

## Use of Force

### 300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every officer of this Division is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Executive Law § 840).

#### 300.1.1 DEFINITIONS

Definitions related to this policy include:

**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 (Penal Law § 10(11)).

**Deploy/use a chemical agent** - The operation of the chemical agent against a person in a manner capable of causing physical injury.

**Deploys/uses/brandishes an 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.

**Discharges/uses/brandishes a firearm** - The operation of a firearm against a person in a manner capable of causing physical injury.

**Display a chemical agent** - To point a chemical agent at a subject.

**Electronic Control Weapon (ECW)/Conducted Energy Weapon (CEW)** - The device also known as an electronic control weapon/device or electronic stun gun that uses electrical energy (Executive Law § 837-t(1)(e)).

**Long-range acoustic device** - A type of ECW/CEW that uses extremely high-power sound waves (Executive Law § 837-t(1)(e)).

**Noise-Flash Diversionary Device (NFDD)** - A flash bomb that emits light and sound (Executive Law § 837-t(1)(e)).

**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.

**Physical injury** - Impairment of physical condition or substantial pain (Penal Law § 10(9)).

**Serious bodily injury** - Bodily injury that creates or causes (Executive Law § 837-t(1)(f)):

- A substantial risk of death; or
- Unconsciousness; or

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- Serious and protracted disfigurement; or
- Protracted loss or impairment of the function of any bodily member, organ, or mental faculty.

**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 (Penal Law § 10(10)).

**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.

### 300.2 POLICY

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

It is the policy of the Division, that the amount of force that is used by its officers shall be the amount of force that is objectively reasonable and necessary under the totality of the circumstances for the officers 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* (490 U.S. 386 (1989)) 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" (*Graham*, 490 U.S. at 396-97).

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

#### 300.2.1 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 the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.

An officer who observes another officer use force that exceeds the degree of force as described above should promptly report these observations to a supervisor.

### 300.3 USE OF FORCE

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 (Penal Law § 35.15(1); Penal Law § 35.30(1)).

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Under the 4<sup>th</sup> Amendment, a police officer may use only such force that is "objectively reasonable" under the totality of the circumstances. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight." (*Graham, 490 U.S. at 396*).

#### PAIN COMPLIANCE TECHNIQUES

#### MEDICAL CONSIDERATIONS

##### 300.3.1 PROHIBITED USES OF FORCE

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

- To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present.
- To coerce a confession from a subject in custody.
- To obtain blood, saliva, urine, or other bodily fluids or cells, from an individual for the purposes of scientific testing in lieu of a court order where required.
- 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.

##### 300.3.2 DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

When used, force should be only that which is reasonable and necessary given the totality of the circumstances perceived by the officer at the time of the event.

Factors that may be used in determining the reasonableness of force include but are not limited to:

- The severity of the crime or circumstance (*Graham, 490 U.S. at 396*).
- The level and immediacy of threat or resistance posed by the suspect (*Graham, 490 U.S. at 396*).
- The potential for injury to citizens, officers, and suspects (*Scott v. Harris, 550 U.S. 372 (2007)*).
- The risk or attempt of the suspect to escape (*Graham, 490 U.S. at 396*).
- The knowledge, training, and experience of the officer. Note: analysis of cases under the 4<sup>th</sup> 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, 490 U.S. 386; Terry v. Ohio, 392 U.S. 1 (1968)*).
- 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 (3<sup>rd</sup> Cir. 1997)*).
- Other environmental conditions or exigent circumstances. Note - courts have repeatedly declined to provide an exhaustive listing of factors (*Chew v. Gates, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)*).

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### **300.4 USE OF DEADLY PHYSICAL FORCE**

Deadly physical force may be used by an officer to protect him/herself or another person from what the officer reasonably believes is an imminent threat of serious physical injury or death (Penal Law § 35.30(1)(c)).

Deadly physical force may be used to stop a fleeing suspect where:

- 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,
- The officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officers or to others.

Where feasible, some warning should be given prior to the use of deadly physical force (Penal Law § 35.30(1)).

### **DISCHARGING A FIREARM**

### **300.5 REPORTING AND REVIEWING USE OF FORCE INCIDENTS**

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

Officers involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete all required reports.

- Use of force that results in a physical injury, serious physical injury, serious bodily injury, or death.
- Use of force incidents that a reasonable person would believe is likely to cause a physical injury, serious physical injury, serious bodily injury, or death.
- Incidents that result from a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
- Incidents where a chemical agent was displayed or deployed/used.
- Incidents where a conducted energy weapon (CEW) was deployed/used/brandished.
- Incidents where a firearm was discharged/used/brandished.
  - Discharge of a firearm while on-duty or off-duty under circumstances where a person could be struck by a bullet from the firearm, including situations where an officer discharges his/her firearm in the direction of a person. These incidents shall be verbally reported to the officer's supervisor within six hours of the occurrence of the incident and a separate written report of the incident shall be filed within 48 hours of the occurrence of the incident, in addition to filing all other required written reports.
- Incidents where a restraint that applies pressure to the throat or windpipe of a person in a manner that is intended to hinder breathing or reduce intake of air was used.
- Incidents where a noise-flash diversionary device (NFDD) was deployed/used.
- Incidents where a long-range acoustic device was deployed/used in its sonic capacity.

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- Incidents where tear gas was deployed/used

Reported uses of force incidents will be reviewed by appropriate supervisors who shall make required notifications.

### REPORTING USE OF FORCE

#### NARRATIVE REPORTS

#### **300.6 PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS**

Where practicable, a supervisor should respond to the scene to begin any required investigation. A supervisor that is made aware of a use of force incident shall ensure the completion of all appropriate documentation, which includes all officers engaging in a reportable use of force and, to the extent practical, ensuring that a record of all officers present has been created.

When appropriate, photographs should be taken which sufficiently document any injuries or lack thereof to officers, violators, or suspects.

The Internal Affairs Bureau will receive use of force reports and ensure that any required investigation is completed.

Failure to adhere to use of force guidelines will be addressed pursuant to existing disciplinary procedures and in accordance with applicable collective bargaining agreements.

#### SUPERVISORY RESPONSIBILITIES

#### **300.7 TRAINING**

All officers should receive training and demonstrate their understanding of the proper application of force.

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 an agitated condition as well as duty to intervene, and prohibited conduct.

#### **300.8 PUBLICATION OF POLICY**

This policy shall be readily available to the public upon request and shall be posted on the Agency website (Executive Law § 840).