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## Use of Deadly Force

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### INTRODUCTION:

There is no greater degree of governmental intrusion than that of the government's ability to take human life in certain justified circumstances. The police officer is one of the most visible icons of governmental authority and intrusion, and arguably is most visible when it comes to the use of lethal force by the government, outside of the military.

A great deal of care and caution must be given by officers, as they are entrusted with the authority to enforce laws even to the point of inflicting death on the lawbreaker. These General Orders, in combination with training and experience, provide the foundation for our officers to make proper decisions in moments of crisis. When a violent felon acts out to cause harm, our officers should have no hesitancy in using that force which is necessary to bring the person under control.

### POLICY:

It is the policy of the LCC PD that officers may only use deadly force when it is objectively reasonable given the facts and circumstances known to the officer at the time:

- a. In defense of the officer's life when faced with an immediate threat of serious physical injury or death.
- b. In defense of another person's life when faced with an immediate threat of serious physical injury or death.
- c. When the officer has probable cause to believe a subject has committed, is committing, or is about to commit a violent felony involving the infliction or threat of infliction of serious bodily injury or death, provided that officers should give a warning prior to the use of deadly force if possible.
- d. When a subject seeking to escape or avoid custody has committed a violent felony involving the use or threatened use of deadly force against another person AND the subject poses an immediate or imminent danger to others if allowed to escape.

### DEFINITIONS:

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**Deadly Force:** The degree of force that is likely to result in death or serious physical injury.

**Serious Physical Injury:** A bodily injury that creates 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.

**Less Lethal Force:** Any use of force other than that which is considered deadly.

### **MICHIGAN STATUTES:**

The following Michigan statutes address circumstances in which a police officer may use deadly force or commit other acts where otherwise a citizen would be criminally charged with a crime. The full text of these statutes is contained in the External Documents.

750.224 Weapons; manufacture, sale, or possession as felony; violation as felony; penalty; exceptions; "muffler" or "silencer" defined.

750.224b Short-barreled shotgun or rifle; manufacture, sale, or possession as felony; penalty; exceptions; applicability to collector's item.

750.224d Self-defense spray or foam device.

750.226a Pocket knife opened by mechanical device; unlawful sale or possession; persons exempted.

750.227 Concealed weapons; carrying; penalty.

750.227b Carrying or possessing firearm when committing or attempting to commit felony; "law enforcement officer" defined.

750.227c Transporting or possessing loaded firearm in or upon vehicle; violation as misdemeanor; penalty; applicability to person violating MCL 312.10(1)(g).

750.227d Transporting or possessing firearm in or upon motor vehicle or self-propelled vehicle designed for land travel; conditions; violation as misdemeanor; penalty.

750.227f Committing or attempting to commit crime involving violent act or threat of violent act against another person while wearing body armor as felony; penalty; consecutive term of imprisonment; exception; definitions.

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750.231 MCL 750.224, 750.224a, 750.224b, 750.224d, 750.226a, 750.227, 750.227c, and 750.227d inapplicable to certain persons and organizations.

750.233 Pointing or aiming firearm at another person; misdemeanor; penalty; exception; "peace officer defined."

750.234 Firearm; discharge; intentionally aimed without malice; misdemeanor; penalty; exception; "peace officer" defined.

750.234a Intentionally discharging firearm from motor vehicle, snowmobile, or off-road vehicle in manner that endangers safety of another individual as felony; penalty; exception; "peace officer" defined; self-defense.

750.234b Intentionally discharging firearm at dwelling or occupied structure as felony; penalty; exceptions; definitions.

750.234d Possession of firearm on certain premises prohibited; applicability; violation as misdemeanor; penalty.

750.234e Brandishing firearm in public; applicability; violation as misdemeanor; penalty.

750.235 Maiming or injuring person by discharging firearm; intentionally aimed without malice; exception; "peace officer" defined.

750.329 Discharging firearm pointed or aimed at another person resulting in death; manslaughter; exception; "peace officer" defined.

Section 215 (MCL.750.215), as referred to in these statutes, defines "peace officer" as follows.

As used in this section, "peace officer" means any of the following:

- a. A police officer or public safety officer of a community college, college, or university who is authorized by the governing board of that community college, college, or university to enforce state law and the rules and ordinances of that community college, college, or university.

### CASE LAW:

*Tennessee v. Garner.*

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“Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”

*Graham v. Connor.*

“All claims that law enforcement officials have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen are properly analyzed under the Fourth Amendment’s ‘objective reasonableness’ standard, rather than under a substantive due process standard.”

“The Fourth Amendment ‘reasonableness’ inquiry is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.”

*Butler v. City of Detroit.*

Several issues are addressed in *Butler* regarding police officers and the use of force.

- a. “If a police officer is engaged in the exercise or discharge of a governmental function, that officer is protected by governmental immunity from liability based on justifiable actions that normally would constitute intentional torts.” (*Quote from Brassell v Laban summarizing Butler.*) The Michigan Court of Appeals in *Brassell* references MCL 691.1407 as the statutory authority for the above statement. That statute that provides governmental immunity to government officials.
- a. “The court also held that it was indisputable that the officer possessed the authority to use deadly force.” (*MSP Criminal Law and Procedure Manual, p. 13-3, 2003 edition.*)

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- b. “We must then inquire whether plaintiff ‘proved a case which fits the other prong of substantive due process – official acts which “may not take place no matter what procedural protections accompany them.”’ *Wilson v. Beebe*, 770 F2d [578] 586 [(CA 6, 1985)]. As explained by the *Wilson* court, there ‘is a substantive due process right akin to the “fundamental fairness” concept of procedural due process.’ *Id.* Applying the ‘shocks the conscience test’ as described in *Wilson v. Beebe*, supra, to the facts and evidence presented in this case, we find that the plaintiff had failed to establish a cause of action under 42 USC 1983. The complained-of official conduct does not ‘shock the conscience’ of this Court nor does it ‘offend those canons of decency and fairness which express the notions of justice of English speaking peoples even towards those charged with the most heinous crimes.’” *Butler v. City of Detroit*.

#### MICHIGAN ATTORNEY GENERAL OPINION:

Michigan Attorney General Opinion No. 5068 (1976) states the following.

“A peace officer may not use deadly force when attempting to stop or arrest a person who has committed a misdemeanor.

A peace officer may use deadly force to effect the arrest of a felon unless a safe and speedy capture can be made without using deadly force.

A peace officer may use deadly force to arrest the occupants of a fleeing vehicle only where:

- a. he knows or has probable cause to believe that a felony is involved;
- b. he seeks only to control or stop the vehicle without intentionally harming the occupants;
- c. a safer alternative would be useless or unreasonably dangerous to persons other than the occupants of the vehicle.”

#### PROHIBITED USE OF DEADLY FORCE SITUATIONS:

Deadly force and firearms shall not be used in any of the following, whether on duty or off duty:

- a. Misdemeanor or civil infraction situations.
- b. To fire warning shots or shots to attract attention.

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- c. Shots shall not be fired from a moving vehicle, except where an officer has no alternative to prevent death or serious injury.
- d. Shots will not be fired at moving vehicles except, where an officer has no other alternative to prevent death or serious injury.
- e. Shots will not be fired toward, into or at a crowd or gathering unless an officer has no other option to preserve life. The officer should take all reasonable precautions to ensure as accurate a shot as possible.
- f. Deadly force shall not be used for any purpose or in any manner otherwise prohibited in this General Order, in statute or case law.

**AUTHORIZED FIREARMS:**

Officers are authorized to carry and use only those firearms detailed in the authorized firearm general order and only in accordance with all applicable general orders issued by the Department.

**DEADLY FORCE – WEAPONS OTHER THAN FIREARMS:**

Deadly force may consist of the use of items, articles, instruments or equipment other than firearms which are designed, intended and routinely utilized for other legitimate police or other purposes, such as vehicles, flashlights, pocket knives and like objects. The deliberate use of any such item, article, instrument or equipment for any purpose other than that for which it is designed and intended, or in a potentially deadly manner is prohibited except in cases where the use of deadly force is specifically authorized in this General Order.

The following items will not be authorized: chemical irritants (other than the type specifically authorized by the Department), slapjacks, blackjacks, brass knuckles, lead gloves, saps, stars and any other unsanctioned offensive weapon.

**DISPLAY OF WEAPONS:**

Firearms may be displayed in the following situations:

- a. Where the use of firearms is authorized pursuant to this policy.
- b. Where the person to be apprehended has committed, or there is

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probable cause to believe the person to be apprehended has committed, a felony offense and the possibility of confrontation with deadly force exists.

c. Situations where the officer(s) experience and training in conjunction with the totality of circumstances indicate a plausible present danger.

Considerations involved in display of firearms:

- a. Severity of the charge.
- b. Individual or number of individuals to be apprehended or investigated.
- c. Credible information received concerning weapons and/or propensity for violence.
- d. Other circumstances under which the felony arrest may occur which renders drawing or display of a firearm a reasonable precaution.

Conditions which must be present:

- a. Conditions are such that drawing or displaying a firearm can be accomplished without unreasonable risk of accidental discharge.
- b. Firearms shall not be displayed or drawn in any known misdemeanor or civil arrest.

### **SURRENDERING OF FIREARMS:**

No officer shall display or provide any weapon to a citizen to inspect, examine or otherwise handle except as authorized by a Command Officer.

Survival studies have concluded that in instances in which the officer is taken hostage or prisoner by an armed felon, the probability of survival is diminished by surrendering his/her weapon. Due to the fact that the individual officer in such situations must make the ultimate decision as to the safety of others and his own personal safety, any decision to surrender the weapon in that situation shall be solely in the discretion of the officer. However, it is believed that an affirmative act to maintain the weapon, utilizing awareness, defensive tactics, disarming maneuvers, and other techniques, afford the best strategy for survival.

### **OFF-DUTY CARRY AND USE OF A FIREARM:**

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The purpose of this General Order section is to adopt safety directives and guidelines for dealing with the carrying of firearms off-duty and for dealing with an officer's duty and responsibility to take action in response to criminal activity while off-duty.

The following policies address the carrying of firearms while off-duty:

- a. An officer may carry a firearm while off-duty in accordance with state and federal law. It shall not be necessary that an officer who chooses to carry a firearm off-duty carry his service weapon. However, any weapon that an officer chooses to carry must be inspected, approved, test fired and registered with the Department in accordance with GO 1.3.9.
- b. Officers shall refrain from carrying firearms when consuming alcoholic beverages, or under other circumstances where the need to carry a firearm is outweighed by safety issues associated with the circumstances that the officer will be undertaking.
- c. An officer who becomes aware of an incident that poses a threat of serious bodily injury or death to some individual shall take "action" to minimize the risk of serious bodily harm or death. "Action" under this provision is fulfilled by reporting the incident and shall not require the officer to place him or herself in a position of peril. An officer who is faced with such a circumstance should act in accordance with the guidelines as spelled out in this General Order.

The following guidelines should be used by officers who find themselves in a situation that poses a threat of serious bodily injury or death.

- a. If possible, go to a safe location, and call 911.
- b. When you encounter a situation off-duty that seems to require police action, you must consciously evaluate whether your involvement is necessary or desirable, given the circumstances. How important and urgent is the need for your intervention?

A number of circumstances may impact your decision to get involved in any situation.



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- a. First, you may be alone, with family members or other non-police personnel.
- b. Second, it is unlikely that you will have all of the necessary police equipment while off-duty, for example; bullet-proof vest, handcuffs or radio. You may be faced with multiple suspects or be unaware of hidden suspects. There may also be environmental factors working against you such as: lack of cover, crowds of civilians, darkness, etc. Your intervention may actually spark an escalation of violence. Therefore, your best plan of action may be to:
  1. Gather accurate intelligence like a good witness until uniformed, on-duty officers arrive.
  2. Remember, you have NO LEGAL OR DEPARTMENTAL obligation to get involved, especially if such intervention places you in a position of peril or such intervention requires that you behave recklessly, carelessly, or in a suicidal manner.
  3. While Department policy mandates that you "take action" when witnessing a serious crime, that obligation is fulfilled by calling the police and monitoring the situation from a SAFE vantage point.
  4. Most survival-conscious officers have trained themselves NOT to intervene off-duty UNLESS their life or the life of another innocent party is IMMINENTLY in danger. In other words, you should only consider intervention when deadly force would be justified. You should not intervene just to make an arrest while off-duty. The decision to take action, beyond simply reporting, is a personal one and is not a requirement of this department.
  5. If you decide you must get involved, attempt to have someone call 911 advising the operator that an off-duty officer is on scene. Have the caller inform the operator if you are armed. If possible, have them describe you and your clothing. This will affect the mindset of the responding officers. When uniformed police officers arrive, have your badge out and visible (if you carry your badge while off-duty, as some officers carry only their photo

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credentials). Do not rely on showing your identification as a means of providing any protection. At a distance, in dim light and under stress, your badge may not be seen. Or, the identification may not be given credibility if the responding officers do not recognize you personally.

