



RULES, REGULATIONS, AND POLICIES

ARTICLE: VII

SUBJECT: USE OF FORCE		
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PURPOSE

1. 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.
2. This policy is not intended to endorse or prohibit any particular tactic, technique, or method of employing force.

POLICY

3. 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.
4. 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
5. 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.

DEFINITIONS

6. **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

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).

³ *Graham*, 490 U.S. 396 (1989)

7. **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
8. **Physical Injury** – Impairment of physical condition or substantial pain.⁵
9. **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

USE OF FORCE

10. 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
11. 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

DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

12. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.
13. 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;⁹
 - b. The level and immediacy of threat or resistance posed by the suspect;¹⁰
 - c. The potential for injury to citizens, officers, and suspects;¹¹
 - d. The risk or attempt of the suspect to escape;¹²
 - e. The knowledge, training, and experience of the officer;¹³
 - f. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;¹⁴
 - g. Other environmental conditions or exigent circumstances.¹⁵

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)

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 officer 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)

DUTY TO INTERVENE

14. 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 intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.
15. An officer who observes another officer use force that exceeds the degree of force as described in subdivision 14 of this section should promptly report these observations to a supervisor.

USE OF DEADLY PHYSICAL FORCE

16. 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
17. Deadly physical force may be used to stop a fleeing suspect where:
 - a. 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,
 - b. The officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officer or to others.
 - c. Where feasible, some warning should be given prior to the use of deadly physical force.¹⁷
18. Chokeholds and Obstruction of Breathing or Blood Circulation
 - a. Any application of pressure to the throat, windpipe, neck or blocking the mouth or nose of a person in a manner that may hinder breathing, reduce intake of air or obstruct blood circulation, is prohibited unless deadly physical force is authorized.¹⁸

USE OF PHYSICAL FORCE

19. Sworn members are authorized to use the following instruments for the application of force as may be permitted by this policy. They may be used to help effect and arrest, or gain control of, or compliance from an individual.
 - a. The straight/expandable baton (impact weapon) is to be used in accordance with the training techniques of this department. Only those members who have received specific training in that weapon are authorized to use it as a defensive/offensive weapon.
 - b. The TASER (conducted energy weapon) is to be used in accordance with the training techniques of the department. Only those members who have received specific training in that weapon are authorized to use it as a defensive/offensive weapon.

PROHIBITED USES OF FORCE

20. Force shall not be used by an officer for the following reasons:
 - a. To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;
 - b. To coerce a confession from a subject in custody;

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 related to fleeing felons) In *Garner*, the Supreme Court uses “significant threat of serious physical harm, either to the officers 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 and § 121.13-a establishes the crime of Aggravated Strangulation.

- c. 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;
- d. 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.

REPORTING & REVIEWING THE USE OF FORCE

- 21. A member 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.¹⁹
 - a. This includes appropriate and timely medical attention being provided to a party injured as a result of a use of force incident.
 - b. 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.²⁰
- 22. 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.
 - a. Use of force that results in a physical injury.
 - b. Use of force incidents that a reasonable person would believe is likely to cause an injury.
 - c. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
 - d. Incidents where a conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed.
 - e. Incidents where a firearm was discharged at a subject.²¹
- 23. A Use of Force Report should be used to document any reportable use of force incident.
- 24. Members should document any requests for necessary medical or mental health treatment, as well as efforts of police to arrange for such treatment.

REPORTING USE OF FORCE TO THE DIVISION OF CRIMINAL JUSTICE SERVICES

- 25. The following use of force incidents must be reported to The Division of Criminal Justice Services:
 - a. **Display a chemical agent** – to point a chemical agent at a person or persons.
 - b. **Use/Deploy a chemical agent** – the operation of a chemical agent against a person or persons in a manner capable of causing physical injury as defined in PL Article 10.
 - c. **Brandishes a firearm** – to point a firearm at a person or persons.
 - d. **Uses/Discharges a firearm** – to discharge a firearm at or in the direction of a person or persons.

¹⁹ NY Civil Rights Law Article 3 § 28

²⁰ NY Mental Hygiene Law § 9.41

²¹ NY EXC § 837-v requires that any discharge of a weapon, which either on or off duty, in the direction of a person be verbally reported to the involved officers supervisor within six hours and a written report prepared within forty-eight hours of occurrence.

- e. **Brandishes an electronic control weapon** – to point an electronic control weapon at a person or persons.
- f. **Uses/Deploys electronic control weapon** – the operation of an electronic control weapon against a person or persons in a manner capable of causing physical injury as defined in PL Article 10.
- g. **Brandishes an impact weapon** – to point an impact weapon at a person or persons.
- h. **Uses/deploys an impact weapon** – the operation of an impact weapon against a person or persons in a manner capable of causing physical injury as defined in PL Article 10.
- i. **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.
- j. **Conduct that Resulted in Death**
- k. **Serious bodily injury** – bodily injury that creates or causes:
 - i. A substantial risk of death; or
 - ii. Unconsciousness; or
 - iii. Serious and protracted disfigurement; or
 - iv. Protracted loss or impairment of the function of any bodily member, organ or mental faculty.

