

PT-15: USE OF FORCE

Use of Force Policy

I. 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.

II. POLICY

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness.¹ 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.”²

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.

It is recognized that no policy can realistically predict every possible situation an officer may encounter. Officers are entrusted to use well-reasoned discretion in determining the appropriate use of force for each incident.

It is recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons, or methods provided by this department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronted with. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

The ultimate goal of every law enforcement encounter is to avoid or minimize injury. There is nothing in this policy that requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

1 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.

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

III. 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.³

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.⁴

C. Physical Injury – Impairment of physical condition or substantial pain.⁵

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.⁶

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.⁷

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.⁸

3 Graham, 490 U.S. 396 (1989) 4 NY Penal Law § 10 (11) (McKinney 2013)

5 NY Penal Law § 10 (9) (McKinney 2013) 6 NY Penal Law § 10 (10) (McKinney 2013) 7 NY Penal Law and § 35.30(1) (McKinney 2013) 8 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;⁹
2. The level and immediacy of threat or resistance posed by the suspect;¹⁰
3. The potential for injury to citizens, officers, and suspects;¹¹
4. The risk or attempt of the suspect to escape;¹²
5. The knowledge, training, and experience of the officer;¹³
6. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;¹⁴
7. Other environmental conditions or exigent circumstances.¹⁵

VI. DUTY TO INTERVENE

A. Any officer present and observing another officer using force that he/she reasonably believes to be clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force.

B. 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.

9 Ibid. 10 Ibid. 11 Scott v. Harris, 550 U.S. 372 (2007) 12 Graham, 490 U.S. at 396 (1989)

13 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) 14 Sharrar v. Felsing, 128 F. 3d 810 (3rd Cir. 1997) (numbers of officers or subjects) 15 Courts have repeatedly declined to provide an exhaustive listing of factors. Chew v. Gates, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)

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.¹⁶

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 or intends to commit, a felony involving the infliction or threatened infliction 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 if the individual is not immediately apprehended.

3. Where feasible, some warning should be given prior to the use of deadly physical force.¹⁷

Imminent does not necessarily mean immediate or instantaneous. An imminent danger may exist if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:

1. The individual has a weapon or is attempting to access one and it is reasonable to believe the individual intends to use it against the officer or another person.
2. The individual is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the individual intends to do so.

C. Shooting at or from moving vehicles – An officer should only discharge their firearm at a moving vehicle or its occupants when the occupants of said vehicle are using deadly physical force against the officer or another person.

D. Deadly force limitations and prohibitions

Chokeholds: The Department bans the use of chokeholds as a police practice in a manner consistent with the conduct prohibited by NY Penal law 121.13-A. A chokehold is defined as either (i) a technique that applies pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air (NY Exec. Law 837-t); or (ii) a technique that applies pressure on the throat or neck of such person or blocks the nose or mouth of such person with intent to impede the normal breathing or circulation of blood of another person (NY Penal Law 121.11)¹⁸

¹⁶ NY Penal Law and § 35.30(1)(c)(McKinney 2013)

¹⁷ 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.

¹⁸ NY Penal Law 121.13a establishes the crime of Aggravated Strangulation

VIII. 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.
5. In general officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. If a person does swallow evidence or contraband, EMS should be activated.
6. Warning shots are prohibited.

IX. REPORTING & REVIEWING THE USE OF FORCE

A. Any injuries resulting from a use of force incident shall result in the appropriate and timely medical attention being provided to the injured party.

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.

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 displayed or intentionally discharged after being displayed.

5. Incidents where a firearm was displayed or discharged.

C. A Department use of force form should be used to document any reportable use of force incident.

(See addendum 1)

X. PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS

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

B. Ensure that any injured parties are examined and treated.

C. 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.

D. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.

E. Identify any witnesses not already included in related reports.

F. Review and approve all related reports and then forward the report(s) to the Chief of Police or his/her designee.

E. All Use of Force Reports will be reviewed to ensure that the level of force used was appropriate and to evaluate the need for further training. If it is determined that the force used was appropriate, then no further action will be necessary. If it is determined that the force was excessive or unjustified a criminal or internal investigation will be commenced.

XI. TRAINING

A. All officers will receive annual training on this policy and demonstrate their knowledge and understanding.

November 2021

Town of Hamburg Police Department Use of Firearms/Force Report		DATE	Complaint #
		TIME	INCIDENT OCURRED: On Duty Yes No
Location of Incident		Was a firearm accidentally discharged Yes No (if yes explain in narrative)	
Defendant's Name		Phone	Height
Address		Sex	Weight
		Race *see reverse side	DOB
		Ethnicity: Hispanic Non-	
Hispanic			
Nature of injuries before force used:			
Nature of injuries after force used: Photographs: Yes No			
Transported to Hospital: Yes No Ambulance: Other:	Hospital Name		At Hospital, Defendant was: Admitted Treated/released Not treated Refused treatment Name of witness to refusal:
	Address		
	Doctor's Name		
Condition of Defendant: Sober Had been drinking Intox (alcohol) Intox (drugs)	Charges placed against defendant:		Animal Destroyed: Explain in Narrative
Name Witnesses to Incident	Address		Phone Numbers Day Night
Narrative: (Indicate reason force used, how force was used, type of equipment used (gun, handcuffs, baton, oc, etc).		Names of Other Officers at Scene	Injured? Yes No
Weapon used (make, serial#):		Shots Fired #:	
Reporting Officer/Badge#		If additional space is needed-attach supplement	
Reporting officer Injured Yes No			
Shift Supervisor/Badge#			
Captain/Badge# Reviewing Report			

Circle All that Apply:

Brandished Firearm

Discharged Firearm

Used Firearm

Displayed chemical agent

Deployed chemical agent

Used Chemical agent

Brandished Impact weapon

Deployed Impact weapon

Used an Impact weapon

Brandished an
Electronic
Control weapon

Deployed an
Electronic
Control weapon

Used an
Electronic
Control weapon

Used a chokehold or similar
Restraint that may hinder breathing
Or reduce intake of air

Conduct that resulted in serious
Bodily injury

Conduct that resulted in death

*Race: American Indian/Alaskan Native
Asian
Black
Native Hawaiian/Pacific Islander
Unknown/Not Reported
White

DCJS

Date Submitted:

Print Name/

Badge #

Signature: