

CHAPTER: 2 DATE ISSUED: 4/03/2008 DATE UPDATED: 12/08/2020

SECTION 9a: NON-LETHAL USE OF FORCE

I. PURPOSE:

To establish guidelines for the use of physical force involving less lethal weapons and equipment

II. POLICY:

Members of the Service shall use less lethal weapons and equipment only to affect lawful objectives. Members shall use the amount of force necessary to effect cooperation and control of a situation which requires police intervention, and then only when all other reasonable alternatives have been exhausted or are not available. As in any use of force incident, verbal direction and the opportunity to comply should be given to the subject to minimize the need for the continuation or escalation of force.

III. DEFINITIONS:

1. Instrument- Any article, device, object, apparatus, implement or tool used to effect cooperation and control by forceful means.
2. Restraining force- Is the use of a minimal amount of physical strength or energy exerted to hold, restrain, control etc., required to overcome resistance or reluctance to obey the direction of an officer.
3. Physical Force- Is the striking, kicking, fighting or any other physical or violent confrontation and force greater than restraining force not amounting to deadly physical force.
4. Physical Injury- Is the impairment of physical condition or substantial pain.
5. Serious Bodily Injury (serious Physical Injury)- Bodily injury that creates or causes:
 - a) Substantial risk of death; or
 - b) Unconsciousness; or
 - c) Serious and protracted disfigurement; or
 - d) Protracted loss or impairment of the function of any bodily member, organ or mental faculty.
6. Deadly Physical Force- Physical force which is readily capable of causing death or other serious physical injury.

7. Objectively Reasonable- An objective standard used to judge an officer's actions. Under this standard, a particular application of force must be judged through the perspective of a reasonable officer facing the same set of circumstances, without the benefit of 20/20 hindsight, and be based on the totality of the facts that are known to that officer at the time that the force was used. [*Graham*, 490 U.S. at 396 (1989)]
8. Display a Chemical Agent- To point a chemical agent at a subject.
9. Use/Deploy a Chemical Agent- The operation of the chemical agent against a person in a manner capable of causing physical injury.
10. Brandishes/Uses/Discharges a Firearm- The operation of a firearm against a person in a manner capable of causing physical injury.
11. Brandishes/Uses/Deploys and Impact Weapon or Electronic Control Weapon- The operation of an impact weapon or electronic control weapon against a person in a manner capable of causing physical injury.
12. Uses a chokehold or other similar restraint- Any application of sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air.

IV. REFERENCES:

1. Article 35 of the New York State Penal Law
2. NYS Executive Law Section 837-t, Use of Force Reporting

V. RULES AND REGULATIONS:

1. Less lethal weapons and equipment, when used, shall be the minimum force necessary for a given situation and shall be reasonable in degree to the extent that it is necessary to effect cooperation and control of the situation.
 - a) No member of the Service shall exceed the limits of his/her authority under Article 35 of the New York State Penal Law known as the Defense of Justification.
2. Only issued or approved less lethal weapons and equipment shall be used when applying physical force, except in emergency situations when it may be necessary to use any instrument at the disposal of the officer(s) involved.
3. Whenever a person or persons are engaged in passive resistance demonstrations, "Pain Compliance" come along holds shall not be used unless

specific authorization has been given to use such holds by a member of the Service holding the rank of Deputy Chief or above. This limitation applies only to passive resistance demonstrations and is not a restriction upon an officer's authority to use come along holds and less lethal weapons and equipment when the officer is any way endangered, the subject of an attack or is confronted by someone actively resisting arrest as opposed to passive non-cooperation.

VI. PROCEDURES:

1. Less Lethal Weapons and Equipment - shall be used only as prescribed in Departmental training. These items, or other authorized equipment, shall never be converted or used in such a way as to represent the use of deadly force unless the officer reasonably believes such is necessary to repel imminent use of deadly force against the officer or another. Members of the Service are required to obtain Department authorized training in the proper use of less lethal weapons and equipment. All members of the Service using these less lethal weapons and equipment must successfully complete a Department approved initial training course prior to issuance, and receive annual training thereafter which is accomplished by the required annual viewing by members of the Service of the Decentralized Individualized In-Service Training (DIIT) video entitled "Deadly Physical Force/Physical Force-Less Lethal".

a) Pepper Mace/O.C.

- i. The use of Pepper Mace/O.C. is controlled by the sections of the Penal Law that control the use of other issued weapons and the use of physical force. Pepper Mace/O.C. is not used on a subject unless the member of the Service reasonably believes that the use of Pepper Mace/O.C. is necessary to effect an arrest, or for self-defense, or the defense of a third party against unlawful physical force.
- ii. When Pepper Mace/O.C. is used, the member of the Service involved will transport the subject, or cause the subject to be transported to the nearest medical facility for examination and treatment as soon as possible. The medical facility will decontaminate the subject according to proper medical treatment prior to processing by the arresting officer.
- iii. When a Pepper Mace/O.C. weapon is discharged against another to affect an arrest, for self-defense, or in the defense of a third party against unlawful physical force, a supervisor must be notified and will respond to the scene as soon as possible. The supervisor will investigate the circumstances and take any other measures deemed appropriate at the time. The supervisor will ensure a Use of Force Report is completed by the member using Pepper Mace/O.C. The

responsible supervisor shall distribute copies of the report as indicated. In the event that the Pepper Mace/O.C. weapon is discharged for the control of an animal, no Use of Force Report shall be filed. However, the incident will be documented in the Incident Report. If the use of Pepper Mace/O.C. is only displayed, notification of a supervisor is not required however the Use of Force Report shall be submitted, (per Subdivision III. – Definitions.)

- iv. When Pepper Mace/O.C. which was issued to a member of the Department is lost or stolen, the member will comply with that section of the Rules and Procedures regarding Department property lost/stolen.

b) Tasers- (Conducted Energy Devices [CED])

- i. The use of the Taser is controlled by the same sections of the Penal Law that control the use of physical force. The Taser is not to be used on a person unless the member of the department reasonably believes that the use of the Taser is necessary to affect an arrest, for self-defense, or the defense of a third party against unlawful physical force.
- ii. Unless a person presents an immediate threat of injury to himself/herself or to others, the Taser shall not be used if the person is:
 - 1) obviously pregnant
 - 2) apparently under 16 years of age
 - 3) apparently over 65 years of age
 - 4) running away to escape
 - 5) In an elevated position above ground level from which the person might fall and injury is likely, unless safety precautions have been taken (example: airbag deployment).
 - 6) operating a vehicle or machinery
 - 7) In a flammable environment or in the presence of flammable products on a subject.
 - 8) in water unless additional personnel are available for possible rescue
 - 9) obviously frail or infirmed
 - 10) Handcuffed, unless they are exhibiting active aggression, and/or to prevent individuals from harming themselves or others.
- iii. The Taser is considered a use of force and it is not to be used merely to persuade an individual who is simply not complying with an officer's orders.

- iv. Under all circumstances if possible, when deploying the Taser members of the department should attempt to avoid the sensitive areas of the body; the head, throat, frontal chest/breast area or known pre-existing condition areas. Taser use causes Neuromuscular Incapacitation (NMI) and beyond its intended purpose may exacerbate medical conditions in persons taking certain medications and/or drugs or who have other cardiac conditions and/or implanted electronic medical devices such as pacemakers and defibrillators.
- v. After a Taser has been deployed on a person, the member of the department involved shall transport, or cause the subject to be transported, to the nearest medical facility for a clinical evaluation and removal of the Taser darts.
- vi. When a Taser device is used against a subject, a supervisor must be notified and will respond to the scene as soon as possible. The supervisor will investigate the circumstances and take any other measures deemed appropriate at the time. The supervisor will ensure a Use of Force Report is completed by the member using a Taser. The member's supervisor shall ensure the distribution of copies of the report as indicated on the report. In addition, a copy of the Use of Force Report shall be transmitted as soon as practicable to the Chief of Police so it can be forwarded to the Firearms Training Section.
- vii. When a Taser device is used in the Drive-Stun (dry-stun, dry tasing, contact tasing, drive tasing) mode, the member of the department involved shall immediately transport, or cause the subject to be transported, to the nearest medical facility for a clinical evaluation.
- viii. Each discharge of a Taser on an individual is considered a separate use of force which must be justified and documented. If after the third 5-second discharge the subject is not yet controlled, the officer should consider other force options or techniques. If extenuating circumstances justify additional discharges of the Taser, those circumstances must be fully documented on a Use of Force Report. NOTE: The entire use of multiple Taser discharges can be documented on a single Use of Force Report.

c) Baton- Impact Weapon, Expandable Baton

- i. The use of the Baton is controlled by the same sections of the Penal Law that control the use of physical force. The Baton is not to be used on a subject unless the member of the Service

reasonably believes that the use of the Baton is necessary to affect an arrest, for self-defense, or the defense of a third party against unlawful physical force.

- ii. If it is necessary to strike a subject with a Baton, the officer shall immediately determine if the subject requires medical attention. If the subject suffered a physical injury and/or complains of injury or pain, the member of the Service involved shall transport, or cause the subject to be transported, to the nearest medical facility for a clinical evaluation.
- iii. When a subject is struck with a Baton, a supervisor must be notified and will respond to the scene as soon as possible. The supervisor will investigate the circumstances and take any other measures deemed appropriate at the time. The supervisor will ensure a **Use of Force Report** is completed by the member using the Baton. The member's command shall ensure the distribution of copies of the report as indicated on the report.
- iv. Unless deadly physical force is justified, avoid strikes to the head and spine. Baton strikes should be directed at the subject's arms and legs which present the greatest threat to a member of the Service. Verbal direction and the opportunity to comply should be given to the subject to minimize the need for repeated strikes.

d) Spit Sock Hood –

- i. The hood controls spitting while allowing an officer to observe the subject's face. The medical filtration fabric helps limit exposure to a variety of viruses, bacteria and infectious diseases. Fitting loosely over the head of the subject, the Spit Sock Hood, used in place of other protection methods that may cause unintentional harm, is safer and reduces the risk of injury to the subject.
- ii. Whenever the Spit Sock Hood is used on a subject, officers are required to complete a **Use of Force Report**.

e) Handcuffs and Restraints-

- i. The purpose of handcuffs, flexcuffs, or transport handcuffs is to restrain the movements of a subject in a manner that provides a safe means of transportation for officers. Restraints also prevent further physical resistance from a subject. The departmental policies for the use of restraints are as follows:

- 1) All subjects taken into custody should be handcuffed behind their back. This is to ensure the safety of the officer or other citizens. The exceptions to this rule are:

When the subject has an injury that does not permit his/her arms to move behind the back.

When the subject's age, physical condition, or physical limitations may also indicate a change in this procedure.

- 2) All subjects taken into custody should be handcuffed behind their back, and the handcuffs are double-locked. The exception to this rule is: when the arrest environment is tactically unsafe for the officer to double-lock the handcuffs.
 - 3) If a subject complains that the handcuffs are too tight, the transporting officer is to ensure that unnecessary tightness, which may prevent proper blood circulation, does not occur.
 - 4) To ensure proper safety for officers, all subjects will be handcuffed before being searched.
 - 5) Except under exceptional circumstances, officers should not handcuff a subject to fixed objects such as posts, vehicles, buildings, etc.
 - 6) It is not uncommon for an officer to arrest a subject, place him in restraints, and then have the subject start to resist. If an officer does encounter this type of resistance, the officer should utilize control techniques to prevent this type of resistance, and to prevent injuries to the officer or injuries to the subject. However, the control techniques should be limited to those that would not be construed as excessive force.
2. Reporting Procedures- Reporting requirements for the use of force, including the use of deadly physical force, are contained within Chapter 2 Section 9, 9a, and 10 of these Rules and Procedures. Report writing for firearms discharges are contained within Chapter 5, Section 4.

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