

Operating Procedure # 01-13		
Subject: Physical Force & Deadly Physical Force		Category: General Procedures
Effective Date: 06/2019	Pages: 6	Last Revised: 6/18/2019

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.

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

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)

- 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.

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 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 verbal warning should be given prior to the use of deadly physical force.¹⁷

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;

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.

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.

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 or the OIC as soon as practicable and shall complete a departmental "Response to Resistance" 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 firearm was discharged at a subject.
 5. Incidents where a firearm was displayed at a subject.

X. PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS

- A. Where practicable, a supervisor should respond to the scene to begin the preliminary force investigation or if unable to immediately notify the OIC.
- B. A supervisor that is made aware of a force incident shall ensure the completion of a "Response to Resistance" 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 Chief of Police will receive the "Response to Resistance" report and complete a review to determine further action.
- E. Any violation of the regulations contained herein may be the cause for administrative and/or disciplinary action. ¹⁹

XI. 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.²⁰
- 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.

Attachment- "Response to Resistance" report.

¹⁹ EXC §840(4)(d)(2)(vi)

²⁰ EXC §840(4)(d)(2)(vii)