

Section 9: Use of Physical Force

I. PURPOSE:

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

II. POLICY:

1. Members of the Service shall use only the force necessary to effect 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.
2. The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness. The amount of force that is used by members of the Service shall be the amount of force that is objectively reasonable under the circumstances for the member of the Service involved to effect an arrest, prevent an escape, or in defense of themselves or others. The standard of objective reasonableness, established by the United States Supreme Court in *Graham v. Connor*, is used in this policy and is intended to provide members of the Service with guidelines for the use of force, including deadly physical force.
 - a) As the Supreme Court has recognized, this reasonableness inquiry embodies “allowance for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation.” [*Graham v. Connor*, 490 U.S. 386 at 396 (1989)]

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.
13. Mere Pointing of a Firearm, impact weapon or electronic control devise at a subject- Must fill out a use of force report.

IV. REFERENCES:

1. New York State Penal Law, Article 10, Section 10.00, Article 35, Sections 35.10 to 35.30. Section 121.13-(a)
2. New York State Criminal Procedure Law, Article 690, Section 690.50
3. NYS Civil Rights Law Section 28.

4. NYS Executive Law Section 837-t, 837-v, 840(4)(d)(3)
5. NYC Mental Hygiene Law Section 9.41
6. 9 New York Codes, Rules, and Regulations (NYCRR) Section 6058
7. NYS Municipal Police Training Council (MPTC)
8. NYS Division of Criminal Justice (DCJS)

V. RULES AND REGULATIONS:

1. Physical force, 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. In general terms, force is authorized to be used when reasonably believed to be necessary to effect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of one's self or another.
 - 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 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 reasonable force when the officer is any way endangered is the subject of an attack or is confronted by someone actively resisting arrest as opposed to passive non-cooperation.
4. Under the Fourth Amendment, a police officer may use only such force as is "objectively reasonable" under the circumstances. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene. [*Graham*, 490 U.S. at 396 (1989)]
5. Failure to adhere to Departmental use of force guidelines and use of force reporting requirements may result in disciplinary action.

VI. PROCEDURES:

1. Physical force may be used when it is lawful and when the exercise of persuasion, advice and/or warning is found to be insufficient to obtain cooperation and control.
2. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.
3. Factors that may be used in determining the reasonableness of force include, but are not limited to:
 - a) The severity of the crime or circumstance; [*Graham*, 490 U.S. at 396 (1989)]
 - b) The level and immediacy of threat or resistance posed by the suspect; [*Graham*, 490 U.S. at 396 (1989)]
 - c) The potential for injury to citizens, officers, and suspects; [*Scott v. Harris*, 550 U.S. 372 (2007)]
 - d) The risk or attempt of the suspect to escape; [*Graham*, 490 U.S. at 396 (1989)]
 - e) The knowledge, training, and experience of the officer; [*Graham v. Connor*, 490 U.S. 386 (1989), *Terry v. Ohio*, 392 U.S. 1 (1968)]
 - f) Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects; [*Sharrar v. Felsing*, 128 F. 3d 810 (3rd Cir. 1997)]
 - g) Other environmental conditions or exigent circumstances. [*Chew v. Gates*, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)]
4. Duty to Intervene:
 - a) Any officer present and observing another officer using force that he/she reasonable believes to be clearly beyond that which is objectively reasonable under the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.
 - b) An officer who observes another officer use force that exceeds the degree of force as described in the subdivision above of this section should promptly report these observations to a supervisor.
5. Prohibited Uses of Force:
 - a) Force shall not be used by a member of the Service for the following reasons:

- i. To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;
 - ii. To coerce a confession from a subject in custody;
 - iii. To obtain blood, saliva, urine, or other bodily fluid or cells, from an individual for the purposes of scientific testing in lieu of a court order where required;
 - iv. Against persons who are handcuffed or restrained unless it is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the subject.
6. Health of a Person In Custody: In accordance with New York State Civil Rights Law Article 3, Section 28, a police or peace officer or other law enforcement entity, who has custody of a person must provide attention to the medical and mental health needs of a person in their custody and obtain assistance and treatment of such needs, which are reasonable and provided in good faith.
 - a) If it is necessary to use physical force, 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.
 - b) In accordance with New York State Mental Hygiene Law Section 9.41, the immediate mental health needs of a person shall be based upon the reasonable cause to believe that a person, who appears to be mentally ill, is conducting themselves in a manner which is likely to result in serious harm to themselves or others. Department members can locate pertinent information on addressing the mental health needs of individuals within the following components of the Rules and Procedures: Chapter 9, Section 5, ('Police Response to Incidents Involving Persons with Possible Mental/Emotional Issues [PMI]') and ('Transport and Special Processing Procedures for Arrestees Requiring a Mental Health Evaluation and/or Treatment'). Department members are reminded that these sections both state that if circumstances indicate immediate emergency medical care is needed, the person with mental health needs will be transported to the closest available hospital regardless of whether it is a mental health facility.
7. If any physical injury occurs a supervisor must be notified. The supervisor will investigate the circumstances and take any other measures deemed appropriate at the time such as:
 - a) Ensure the member receives medical treatment if necessary and the **Injured Employee Report** is completed.

