

City of Johns Creek Police Department

<i>Subject:</i> Use of Force - Reporting and Investigation		<i>Number:</i> 04-17
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PURPOSE:

Establish and prescribe guidelines for the reporting, investigation and reviewing of use of force incidents by sworn officers of the Johns Creek Police Department.

POLICY: (04-17)

The Johns Creek Police Department recognizes the responsibility it has when it comes to the constitutional authority to use force to fulfill its mission. Part of this responsibility includes having a process in place to evaluate each use of force incident to ensure it is reasonable and falls within the guidelines of Federal and State Law, and Johns Creek Police Department policy. Johns Creek Police Department strives to have transparency and accountability through proper documentation and review of use of force incidents. Officers are responsible for completing all required reports and cooperating with all department investigations.

Any and all discharges of a firearm by a police officer shall be investigated with the exception of shots fired during authorized shooting events or exhibitions and/or authorized firearms training.

DEFINITIONS:

Administrative Review: A documented review of an incident or occurrence prepared by or for the Chief of Police. The review should indicate whether policy, training, equipment, or disciplinary issues should be addressed.

Analysis: A systematic, structured process for dissecting an event into its basic parts to identify any patterns or trends. Analysis should reveal patterns or trends that could be predictive or could indicate program effectiveness. Training needs, equipment upgrade needs and/or policy modification needs.

FIT (Force Investigation Team): The department personnel tasked with conducting officer-involved shootings and Type III use of force investigations, which is typically the CID Lieutenant and, Crime Scene Investigator, CID personnel and a representative of the Fulton County District Attorney's Office, if applicable.

Force: Force means any physical coercion by an officer in performance of official duties, including the following types of force:

1. **Type I Force** – Force that causes transient pain or the complaint of transient pain, including soft takedowns, open/or empty hand strike(s), and aiming a firearm at a person/subject.
2. **Type II Force** – Force that causes or is reasonably expected to cause physical injury greater than transient pain but less than serious physical injury. Type II Force includes hard takedowns, hard strikes, use of impact weapon, Taser deployment, OC deployment minor vehicle injury, complaint of injury, K9 Bite and use of impact projectile and hobble type restraints.
3. **Type III Force** – Force that causes or is reasonably expected to cause serious physical injury, loss of consciousness, or death. The intentional/unintentional use of deadly force. Type III Force includes gunshot wounds, impact weapon strike to the head and discharge of a firearm regardless of injury, to include misses. Type III also includes any significant break of bones and admission to a hospital for injuries as a result of use of force.

Compliance Control: The physical interaction between an officer and a subject that is meant to control the subject for handcuffing or to physically separate or guide a subject is not considered a use of force. Compliance control may include the use of control holds or joint manipulation techniques in a manner that does not cause any pain and/or is not reasonably likely to cause pain.

Transient or Temporary Pain: Physical pain which is temporary and is not intended to cause permanent physical impairment or injury.

Physical Injury: Bodily injury or pain which is greater than transient pain and reasonably expected to cause physical injury or bodily harm, but less than serious physical injury. This may also include complaint of injury, minor vehicle injury and temporary loss or impairment of any body part or organ or a fracture of any bodily part.

Serious Physical Injury: A bodily injury that creates a substantial risk of death; causes serious, permanent disfigurement or results in long-term loss or impairment of the functioning of any bodily member or organ. This also includes loss of consciousness due to use of force actions.

Reportable Force: All Use of Force incidents (Type I, II, and III) are reportable and require the completion of a Use of Force report in OSSI.

PROCEDURES:

Classifying Types of Force (04-17-01)

- A. The highest ranking on-shift supervisor at the time of the incident shall classify the response to aggression as a Type I, II or III use of force incident. The particular force option used does not automatically place the use of force in a particular type. The resulting injury and mitigating circumstances may place the response to aggression in a higher use of force type.
- B. The investigating supervisor or any reviewer may request a reclassification of a use of force to a higher type for any given incident. Factors to consider when determining when a reclassification of higher type is appropriate includes, but not limited to the following:
 - 1. The nature of the resistance encountered;
 - 2. Force used against a handcuffed, in-custody or otherwise restrained subject;
 - 3. Force used against a vulnerable, mentally ill, infirmed or a known pregnant subject, etc.;
 - 4. Response to aggression based on incorrect or misleading information or an unintentional error; and
 - 5. If it is unclear if the involved officer(s) actions were consistent with training, agency policy, current laws and statutes.

Incident Reports (04-17-02)

All use of force incidents shall be reported and investigated. Any time an employee employs force, whether on or off duty, as defined by this policy an incident report and a use of force report shall be completed and submitted through the chain of command.

The narrative of the incident report is a crucial element in documenting the use of force incident. At a minimum, the narrative of all incidents involving force shall contain the following information;

- 1. Subject's action(s) which led to the use of force;
- 2. Officer's verbal commands;
- 3. Subject's response to officer's verbal commands;
- 4. Duration of the incident;
- 5. Documentation of the incident by any recording device; and
- 6. Witness statements

Review and Routing of Use of Force Reports (04-17-03)

- A. Each incident involving the use of any level of force will be reviewed and a Use of Force Report completed in OSSI. This review, and subsequent conclusions and recommendations, will be forwarded through the employee's chain of command to the Chief of Police.
- B. *Graham v. Connor* establishes the objective reasonableness standard for officers' use of force and it provides that the officers use of force is judged based on the totality of circumstances, from the perspective of the officer, on the scene, at the moment force was used, without 20/20 hindsight, in circumstances that are tense, uncertain and rapidly evolving therefore, officers will not review video of the incident until the use of force has been documented and the supervisor interview has been completed.
- C. The review shall determine the following:
 - 1. If the action of the employee(s) was within Department rules, policies and procedures, laws and constitutional requirements.
 - 2. If the relevant policy was understandable and effective to cover the situation; and
 - 3. If the training was adequate; any findings of training inadequacies shall be documented so appropriate action can be taken, if necessary.
- D. The following steps and responsibilities, with exceptions noted in this policy, shall be followed when completing the Use of Force Report/Review in OSSI:
 - 1. The responding shift supervisor shall complete the required fields in OSSI prior to the end of their shift.
 - 2. The responding shift supervisor shall enter a "Use of Force Pending" event in Guardian Tracking under the employee's name before the end of shift.
 - 3. The supervisor shall ensure the names of all officers involved in the use of force are documented.
 - 4. The supervisor shall ensure that each type of force used by the involved officer(s) is documented.
 - 5. The supervisor's narrative shall explain each type of force used by the involved officer(s).
 - 6. Officer(s) who witnessed the response to aggression, but were not involved, shall complete a supplement report prior to the end of their shift.
 - 7. The involved Officer(s) Lieutenant shall review any available videos, supplemental reports, witness statements and any other additional information involving the incident.
 - 8. The involved Officer(s) Lieutenant shall, within ten days of the incident, document his/her findings in OSSI with a Concur or Not Concur.
 - 9. The Training Division will then have three working days to review the incident as it specifically and narrowly relates to the agency and officer(s)

training curriculum only. If the review identifies a training need or the recommendation for remedial training the Training Division shall document their findings and recommendations in OSSI.

10. The officer(s) assigned Division Major shall review all supporting documentation and videos to include the Lieutenant's findings and the Training Division's review. The Division Major shall within ten days document his/her findings as Concur or Not Concur.
11. The Chief of Police or his/her designee shall have the final approval of any recommended remedial training and the conclusion of findings for each incident. The final review and conclusion of the Chief of Police are final.
12. If the Chief of Police finds the incident justified he/she shall forward the use of force report to the Office of Professional Standards. Otherwise, the Chief of Police shall forward the report to the appropriate Division Major for follow-up, discipline, and/or remedial training etc.
13. Once all the above steps are completed the Use of Force Report shall be maintained by the Office of Professional Standards for secure storage and entry into the Guardian Tracking System as either "Use of Force Justified" or Use of Force "Not-Justified".