26. The Chief of Police shall report these incidents to the Division of Criminal Justice Services.

PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS

- 27. A supervisor should respond to the scene to begin the preliminary force investigation.
- 28. 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.
- 29. Photographs should be taken which sufficiently document any injuries **or lack thereof** to officers or suspects.
- 30. The Chief of Police, or his designee will receive the supervisor's report and conduct an investigation.
- 31. Consistent with Harrison Police Department disciplinary protocols and the collective bargaining agreement, Department policy establishes standards for addressing the failure to adhere to use of force guidelines.²²

TRAINING

- 32. All officers receive training and shall be able to demonstrate their understanding on the proper application of force.
- 33. Department 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.²³

²² NY EXC § 840(4)(d)(2)(vi)

²³ NY EXC § 840(4)(d)(2)(vi)

34. 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.



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John T. Vasta
Chief of Police

USE OF FORCE FAQ

Are officers trained to de-escalate altercations?

Yes. Officers are trained on de-escalation techniques at the Westchester County Police Academy Basic Course for Police Officers, The Westchester County Police Academy Supervisory Training, and Department in-service training. As a New York State Department of Criminal Justice Services (DCJS) Accredited Agency, we conduct annual in-service training, utilizing a lesson plan provided by DCJS.

Are officers authorized to use carotid restraints?

No. Intentional chokeholds, carotid holds and similar compressions of the neck are not authorized, unless an officer or another person is in imminent danger of death or serious physical injury.

Are officers authorized to transport persons face down in a vehicle?

No.

Are officers required to intervene if they witness another officer using excessive force?

Yes. 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 intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.

Are officers authorized to shoot at moving vehicles?

No. Officers are not permitted to shoot at a moving vehicle, except in the limited circumstance where, consistent with the standard set forth in [Graham v. Connor](#), 490 U.S. 386 (1989) and [Tennessee v. Garner](#), 471 U.S. 1 (1985), doing so is required to defend themselves or another when the occupants of the vehicle are employing deadly force, which the officer reasonably perceives as an immediate threat of death or serious physical injury to themselves or another (including situations where the vehicle itself is being used as a deadly weapon and the officer is unable to escape the path of travel), and the officer reasonably believes that they will not endanger innocent persons.

Is there a use-of-force policy that details what weapons and force are acceptable in a wide variety of civilian-police interactions?

Officers are trained to use only that level of force that is objectively reasonable based on the totality of the circumstances. Our use of force policy is guided by the Department of Criminal Justice Services and Municipal Police Training Council model policy. Use of force training, including review of the policy, is conducted yearly.

Are officers required to exhaust every other possible option before using force?

Consistent with the standards set forth in [Graham v. Connor](#), 490 U.S. 386 (1989) and [Tennessee v. Garner](#), 471 U.S. 1 (1985), officers may only use that level of force that is objectively reasonable based upon the totality of circumstances. Officers will attempt to use the lowest level of force in order to effectuate the lawful objective

Are officers required to give a verbal warning to civilians before drawing their weapon or using force?

Consistent with the standards set forth in [Graham v. Connor](#), 490 U.S. 386 (1989) and [Tennessee v. Garner](#), 471 U.S. 1 (1985), officers may only use that level of force that is objectively reasonable based upon the totality of circumstances. Officers will attempt to use the lowest level of force in order to effectuate the lawful objective, and will attempt to warn individuals prior to using any level of force, provided that they have the time and opportunity to do so. There may be, however, some very limited instances, where it is

impossible for officers to provide a warning prior to using force, such as when doing so is necessary in order to preserve human life. Harrison police officers are trained to issue a verbal warning and identify themselves, if circumstances allow, during a lethal force encounter.

Are officers required to report each time they use force on civilians?

Yes. Officers are required to complete a use of force report for each instance where force is used. The use of force reports are reviewed by the Internal Affairs Officer. (Deputy Chief)

Are officers thoroughly vetted to ensure that they do not have a history with abuse, racism, xenophobia, homophobia/transphobia, or discrimination?

Harrison Police Officers undergo a rigorous, in depth background investigation by the department, and an independently administered psychological exam by an agency authorized by the Westchester County Department of Human Resources.

Are officers trained to perform and seek necessary medical action after using physical force?

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

Is there an early intervention system enforced to correct officers who use excessive force?

Officers are required to complete a use of force report for each instance where force is used. The use of force reports are reviewed by the Internal Affairs Officer. (Deputy Chief). Every officer receives annual in-service training covering use of force. All complaints are thoroughly investigated and appropriate disciplinary actions are taken when necessary.

****As a New York State Department of Criminal Justice Services Accredited Agency, we are required to meet rigorous standards set by the state. Our policies are reviewed on a regular basis by both the department and DCJS. Policies are updated and/or instituted whenever necessary.****