- b) Ensure the subject receives medical treatment if necessary.
 - c) Notify the Chief of Police in cases resulting in serious bodily injury. When the incident occurs during non-working hours of the Chief, the Supervisor will contact the Him/Her at home. The Chief of Police will notify the Police Commissioner.
8. Use of Force Reporting - Except for those use of force cases investigated by the Homicide Section (i.e., police shootings resulting in physical injury or death, death in custody, etc.), when a member of the Service uses physical force, including deadly physical force, whether an arrest is made or not and/or in any case where a person is charged with Resisting Arrest (205.30 N.Y.S. P.L.) wherein any level of force is used, all involved officers shall, prior to the end of their tour, prepare a **Use of Force Report**, to detail their respective involvement and submit this report for supervisory approval. If a member is incapacitated, his or her immediate supervisor shall prepare and submit the **Use of Force Report**. The member's supervisor shall ensure the distribution of copies of the report as indicated on the report. If the use of physical force is only threatened, notification of a supervisor is not required.
- a) In the event an involved officer is unable to complete the required paperwork prior to the end of the tour due to injury or other exigent circumstances, the officer may, upon approval of his or her immediate supervisor, complete it during his or her next tour.
 - b) In the event an involved officer's unavailability to complete the required paperwork extends beyond his or her next tour, the officer's immediate supervisor will ensure that a designated member of the Service completes all required reports.
 - c) In addition to the aforementioned use of force reporting requirements and in accordance with New York State Executive Law § 837-t and 9NYCRR 6058, members of the Service shall also submit the **Use of Force Report** for the following use of force incidents, (For definitions, refer to Subdivision **III.**):
 - i. Brandishing, using or discharging a firearm at or in the direction of another person; or
 - ii. 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; or
 - iii. Displaying, using or deploying a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas; or
 - iv. Brandishing, using or deploying an impact weapon, including, but not limited to, a baton or billy; or

- v. Brandishing, using or deploying an electronic control weapon, including, but not limited to, an electronic stun gun, flash bomb or long range acoustic device; or
- vi. Engaging in conduct which results in the death or serious physical/bodily injury of another person.
- vii. If any physical injury occurs a supervisor must be notified.

NOTE: Routine handling, maintenance, storage, cleaning or training is excluded.

- d) All Use of Force forms shall be forwarded to the Chief of Police, and the Chief of Police shall be the designated Officer tasked with making the appropriate entries into the New York State Division of Criminal Justice Services (NYSDCJS) Use of Force Reporting database. The entries shall include, but not be limited to the date of the event, the location, a description of the circumstances of the event, and the race, sex, ethnicity, age, or if unknown, approximate age of all persons engaging in the use the use of force or suffering such injury. The names of the individuals involved in the use of force incident are not entered into the (NYSDCJS) database.
9. Required Photographs - Photographs will be taken if a person is subjected to any force in excess of restraining force, or is charged with Resisting Arrest, whether or not the person is injured or alleges injury. In addition, photographs will be taken whenever a person subjected to restraining force is injured, alleges injury, or is arrested. The required photographs are taken in addition to mug shots.
- a) The supervisor on duty will take the photographs, whenever possible. Digital cameras will be used or department cell phone. If the supervisor is not available, any officer other than the arresting officer will take the photos. The photographs will clearly depict the following body areas of the person:
 - i. Overall front and back areas.
 - ii. Close-ups of all exposed areas.
 - iii. Close-ups of all injured areas.
 - iv. Close-ups of all areas alleged by the person to be injured.
 - v. Upon consent of the person, close-up photographs of the following unclothed body areas: front and rear torso (male), rear of torso (female), legs and feet. No efforts shall be made to compel or force a person to submit to any photographs of the foregoing body areas.

- b) Photographs will be taken of the scene and any evidence pertaining to the person's injury / alleged injury, if applicable.
 - c) The photographs of the person subjected to force will be documented on a **Supplementary Report**, by the officer taking the photographs. The officer will also make the proper notations on the **Prisoner Activity Log**, if applicable.
 - d) The Officer in Charge of the processing will ensure photographs are taken as required and, if applicable, will make a notation in the **Prisoner Activity Log**.
10. Use of Force Investigations Conducted by the Homicide Section - In cases when an investigation is being conducted by the Homicide Section concerning the use of force by a member of the Service, the **Use of Force Report**, shall not be completed. Instead, the Commanding Officer of the Homicide Section, or the Commanding Officer's designee, shall prepare and submit an **Internal Correspondence (PDCS-2042) to the Chief of Police within 10 days of the initiation of the investigation. The correspondence shall include the following information:**
- a) The name, rank, and command of the officer.
 - b) Pedigree of the officer:
 - i. Age
 - ii. Gender and race
 - iii. Ethnicity
 - c) The date and time of occurrence.
 - d) Type of force used.
 - e) Pedigree of the Use of Force subject:
 - i. Date of birth/Age
 - ii. Personal Identification Number (PIN)
 - iii. Gender and race
 - iv. Ethnicity
 - v. Address, home and cell phone numbers
 - f) Indicate if the subject was engaged in unlawful activity and if so, what type.
 - g) Describe the subject's injury:
 - i. Physical injury
 - ii. Serious bodily injury
 - iii. Death – Has the Medical Examiner determined the manner and cause of death?

11. Use of Force Training – in accordance with New York State Law Enforcement Accreditation Program standard 33.1, members of the Service receive annual training regarding the use of force and the use of deadly physical force via a Department training video entitled “Deadly Physical Force/Physical Force-Less Lethal”.
12. In accordance with New York State Executive Law Section 840 and New York State Law Enforcement Accreditation Program standard 20.1, the Department shall conspicuously post the Department’s use of force directive(s) on the public website.

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