E. Additional responsibilities of all reviewers are as follows:

1. Each reviewer is responsible for examining all supporting documentation and evidence to ensure the report and review is thorough and complete.
2. Any reviewer shall return the use of force report to the supervisor if it is determined that the review and investigation is not thorough or complete.
3. Each reviewer shall address any discrepancies, confusion or lack of relevant information prior to completing the required modules of the use of force report.
4. Any documented discrepancies shall be returned to the appropriate supervisor.
5. Any supervisor who used force; participated in the event or ordered the force cannot conduct or participate in the review or investigation of the incident. The supervisor shall be listed as an involved party.
6. If a reviewer does not concur with the response to aggression used as it relates to agency policy, training and binding statutes the reviewer shall document his/her findings as "Not Concur". A "Not-Concur" finding requires a documented explanation.

Use of Force Investigation for Type I Force (04-17-04)

- A. For all Type I Force investigations the highest ranking shift supervisor at the time of the force shall respond to the scene immediately.
- B. The supervisor is responsible for ensuring all reporting requirements previously mentioned in this directive are completed.

Use of Force Investigation for Type II Force (04-17-05)

- A. For all Type II Force investigations the highest ranking shift supervisor at the time of the force shall respond to the scene immediately and initiate a CIN page.
- B. The supervisor is responsible for ensuring all reporting requirements previously mentioned in this directive are completed. In addition to the above responsibilities the supervisor shall complete the following:
 - 1. The responding supervisor shall immediately notify the assigned officer(s) shift or unit Lieutenant.
 - 2. The supervisor shall interview the subject(s) at the scene unless it is necessary for the subject(s) to be transported to a medical facility or the detention center at which time the supervisor shall proceed to the location and conduct the interview.
 - 3. If the interview with the subject(s) is not feasible due to the subject(s) aggression or medical condition, etc. the supervisor shall document this occurrence in the use of force report.
 - 4. The supervisor shall photograph all injuries sites, to include complaint of injury sites as well as the subject(s) face, hands and feet. If pictures are not able to be obtained, the supervisor shall document the occurrence and explain the reason(s) for the lack of photographs. All injuries shall be documented in the report.
- C. The involved officer(s) shift Lieutenant is responsible for completing all required reports previously mentioned in this directive. In addition to the required review and reports the Lieutenant shall complete the following:
 - 1. Pull a copy of all CAD reports to ensure all officer(s) who responded are included in the use of force report and times are consistent;
 - 2. Conduct a canvass of surrounding businesses or residences to locate additional witnesses or a video which may have captured the force incident; and
 - 3. If additional witnesses or a video is discovered the Lieutenant will document his/her findings. If the canvass resulted in negative results the findings shall be documented in the use of force report.

Use of Force Investigations for Type III Force (04-17-06)

- A. If an officer uses force that is classified as a Type III Force the following shall occur:
 - 1. The officer shall immediately, or as soon as practical, advise the shift supervisor of the incident;
 - 2. Secure the scene and render aid;
 - 3. Submit to a medical or urinalysis drug screening; and
 - 4. Provide a brief public safety review.

