



ROME POLICE DEPARTMENT
POLICY AND PROCEDURE

| | |
|---|--------------------------------|
| EFFECTIVE DATE: 6-16-03 | SUBJECT: NECESSARY FORCE |
| REVISED DATE: | |
| SUPERCEDES: All Previous Memos, Orders, and Policies & Procedures | DISTRIBUTION: All Personnel |
| BY ORDER OF : Merino J. Ciccone, Chief of Police | GENERAL ORDER #: 03-01 |
| | PAGE 1 OF 14 |
| REFERENCES: ACCREDITATION STANDARD 20.1 | |

20.1 NECESSARY FORCE

I. PURPOSE

The purpose of this police is to provide a written directive requiring all Rome Police Department personnel to use only the force necessary to effect lawful objectives consistent with Article 35 of the New York State Penal Law.

II. POLICY

At times, members of the public can become victims of violent crime including the crime of final resort – murder. Society chooses not to wage open warfare to control such violence. Rather, society places the responsibility for control on a few – the police. Society further chooses to provide these officers with the ultimate personal and public protection – a firearm. As long as we live in this free society, it will be necessary for police officers to be armed. Since society has given law enforcement officers the authority to carry firearms, society must also retain the right to control the use of such firearms.

The use of deadly physical force is the most serious act, which a law enforcement officer could possibly engage. It has the most far-reaching consequences for all of the parties involved. It is, therefore, imperative not only that the officers act within the boundaries of legal guide lines, ethics, good judgment, and accepted practices, but also that the officer be prepared by training, leadership, and direction to act wisely whenever using force readily capable of causing death or otherwise serious physical injury.

A reverence for the value for human life shall guide officers in considering the use of deadly physical force. While officers have an affirmative duty to use that degree of force necessary to protect human life, the use of deadly physical force is not justified merely to protect property interests.

This policy is not intended to create doubt in the mind of an officer at a moment when action is critical and there is little time for mediation or reflection. It provides basic guidelines governing the use of weapons so that officers can be confident in exercising judgment as to the use of physical force. Such a policy must be viewed as an administrative guide for decision-making before the fact and as a standard for administrative judgment of the propriety of the action taken. It is not to be considered a standard for external judgment (civil or criminal litigation) of the propriety of an action taken. This is left a matter of established law and also a process for the courts and juries reviewing specific facts of a given incident.

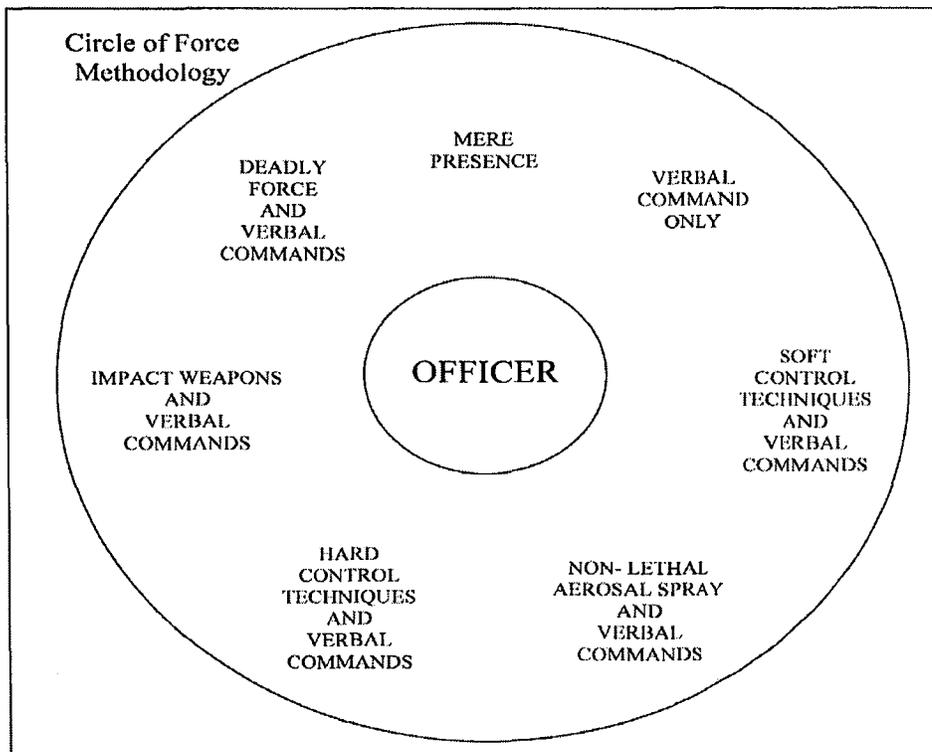
Officers of this Department shall only resort to the lawful use of physical force as provided by Article 35.00 of the New York State Penal Law, and deadly physical force as provided by these procedures, when reasonably necessary. It is also the policy of the Department that members shall not unnecessarily or unreasonably endanger themselves or others in applying those guidelines to actual situations.

This directive is for Departmental use only and does not apply in any criminal or civil proceeding. The Department policy shall not be construed as a creation of higher legal standard of safety or care in an evidential sense with respect to third party claims. Violations of this directive will only form the basis for Departmental administrative sanctions. Violations of the law will form the basis for civil and criminal sanctions in a recognized judicial setting.

III. PROCEDURE

A. Physical force use for making arrests/preventing escape.

1. An officer, in the course of effecting or attempting to effect an arrest, or preventing or attempting to prevent the escape from custody, of a person whom he/she reasonably believes to have committed an offense, may use physical force when and to the extent he/she reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody, or to defend him/herself or a third person from what he/she reasonably believes to be the use or imminent use of physical force; except that he/she may use deadly physical force for such purposes only when he/she reasonably believes that:
 - a. The offense committed by such person was a felony or an attempt to commit a felony involving the use, attempted use, or threatened use of deadly physical force; or
 - b. 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 other deadly weapon; or
 - c. 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 officer or another person from what the officer reasonably believes to be the use of imminent use of deadly physical force.
2. Deadly or other physical force shall only be exercised when all reasonable alternatives have been exhausted or appear impractical.
3. The following Circle of Force Methodology is to be used as a guideline to help Department officers keep their use of force reasonable:



VERBAL COMMANDS VERBAL COMMANDS VERBAL COMMANDS VERBAL COMMANDS

- a. This methodology shows a relationship between a suspects behavior and an officer's appropriate response. It includes certain response options that are prevalent today and whose relative ranking in terms of force intensity is confusing to many officers. It also allows for adaptation, according to training and experience, to Rome Police Department policies, and to new tools, techniques and legal decisions that may develop in the future.

- b. Understand that any force methodology is merely a **starting point** for discussing a very complex issue: the justification for the use of force. It represents an ideal, orderly world – not necessarily the real world, where officer actions in the midst of violent turmoil often are judged long afterward in calm and distant settings.

- c. Resistance and response are dynamic. The suspect’s behavior and an officer’s use of force to control it may move in and/or out of the methodology during any given encounter, as indicated by the two-way arrows. Moreover, this movement will not always be in an incremental step-by-step sequence. In selecting the use of force, an officer may need to skip one or more entire steps while using the methodology depending on how he/she “normally” perceive key variables, namely:
 - i. **Threat Assessment Observations** – The factors that bear on an officer’s perception of dangerousness. The evaluation should include:
 - . emotional state
 - . resistive tension
 - . early warning signs
 - . pre-attack postures
 - . access to weapon(s)
 - . apparent willingness to sustain injury

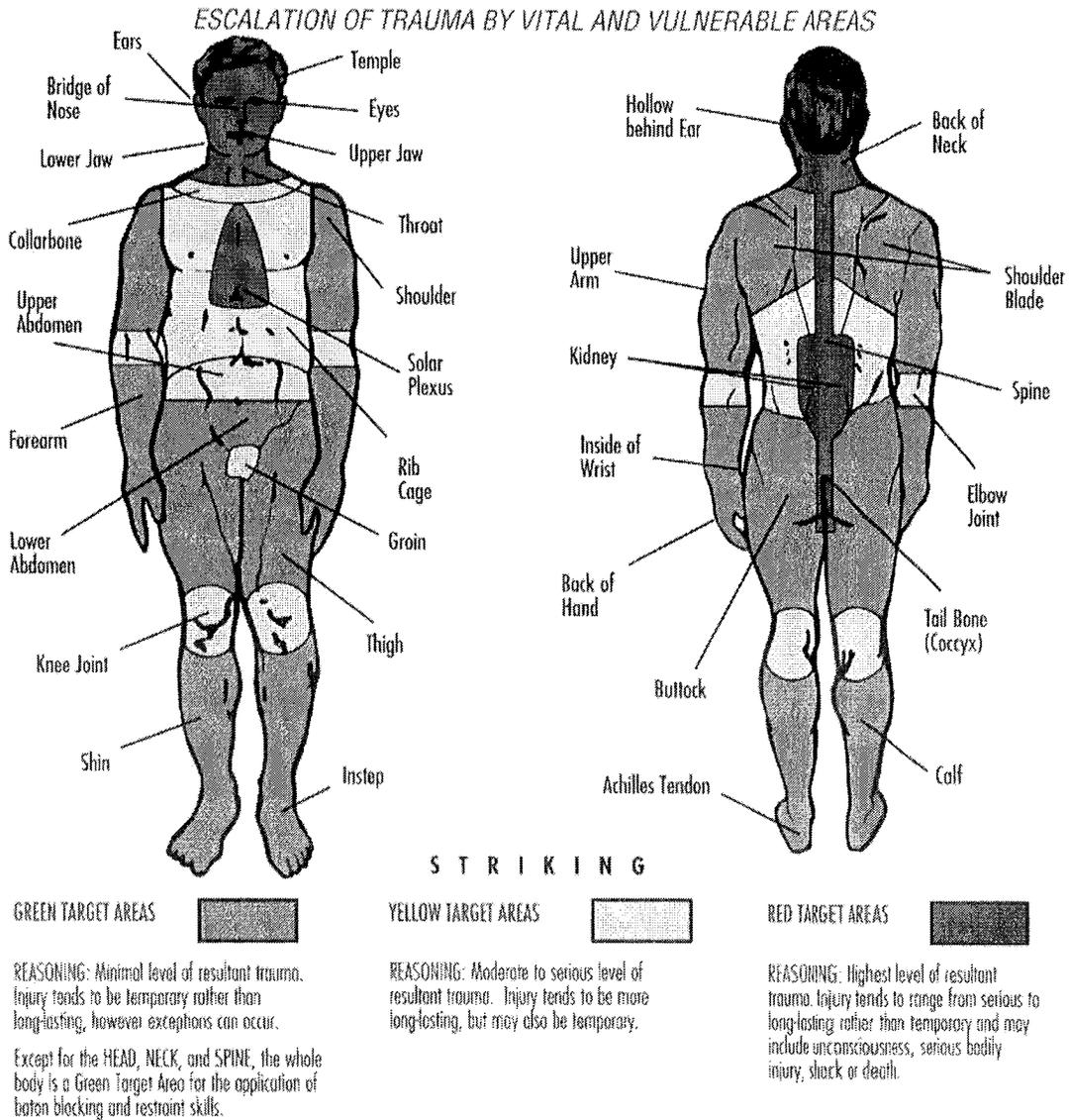
 - ii. **Officer/Subject Factors** – The strengths and weakness an officer brings to an encounter compare to the subject’s strengths and weaknesses. The evaluation should include respective:
 - . age
 - . sex
 - . size
 - . strength
 - . skill level (Training/Experience)
 - . backup (Officer’s/Subjects)

 - iii. **Special Circumstances** – What is unique about the confrontation, if anything, that requires a higher or lower level of response than would “normally” seem justified? The evaluation may include:
 - . a sudden, unexpected assault
 - . the officer’s physical position
 - . the officer’s reasonable perception of danger
 - . the subject’s ability to escalate force rapidly

- . an officer's special knowledge about the subject
- . officers' injuries or exhaustion
- . timing, tools, tactics, training
- . other factors necessitating unusual control measures, such as crime rate in the neighborhood, nature of the call, etc.

These important variables should always be reviewed and explained in an officer's report and/or testimony, if pertinent, to documentation **in detail** that the level of force used was necessary and appropriate, considering all circumstances.

