensure that the member's family is notified on a priority basis and in person if possible, and ensure that the family is provided transportation to the medical facility or other location where they are needed as soon as possible, and assign a member to the family for security, support, control of the press and visitors, establishment of communications and other related matters.
 2. Not release the names of any injured officers to the media or unauthorized persons prior to appropriate notification of the family nor release the names of other involved officers to the media except as authorized by the Attorney General, County Attorney, or the Director or his/her designee.
 3. Ensure that a member or sworn officer responds to the medical facility to which any member or suspect is taken to ensure that clothing or other potential items of evidence are safeguarded and not lost or destroyed.
 4. If the member or members who fired shots are not injured, move them away from the center of activity accompanied by another member or sworn officer who is instructed not to discuss the case but to provide safety and support.
 5. Ensure that an adequate perimeter is established and any suspects are detained.
 6. Ensure that other Division personnel are notified, including the Troop or Unit Commander of the geographic area and of the involved member(s), the Professional Standards Commander, the Investigative Services Commander, the Director, the Commissioner and Assistant Commissioner, the Medical Examiner if applicable, the on-call Attorney General, the President or Vice-President of the Trooper's Association if a member of the rank of Sergeant or below is was injured, and a member of the Peer Support Team if available.
 7. Establish a command post and initiate the Incident Command System if necessary.
 8. Assign a member to make a chronological record of activities at the scene including persons present, arriving and leaving as well as actions taken by police personnel.
 9. Establish a media staging area as time permits.
 10. Arrange for the surrender of weapons and cartridge casings in the manner prescribed in 1-C 2.2 A 2 above.
 11. Locate the suspects' weapons, ammunition and expended cartridges, and not move them unless absolutely necessary.

12. Collect information about the suspect(s) including identity, physical description, residence and other pertinent information.
 13. Locate and secure as evidence any clothing that may have been removed from the suspect(s) by emergency medical personnel or others.
 14. Determine the positions of officers and suspects at the time of the shooting.
 15. Separate and secure all on-scene witnesses for interviews.
- C. The commander of the **Investigative Response and Support Team** shall:
1. Ensure that the on-scene responsibilities of the personnel at the scene and the first arriving supervisor have been carried out and if not, make appropriate assignments to accomplish them.
 2. Ensure that the weapon(s) of any officer(s) that were discharged during the incident and any additional magazines are taken into custody in a discreet manner and packaged, marked or labeled for shipment to the Crime Laboratory as appropriate and that if appropriate; officer(s) have been issued replacement weapons.
 3. Check the weapons of all officers present for discharge.
 4. When necessary ensure that the clothing of members and injured persons is collected in as sensitive a manner as possible for potential evidentiary purposes and that related equipment of officers is safeguarded. Where available Class E uniforms shall be provided to any members whose clothing is to be collected; otherwise arrange for clothing to be brought from home for the members. Undergarments shall not be collected unless required by the Attorney General's representative.
 5. Ensure the efforts of all involved units are being carried out in an appropriate manner.
 6. Ensure that the needs of the involved member(s) and other officer(s) have been addressed and that personnel are being handled in a manner that acknowledges the stress they have been undergoing as a result of the incident.
 7. Advise all involved personnel not to talk with the media about the incident, but to refer inquiries from the media to the Attorney General if a criminal investigation is ongoing, or otherwise to the Director or his/her designee.
 8. Assist the Attorney General, County Attorney or their designee in charge of the criminal investigation in ensuring that *Miranda* rights are observed, that all officers are interviewed separately, that all statements are tape recorded wherever possible, and that if an employee being interviewed requests Association representation or an attorney, that such representation is permitted.

9. It may be useful to request an involved employee to accompany the investigator(s) during a walk-through of the incident scene.
10. If and when an administrative investigation is to take place, ensure that *Garrity* rights are observed and that the administrative and the criminal teams do not share information except as may be permitted by the Attorney General.
11. Whenever possible remove involved members from the scene to an appropriate police facility where they have a greater degree of privacy.
12. Be sensitive to the fact that depending on the stress of the event and the stress tolerance of each individual employee, it may not be appropriate to conduct immediate, detailed interviews and that it may be necessary to delay the interview in some cases. However, no delay shall exceed 5 calendar days unless extenuating circumstances exist.

D. The Director or his or her designee shall:

1. Ensure that directly involved members and any other members who have experienced trauma due to the incident are removed from duty and placed on immediate administrative leave for at least 7 calendar days following the incident as authorized under RSA 106-B:5, II. Depending on the circumstances, the Director or designee may extend the period of administrative leave to the extent permitted by law and personnel rules, may place the member on administrative leave without pay if the preliminary results of criminal investigation justify it, or assign the member to alternative duty in accordance with PSC 22-B.
2. Encourage the member within 72 hours of the incident to submit to a debriefing by a mental health professional of his or her choosing. In a case where the Division member's health insurance carrier denies coverage for the debriefing, the Division will provide a debriefing visit through the Employee Assistance Program or other means 2
3. If a Division Peer Support Team is functioning, ensure that the team is contacted and reaches out to the member directly involved in the incident to offer its services to them.
4. Ensure that prior to return from administrative leave or alternative duty any member directly involved in a fatal shooting, or other use of force in which death occurred, is required to participate in a Fitness for Duty Evaluation by a mental health professional not involved in the critical incident debriefing, and designated by the Division. This evaluation will be scheduled by the Commander of

2 Mental health counseling may also be available to the member's family through the Employee Assistance Program or health insurance plan (See Chapter 22-A of the Professional Standards of Conduct).

Professional Standards at the expense of the Division. After the evaluation the specialist shall report his or her findings to the Director including whether the member may return to full duty or if it is in the best interest of the member and the Division that the member remain on leave or alternative duty and the best course of continued counseling and/or treatment .

5. If there is to be a criminal investigation and an administrative investigation, determine whether it is feasible to conduct parallel simultaneous investigations or if the administrative investigation can await completion of the criminal investigation.
 6. Ensure that separate personnel are assigned to each of the investigations and that they are instructed that personnel involved in the administrative investigation cannot share statements made under *Garrity v. New Jersey* or any fruits of such statements with the criminal investigators nor communicate information gathered by the administrative investigation to the criminal investigators.
 7. Determine when and if an employee placed on administrative leave or alternative duty will be allowed to return to regular duty.
 8. Ensure that any member directly involved in a shooting incident is qualified with their replacement firearm at the earliest practical time.
 9. The Director may convene an Administrative Review Team to review the investigative reports and recommend whether there was a violation of law or a violation of policy that needs to be addressed, or if there are implications for revisions to policy or training as a result of the incident, and whether such a team should not be convened until the completion of criminal investigations.
 10. The Administrative Review Team, when used, shall consist of one Trooper of the rank of Captain, one Troop Commander, one commissioned officer assigned to the Bureau of Investigative Services, and as applicable relative to the use of force applied, a Division Armorer or Firearms Instructor if a firearm was involved in the incident, a Certified Defensive Tactics Instructor if weapons other than firearms were utilized, and a Certified Driving Instructor if a vehicle was utilized as a weapon. Team members may be replaced by the Director when an individual's presence on the board may present a conflict of interest.
- E. The Administrative Review Team shall:
1. Adhere to internal investigation policy and procedures contained in Chapter 26-E, "Personnel Complaint/Internal Affairs Investigation Policy and Procedures."
 2. In determining justification for the use of force, the team shall consider only those facts known to the Division member at the time of the shooting or other use of force, without clarity and benefit of 20/20 hindsight.

3. The team shall submit a written report to the Director containing a complete description of the incident, findings and conclusions relevant to the justification for the use of force, whether the member's actions conformed to Division directives and statutory law, and any implications for Division policies and procedures, equipment, or training.
4. The team shall complete its review within ninety (90) days from the date the investigation began. The team may request thirty (30) day extensions from the Director based on a showing of just cause as to why the administrative review has not been completed. The Director may grant or deny such extensions.

F. Director's Review of the Incident; Annual Analysis of Use of Force Reports.

1. Upon receipt of the report of the Administrative Review Team and all other relevant reports, the Director shall review the situation with his or her command staff and take whatever actions he or she deems appropriate for the proper administration of the Division.
2. The Commander of the Professional Standards Unit shall present an annual analysis of USE OF FORCE REPORTS (DSSP 307) to the Director along with his or her findings of any patterns or trends and recommendations for any needed corrections to policy or training. Said report shall be done on or before March 31 of each year for the proceeding year.

**CHAPTER 1-C
REVIEW OF USE OF FORCE**

Approved:

Ordered:

Commissioner of Safety

Director of State Police

APPENDIX A

USE OF FORCE REPORT (DSSP 307)