- B. In all Type III use of force investigations the Shift Lieutenant, or highest ranking supervisor, shall respond to the scene and assume command of the scene. The Division Major shall also ensure the involved officer(s)/employees are taken for a drug screen and/or urinalysis as required by City policy.
- C. The Shift Lieutenant, or highest ranking supervisor, shall respond to scene, initiate a CIN page, notify the Force Investigation Team and also:
1. Establish an inner and outer perimeter;
 2. Secure the scene and establish a crime scene log,
 3. Brief the Division Major and FIT on arrival;
 4. Establish a media staging area;
 5. Secure any witnesses;
 6. Remove the involved employee(s) from the scene; and
 7. Ensure the initial incident report and the OSSI Use of Force Report is completed prior to the end of shift.
 8. If the force results in a traffic fatality the Traffic Enforcement Unit shall be notified and respond to the scene.
- D. Recall System: It may be necessary, during some incidents, for sworn personnel to be called in to ensure minimum staffing.
1. If the Incident Commander determines the need is present to recall sworn personnel, he or she will obtain approval from the Division Major.
 2. Once approval has been granted, the Incident Commander, or designee, will initiate the Recall System by contacting the off-duty shift lieutenant listed on the Recall Roster.
 3. The Recall Roster will be maintained by the Executive Assistant and will be stored on the P-Drive.
- E. The Force Investigation Team shall respond to the scene and complete a thorough investigation of the events surrounding the incident using established Georgia Bureau of Investigations Use of Force protocols and ensure the following:
1. During the investigation, the officer(s) and employee(s) will be treated and interviewed as witnesses.
 2. All constitutional rights will be observed. The employee will be advised of his/her rights per Miranda, including the right to counsel, before any questioning.
 3. The Chief of Police shall be notified prior to interviewing any employee. The time frame for the involved employee(s) to be interviewed shall be determined by the Chief of Police.
 4. Employee(s) who choose to waive Miranda rights and answer questions will give a written statement under oath which will become a part of the case investigative file.

5. If the employee exercises his/her right to refuse to answer questions, the investigators will make no further efforts to question the officer.
6. Contact the Georgia Bureau of Investigations; their protocols shall determine their response, if any.
7. Submit the team's findings in a written report to the Chief of Police as soon as possible; and
8. If lethal force is used, the matter shall be referred to the District Attorney's office for judicial review.

Administrative Status (04-17-07)

- A. It is mandatory that any employee, whose action(s) or use of force in an official capacity results in serious physical injury be removed from line duty and placed on administrative status, pending an administrative review and debriefing. The assignment to administrative status will not be interpreted to imply or indicate that the employee has acted improperly. The Chief of Police may require the employee to undergo an emotional debriefing with a Department furnished psychologist.
- B. It is mandatory that any employee, whose action(s) or use of force in an official capacity results in death be removed from line duty and placed on administrative status, pending an administrative review. The employee shall also be required to undergo emotional debriefings with a Department furnished psychologist within three days of the incident, if feasible. The purpose of debriefings will be to allow the employee to express his/her feelings and to deal with the after-effects of the incident. The debriefings shall not be related to any Department investigation of the incident and nothing discussed in the debriefings will be reported to the Department. The debriefing sessions will remain protected by the privileged Professional Psychologist Code of Ethics. The psychologist will forward a fitness for duty report to the Office of Professional Standards as to when the employee may return to duty.
- C. Assignment of administrative duty status shall be non-disciplinary, with no loss of pay or benefits. Administrative status serves to address the personal and emotional needs of an employee involved in an incident which injury or death occurs, and to assure the community that all the facts surrounding such incidents are fully and professionally explored and verified.

While on administrative status, the employee will remain available for official departmental needs regarding the incident. The employee will not discuss the incident with persons outside of the Department except:

1. Personnel of the District Attorney's Office;
2. The officer's private attorney;
3. The officer's psychologist

4. The officer's chosen clergy; or
 5. The officer's immediate family.
- D. The Chief of Police shall make the final determination to return the employee to full duty, assign the employee to an administrative function or allow the employee to remain on administrative leave with pay.