4. Whenever an officer finds it necessary to use physical force to gain and maintain control of a subject, consideration must be given to minimizing the injury to that person. Target selection is based on the amount of force the officer perceives as reasonably necessary to bring the subject under control. The concept of **PRIMARY, SECONDARY** and **FINAL** target areas was developed to assist officers in responding appropriately to varying levels of danger. Officers target selection will then depend on a comparison of the degree of imminent harm to the officer versus potential injury to the subject.
 - a. **PRIMARY TARGETS** are for non-lethal confrontations where the necessary physical force is not intended to, nor likely to cause serious bodily harm and/or death.
 - b. **SECONDARY TARGETS** are employed when a **PRIMARY TARGET** fails or does not correspond with the threat level. **SECONDARY TARGETS** represent the upper limits of non-lethal force because the force directed at a joint or an area in close proximity to a **FINAL TARGET** area.
 - c. **FINAL TARGETS** are designated for situations where **PRIMARY** and **SECONDARY TARGET** areas either fail or do not match the level of threat present. Physical force directed at **FINAL TARGETS** may be considered lethal force because of the potential result of serious injury and/or death.



5. The fact that an officer is justified in using physical force under the circumstances prescribed in Article 35 of the New York State Penal Law does not constitute justification for reckless conduct by such officer amounting to an offense against or with respect to innocent persons

- c. When an animal is so badly injured that humanity requires its relief from further suffering. The officer in such incidents will notify a supervisor and the Communications Division of the circumstance. He/She will obtain a sworn statement from the owner of the animal giving permission to destroy the animal or a sworn statement of two reputable and uninvolved citizens that the animal is near death and is suffering. The officer will then, using his/her own weapon, humanely destroy the animal. (Agriculture and Market Law, Section 374.)

The officer will complete a Use of Force Report, Discharge of Weapon report, Investigation Report, and any other reports necessary to explain the incident. The reports will be forwarded to the shift Commanding Officer.

10. Officers are prohibited from discharging their firearms:

- a. When it appears likely that an innocent person may be injured.
- b. From a moving vehicle, except as the ultimate measure of self-defense or defense of another when the suspect is using deadly physical force.
- c. To fire a warning shot.

B. Procedure when an officer's firearm is discharged.

1. It is the responsibility of the involved officer, when his/her firearm has been discharged, including accidental discharges, to:
 - a. Determine the existing danger level.
 - b. Determine the physical condition of any injured person and render first aid when appropriate.
 - c. Request the necessary emergency medical aid.
 - d. Notify the Police Desk of the specifics regarding the incident.

- e. Remain at the scene (unless they themselves are injured) until the arrival of the appropriate investigators. However, if the circumstances are such that the continued presence of the officer(s) at the scene might cause a more hazardous situation to develop (such as a violent crowd), the officer in charge at the scene shall have the direction to instruct the officer(s) to respond to another, more appropriate location.
- f. Protect his/her weapon for examination and submit said weapon to the person indicated by the officer in charge.
- g. Prepare a detailed report of the incident on a Special Administrative Report. The investigating officer will complete the Investigation Report.
- h. Not discuss the case with anyone except:
 - (1) Assigned supervisory and assigned investigative personnel inclusive of the Chief of Police.
 - (2) The Corporation Counsel and District Attorney or an Assistant District Attorney.
 - (3) The officer's attorney, psychologist, clergy, or his/her immediate family.
- i. Be available at all times for official interviews and statements regarding the case and shall be subject to recall to duty at any time.
- j. Submit to blood and urine tests.
- k. Prepare a Weapons Use Report, as is required when they remove his/her weapon from the holster in the line of duty. This report will be immediately forwarded to his/her Commanding Officer for review and then submitted to the Captain of Administration prior to forwarding it to the Chief of Police.

2. Responsibilities of the Desk Officer shall be to:

- a. Dispatch medical aid, if necessary.

 - b. Notify:
 - (1) Chief of Police
 - (2) Commanding Officer on duty
 - (3) Assistant Chief of Police
 - (4) Criminal Investigation Division
 - (5) Commissioner of Public Safety

 - c. In the event of injury, additional notifications, by direction of the Chief of Police or Commanding Officer involved in the investigation, to the:
 - (1) Mayor
 - (2) Corporation Counsel
3. The Commanding Officer, upon notification of the use of a firearm, shall:
- a. Immediately respond to the incident scene and assume command.
 - b. Evaluate the incident and its causes.
 - c. Call for any additional specialized units or persons needed in the investigation.
 - d. Establish a time and place, with the Chief on the Scene, for designated persons to meet to continue the investigation. The meeting will be held as soon as possible after such notifications are made to those required to attend.

