



103-01 USE OF FORCE – GENERAL

ISSUE DATE: 5/13/2021	EFFECTIVE DATE: 6/1/2021	REVISES: ---	CHAPTER: 103 – USE OF FORCE/WEAPONS
REFERENCES: <u>NEW YORK STATE ACCREDITATION STANDARDS</u> 20.1 (Necessary Force) 21.1 (Review of Firearms Use) 43.8 (Health of persons in custody)			
SPECIAL INSTRUCTIONS: This policy supersedes all previous policies and procedures			
DISTRIBUTION: ALL MEMBERS OF THE DEPARTMENT			PAGE: - 154 -
ISSUING AUTHORITY: ANTHONY D. PICCOLINO, CHIEF OF POLICE			

PURPOSE:

Law enforcement officers around the country and here in New York State are authorized to use reasonable and legitimate force in specific circumstances. Federal constitutional and state statutory standards dictate when and how much force can be used. This policy is founded in these standards, but is not intended to be an exhaustive recitation of state and/or federal legal framework governing use of force.

DEFINITIONS:

- A. 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.⁷
- B. Deadly Physical Force** – Physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.⁸
- C. Physical Injury** – Impairment of physical condition or substantial pain.⁹
- D. Serious Physical Injury** – Physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.¹⁰

⁷ *Graham*, 490 U.S. 396 (1989)

⁸ NY Penal Law § 10 (11) (McKinney 2013)

⁹ NY Penal Law § 10 (9) (McKinney 2013)

¹⁰ NY Penal Law § 10 (10) (McKinney 2013)

POLICY:

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness.¹¹ The amount of force that is used by the officers shall be the amount of force that is objectively reasonable under the circumstances for the officer 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 officers with guidelines for the use of force, including deadly physical force.

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.”¹²

This policy is written in recognition of the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires a careful balancing of all interests.

PROCEDURE:**IV. USE OF FORCE**

- A. 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.¹³
- B. Under the 4th 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.¹⁴

¹¹ Force which is objectively reasonable is insulated from criminal liability through Article 35 of the NYS Penal Law and civil liability by the 4th Amendment standard of objective reasonableness.

¹² *Graham v. Connor*, 490 U.S. 386 at 396 (1989).

¹³ NY Penal Law and § 35.30(1) (McKinney 2013)

¹⁴ *Graham*, 490 U.S. at 396 (1989)

V. DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

- A. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.
- B. Factors that may be used in determining the reasonableness of force include, but are not limited to:
 1. The severity of the crime or circumstance;¹⁵
 2. The level and immediacy of threat or resistance posed by the suspect;¹⁶
 3. The potential for injury to citizens, officers, and suspects;¹⁷
 4. The risk or attempt of the suspect to escape;¹⁸
 5. The knowledge, training, and experience of the officer;¹⁹
 6. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;²⁰
 7. Other environmental conditions or exigent circumstances.²¹

VI. DUTY TO INTERVENE

Any officer present and observing another officer using force that he/she reasonably believes to be clearly beyond that which is objectively reasonable under

¹⁵ *Ibid.*

¹⁶ *Ibid*

¹⁷ *Scott v. Harris*, 550 U.S. 372 (2007)

¹⁸ *Graham*, 490 U.S. at 396 (1989)

¹⁹ Analysis of cases under the 4th Amendment require the focus to be on the perspective of a reasonable officer on the scene which includes the training and experience of the officer. *Graham v. Connor*, 490 U.S. 386 (1989), *Terry v. Ohio*, 392 U.S. 1 (1968)

²⁰ *Sharrar v. Felsing*, 128 F. 3d 810 (3rd Cir. 1997) (numbers of officers or subjects)

²¹ Courts have repeatedly declined to provide an exhaustive listing of factors. *Chew v. Gates*, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)

the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm. The intervening officer will report his intervention to the Lieutenant who will follow the procedure in section 105-01 Internal affairs.

An officer who observes another officer use force that exceeds the degree of force as described in subdivision A of this section should promptly report these observations to a supervisor.