Responsibilities of the Office of Professional Standards (04-17-08)

- A. The Office of Professional Standards shall be notified of all Type III Use of Force incidents and respond to the scene to be available should the unit's resources be needed.
- B. An administrative investigation shall be conducted by a member of the Office of Professional Standards. The Office of Professional Standards shall complete the Use of Force Review in OSSI. Once the Force Investigation Team has completed its investigation, the Office of Professional Standards shall conclude the administrative investigation of the incident.
- C. The objective of the administrative investigation is to gather all the facts regarding the incident relevant to current agency policy and present the findings to the Chief of Police. The administrative investigation can proceed at the same time of the criminal investigation, with the exception of conducting interviews of the employee(s) involved or any relevant witnesses. This is to ensure that the investigations are kept separate and to avoid confusion.
- D. The Office of Professional Standards shall consult the appropriate Division Major prior to the employee(s) being interviewed in the administrative investigation. During the interview, the Office of Professional Standards representative shall read all officers or employees interviewed a Garrity Warning.
- E. The administrative investigation shall be thoroughly completed and all relevant witnesses and evidence must be examined. The FIT investigation shall be made available in its entirety to the Office of Professional Standards. The administrative investigation shall include a review from the Training Division as stated previously in this policy.
- F. The Office of Professional Standards shall submit a finding of facts report to the Chief of Police for his/her review and approval.

Findings of the Investigation (04-17-09)

A. Upon completion of the investigations, the findings will be reviewed by the Chief of Police or his/her designee. An employee may be subject to disciplinary action if the investigation finds:

1. The employee violated the law.
2. The employee violated Department policy, rules or regulations.
3. The employee demonstrated poor judgment involving wanton disregard of policy.
4. The employee demonstrated misconduct, including but not limited to, drinking, unjustified display of authority, disregard of duty, or the use of official authority for personal advantages.
5. The firearm was accidentally discharged through carelessness or horseplay.

B. In the event disciplinary action is deemed necessary, the discipline, up to dismissal from the Department, will be applied commensurate with the seriousness of the situation.

Annual Administrative Training Review (04-17-10)

Annually, the Training Division shall complete a documented administrative review of all use of force incidents, remedial or corrective training and the agency's use of force training curriculum. The review should indicate whether policy, training, equipment needs should be addressed or need revision. The review shall also include any patterns or trends identified by the training division. The review may also include any training which was found to be beneficial or should be continued in the future. The review shall be submitted to the Office of Professional in January of each calendar year and included in the annual use of force analysis.

Annual Assault on Sworn Officer Review (04-17-11)

Annually, the Training Division, in conjunction with the Office of Professional Standards, shall conduct an administrative review of all assaults on law enforcement officers to determine trends or patterns, with recommendations to enhance officer safety, revise policy, and address training issues. The purpose of the review is to determine what actions the agency may take to enhance officer safety, prepare the agency for requests for information regarding use of force events, and maintain training curriculums that are founded on real data from field-based events. The review will evaluate the implications of each event based on the following criteria:

1. Time of day;
2. Type of initial call;
3. Presence of multiple officers;

4. Misdemeanor or felony charges; and
5. Prior history of the arrestee (s).

Annual Analysis (04-17-12)

Annually, the Office of Professional Standards shall conduct an analysis of the agency's use of force incidents, use of force activities, policies and practices. The purpose of the analysis to identify any patterns or trends that could indicate training needs, equipment upgrades and/or policy modifications. The report shall include the following:

1. Date and time of incidents;
2. Types of encounters resulting in use of force
3. Trends or patterns related to race, age, and gender of subjects involved;
4. Trends or patterns resulting in injury to any person including employees;
5. Administrative review completed by Training Division;
6. Impact of findings on policies, practices, equipment, and training; and
7. Any supporting documentation found to be necessary.

Force Used Against Domesticated Animals (04-17-13)

During the course of carrying out law enforcement functions, officers may come into contact with aggressive domesticated animals. If deadly force is used against a domesticated animal, Fulton County Animal Control shall be immediately notified. The officer should request a uniform patrol supervisor to respond to the scene. The officer shall complete an incident report detailing the incident and the force option used. The report shall be sent to the officer's assigned Lieutenant for review. If the Lieutenant finds that the force was not justified then the report and incident shall be forwarded to the Office of Professional Standards for review. The Office of Professional Standards shall conduct a thorough investigation and forward the findings to the Chief of Police.