4. Commanding Officer

The Commanding Officer shall investigate the circumstances of the firearms discharge and include in his/her report any observations or conclusions by him/her from the information

obtained.

C. Carrying of Firearms On-duty

Officers shall carry firearms in accordance with laws and established departmental procedures. Officers shall not carry any rifle, shotgun, machine gun, gas gun, or substitute their regulation service weapon with any weapon, without the expressed authorization of the Chief of Police. Officers shall not add a concealed auxiliary weapon while on duty not authorized by the Chief of Police.

D. Display of Firearms

Officers shall never display firearms unnecessarily or draw them in any place, either public or private, except for the purpose of inspection or cleaning, or in the official discharge of their duties. The use of a firearm must be totally justified and in strict accordance with law and departmental policy. Officers shall exhaust all other means of apprehension before resorting to the use of firearms. Officers shall be required to report in writing, any deliberate or accidental discharge of firearms to their Patrol Commander (except routine target practice).

E. Carrying Service Firearm Off-duty

Officers may carry Department issued firearms off-duty whenever legal to do so within New York State. If the Department issued firearm is carried off-duty, it must be in an approved secure holster, be loaded with issued ammunition, and worn in an approved manner.

Commentary: The Firearms Officer must give approval for the carry holster that the officer desires to use while off-duty.

F. Security of Firearms

Officers are responsible for the safety and security of their firearms. When off duty, weapons must be stored in a locked cabinet, closet or locker, and the use of a locking mechanism through the trigger guard is recommended. Weapons and ammunition should be stored separately.

G. Firearms Training

Refer to Section 32.3, Firearms Training.

H. Legal Issues

An officer involved in the use of deadly force can be subjected to several areas of criminal and civil jeopardy in addition to being vulnerable to potential departmental discipline. Individually, the officer involved in a shooting can be held culpable for violation of state criminal statutes. Civil liability can also be imposed for the use of deadly force under state sanctioned civil causes of action. In addition, an officer faces individual civil and criminal jeopardy under federal law for violation of the Federal Civil Rights Act (18 U.S.C. 241 and 242 criminally and 42 U.S.C. 1983 civilly).

I. Psychological Services Provided Officers

1. In all cases where any person has been injured or killed as a result of firearm discharge by a police officer, the involved officer will be **required** to undergo a debriefing as soon as possible. The purpose of this debriefing will be to allow the officer to express his feelings and to deal with the moral, ethical, and/or psychological after-effects of the incident. The debriefing shall not be related to any departmental investigation of the incident and nothing discussed in the debriefing will be reported to the department. The debriefing will be separate and independent of any Departmental investigation. The participation of the officer in this debriefing will be kept confidential. The Training Officer in conjunction with the Chief of Police will assist the officer in seeking these services through the employee assistance program offered by the City of Rome through the Central New York Labor Agency.
2. In all cases where any person has been injured or killed as a result of a firearm discharge by a police officer, the involved officer and his family will have **available** to them the services of the department chaplain. The purpose of this offer is to provide the officer and/or his family with a source of professional consultation to aid them in dealing with the potential moral and ethical after-effects of a shooting incident. The chaplain services shall not be related to any department investigation of the incident and nothing discussed will be divulged to the department. The consultation sessions will remain protected by the privileged relationship.

J. Administrative Leave

1. An officer directly involved in a deadly force incident may be placed on "administrative leave" upon completion of his preliminary report of the

incident. This leave shall be, with the authority of the Chief of Police, without loss of pay or benefits, pending the results of the investigation. The assignment to administrative leave shall not be interpreted to imply or indicate that the officer has acted improperly.

2. While on administrative leave, the officer shall remain available at all times for official departmental interviews and statements regarding the shooting incident, and shall be subject to recall to duty at any time. The officer shall not discuss the incident with anyone except the District Attorney's Office, the Corporation Counsel, department personnel assigned to the investigation, the officer's private attorney, the officer's psychologist, the officer's clergy, and the officer's immediate family.
3. Upon returning to duty, the officer may be assigned to "administrative duty" for a period of time deemed appropriate by the officer, his psychologist, and the Chief of Police.