6. Some trainers advise officers to hold their badge next to their gun for the best chance of being seen because the eyes of the responding officers are most likely to go immediately to your drawn firearm. You're probably safer to RE-HOLSTER your gun when other officers arrive, unless doing so would put you and the responding officers or innocent civilians, in jeopardy. Until the responding officers sort out who is who, your gun is your greatest personal liability.

7. If you have cover, maintain it. You can communicate verbally from there.

8. Make your hands visible. Having responding officers see that you are unarmed and non-threatening will work to calm them and protect you.

9. Verbally identify yourself as a police officer-not once and not in a normal tone of voice, but repeatedly and very loud. Keep shouting out: "POLICE! DON'T SHOOT! OFF-DUTY OFFICER!" until you get acknowledgment and directions as to what you should do. Remember, the noise and excitement of the scene, combined with stress induced auditory blocking may prevent responding officers from hearing you initially.

10. When commands are issued by the responding officers, follow them promptly and completely. Expect to be treated like a suspect until your law enforcement status is verified.

11. When carrying a firearm off-duty (including finishing or beginning a tour of duty), it shall be concealed from public view by an outer jacket, shirt, sweater etc. If an off-duty officer's firearm is observed and prompts the response of police or security officials, the off-duty officer should respond in a manner consistent with this policy.

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12. Finally, the most important rule of all: If you have a gun in your hand, NEVER, EVER turn toward an on-duty officer

Whenever an officer becomes involved in an incident while in an off-duty capacity, he or she shall notify the Chief of Police as soon as possible. The officer shall write an Incident Report documenting what took place, unless the officer was involved in a shooting. In that case, then the procedure outlined in GO 1.3.6 for officer involved shootings will be followed. This report shall also be reviewed by the Department Administration in order to evaluate and update training for "off-duty" response.

### **DESTRUCTION OF ANIMALS:**

Officers may use firearms to destroy severely injured, vicious or rabid animals, which are menacing persons or other domestic animal, provided other reasonable means of apprehension are not available or feasible. Such destruction requires that it can be accomplished in complete safety with regard to other persons and property.

Domestic animals are in reality, personal property of another and in instances where feasible, a written request and/or waiver for the destruction of the animal should be obtained and maintained as part of the Incident Report.

### **PROCEDURES FOR WHEN DEADLY FORCE IS USED:**

**Accidental Discharge:**

- a. Whenever an officer accidentally discharges a weapon, a Command Officer shall be notified immediately. A Command Officer will respond to conduct an investigation and notified the College Administration.
- b. An Incident Report and/or Internal Investigation Report shall be completed and forwarded to the Chief of Police.

**LCC PD Officer – Intentional Use of Deadly Force:**

- a. Whenever an LCC PD officer intentionally discharges a weapon or otherwise uses deadly force, a Command Officer shall be called to the scene immediately. The Command Officer shall conduct an investigation at the scene of the shooting and notify the College Administration.

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- b. Assistance from the Michigan State Police Crime Lab will be requested for any processing and collection of evidence.
- c. If outside investigators are needed to assist, the Michigan State Police, Ingham County Sheriff or Lansing Police will be requested.
- d. An Incident Report and/or an Internal Affairs Investigation Report will be written by the Command Officer and forwarded the Chief of Police.

Other Agency Officer – Discharge of Firearm on Campus

- a. Whenever a firearm is discharged accidentally or intentionally, or if deadly force is otherwise used, within the boundaries of property owned or leased by Lansing Community College by a law enforcement officer from another agency, a Command Officer shall respond to the scene and notify the College Administration.
- b. Assistance from the Michigan State Police Crime Lab will be requested for any processing and collection of evidence, unless the officer’s agency is conducting the investigation, in which case that agency will determine what crime scene investigation resources are utilized.
- c. Depending on the circumstance involved, the Command Officer may coordinate with or turn over the investigation to the officer’s agency, request the Michigan State Police, Ingham County Sheriff, Lansing Police or have the LCC PD conduct the investigation.
- d. An Incident Report written by the Command Officer shall be forwarded to the Chief of Police.

Violations of this General Order

Whenever an officer is alleged to be in violation of this General Order, the matter shall be treated as any other disciplinary action Departmental General Orders and contractual labor agreements.

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Issued By:	Chief William French
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