VII. USE OF DEADLY PHYSICAL FORCE

- A. Deadly physical force may be used by an officer to protect themselves or another person from what the officer reasonably believes is an imminent threat of serious physical injury or death.²²
- B. Deadly physical force may be used to stop a fleeing suspect where:
 - 1. The officer has probable cause to believe the suspect has committed a felony involving the infliction or threat of serious physical injury or death; and,
 - 2. The officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officer or to others.
 - 3. Where feasible, some warning should be given prior to the use of deadly physical force.²³

VIII. PROHIBITED USES OF DEADLY PHYSICAL FORCE

- 1. Choke holds, carotid holds and similar compressions of the neck represent potential use of deadly force and shall never be used unless an officer or another person is in imminent danger of death or serious physical injury, and all other measures to reasonably repel the attack have been exhausted.

²² NY Penal Law and § 35.30(1)(c)(McKinney 2013)

²³ NY Penal Law and § 35.30(1), as restricted by *Tennessee v. Garner*, 471 U.S. 1 (1985) (restricting the use of deadly physical force as it relates to fleeing felons) In *Garner*, the Supreme Court uses "significant threat of serious physical harm, either to the officer or others" in describing the limited circumstances under which deadly force can be used to prevent the escape of a felon.

2. Discharging a firearm at or from a moving vehicle is prohibited unless the occupants of same are using deadly physical force against the officer, or another and the officer reasonably believes that he will not endanger innocent persons.
3. A police officer is not justified in using his firearm to fire a warning shot.

IX. PROHIBITED USES OF FORCE

A. Force shall not be used by an officer for the following reasons:

1. To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;
2. To coerce a confession from a subject in custody;
3. 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;
4. 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.

X. REPORTING & REVIEWING THE USE OF FORCE

- A. 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.²⁴
 1. This includes appropriate and timely medical attention being provided to a party injured as a result of a use of force incident.
 2. 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 a serious harm to themselves or others.²⁵

²⁴ NY Civil Rights law 28

²⁵ NY Mental Hygiene Law 9.41

- B. Members involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete a departmental use of force report when:
1. Use of force that results in a physical injury.
 2. Use of force incidents that a reasonable person would believe is likely to cause an injury.
 3. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
 4. Incidents where a conducted energy device (CED) was brandished, intentionally discharged or accidentally discharged after being displayed in the direction of another person.
 5. Incidents where a firearm was brandished or discharged in the direction of another person.
 6. Uses a chokehold or similar restraint that applies pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air.
 7. Displays, uses or deploys an impact weapon, including but not limited to, a baton or billy
 8. Displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas.
- C. The use of force form should be used to document any reportable use of force incident.
- D. Officers should document any requests for necessary medical or mental health treatment as well as efforts of police to arrange for such treatment.

XI. PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS

- A. Where practicable, a supervisor should respond to the scene to begin the preliminary force investigation.

- B. A supervisor that is made aware of a force incident shall ensure the completion of a use of force report by all officers engaging in reportable use of force and, to the extent practical, make a record of all officers present.
- C. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
- D. The [applicable person, unit, or bureau] will receive the supervisor's report and conduct an investigation.
- E. Consistent with this agencies disciplinary protocols and any applicable collective bargaining agreements, agency policy establishes standards for addressing the failure to adhere to use of force guidelines. See section 105-01²⁶
- F. *As of the April 1, 2021 effective date of Executive Law 70-b. The Office of Special Investigations (OSI) within the Office of the Attorney General will now investigate any incidents in which the death of a person is caused by a police officer or peace officer or where there is question as to whether the death was in fact caused by a police officer or peace officer. We offer the attached guidelines to assist you and your staff when responding to these highly sensitive incidents. These guidelines should assist your organization and OSI to ensure efficient and transparent investigations. Whenever an incident occurs, please contact us immediately at (855) OSI -NYAG ((855)674-6924).*

XII. TRAINING

- A. All officers should receive training and demonstrate their understanding on the proper application of force.
- B. Training topics will include use of force, conflict prevention, conflict resolution and negotiation, and de-escalation techniques and strategies, including, but not limited to, interacting with persons presenting in an agitated condition as well as duty to intervene and prohibited conduct.²⁷

²⁶ EXC §840(4)(d)(2)(vi)

²⁷ EXC §840(4)(d)(2)(vii)

- C. This policy is not intended to be a substitute for proper training in the use of force. Comprehensive training is the key to the real-world application of the concepts discussed within this policy.