



Delaware County Sheriff's Office

280 Phoebe Lane, Suite One
Delhi, New York 13753

Accreditation
Standard No:
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Policy No: 170	Effective Date: December 2, 2020
Subject: USE OF FORCE	
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Authority of: Sheriff Craig S. DuMond	
References: Policies 160 & 180	Distribution: All Authorized Manuals
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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. The policy is designed to provide guidance in accordance with Executive Law §840(4)(d)(3).

This policy is not intended to endorse or prohibit any particular tactic, technique, or method of employing force. Separate policy guidance and training is provided for each of the available force instrumentalities made available to officers.

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.

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.

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.

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
- E. **Display a chemical agent** – to point a chemical agent at a person or persons.
- F. **Use/Deploy a chemical agent** – the operation of the chemical agent against a person or persons in a manner capable of causing physical injury as defined in PL Article 10.
- G. **Brandishes a firearm** - to point a firearm at a person or persons.

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

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)

- H. **Uses/Discharges a firearm**- to discharge a firearm at or in the direction of a person or persons
- I. **Brandishes an electronic control weapon** – to point an electronic control weapon at a person or persons
- J. **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.
- K. **Brandishes an impact weapon** – to point an impact weapon at a person or persons
- L. **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
- M. **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.
- N. **Serious bodily injury**-a bodily injury that creates or causes:
 - a substantial risk of death; or
 - unconsciousness; or
 - serious and protracted disfigurement; or
 - protracted loss or impairment of the function of any bodily member, organ or mental faculty.

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 oneself 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
- C. Officers, in the performance of their duties, may use ONLY that degree of force that is justified by Article 35 of the NYS Penal Law.

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.
- 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

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 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. *Chews v. Gates*, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)

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

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.¹⁷

C. **Chokeholds and Obstruction of Breathing or Blood Circulation:**

1. **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

D. If there is no other reasonable alternative available, an officer is authorized to use deadly physical force to kill a dangerous animal, or an animal so badly injured that humanity requires that it be removed from further suffering.

1. In the case of an injured animal, the permission of the owner should be obtained whenever possible. Great care should be taken to protect bystanders from a ricocheting bullet, and, if possible, the killing of an animal in the presence of children should be avoided.

E. An officer **SHALL NOT** use a firearm in the following circumstances:

1. To fire warning shots.
2. To fire at or from a moving vehicle, unless the occupants of the vehicle are using deadly physical force against the officer or another.

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;

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 § 121.13-a establishes the crime of Aggravated Strangulation.

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.

IX. GUIDELINES AND OBLIGATIONS WHEN USING PHYSICAL FORCE:

The following is a listing of responsibilities of Sheriff's Office members using physical force, deadly physical force or less than lethal force:

1. Only issued or approved equipment will be carried on duty (*and used when applying physical or deadly physical force or less than lethal force*) except in an emergency situation during which an officer must use any resources at his disposal.
2. The use of restraining devices on all prisoners is mandatory unless circumstances exist which make the use of restraining devices impossible or impractical. Use of restraining devices on an arrested person will be made at the discretion of the arresting officer. Officer safety is paramount in rendering this decision.
3. After physical force, deadly physical force or less than lethal force is used, the officer shall immediately evaluate the need for medical attention or treatment for the person upon whom such force was used. If said person is injured or complains of injury or discomfort, it will be the responsibility of the officer to arrange for appropriate medical treatment.

NOTE: Refusal of treatment will be made a matter of record.

4. The officer shall immediately notify his/her supervisor of the incident.
5. When a member of this Office discharges a firearm, in the performance of official duties, (*except for the lawful dispatching of wildlife or domestic animals*), a member of administration (*Sergeant or above*) shall immediately be notified and respond to the scene. Furthermore, an investigator will be immediately assigned to gather initial details and circumstances surrounding the incident and immediately thereafter notify the chain of command. The investigator shall submit his findings, in writing, to the Sheriff or his designee, as soon as practical after the incident.

6. Any officer discharging an issued service weapon unintentionally, shall notify a supervisor immediately, with each supervisor pushing it up the chain of command until everyone is properly notified. The Officer shall file a written report within 24 hours of the incident, unless in the opinion of a supervisor the report should be filed immediately. A thorough investigation will be performed thereafter by the Firearms Instructor and/or Criminal Investigation Division and any relevant administrative action shall be taken accordingly.

X. HEALTH OF PERSONS IN CUSTODY:

- 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.¹⁹
 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.²⁰

XI. REPORTING AND REVIEWING THE USE OF FORCE:

- A. Members involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete an agency use of force report.
 1. For any incident that involves a use of force to control a situation.
 2. Use of force that results in a physical injury.
 3. Use of force incidents that a reasonable person would believe is likely to cause an injury.
 4. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
 5. Incidents where a conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed.

¹⁹ NY Civil Rights Law § 28

²⁰ NY Mental Hygiene Law § 9.41

6. Incidents where a firearm was discharged at a subject.

a) Pursuant to NYS Executive Law 837-v any peace or police officer who discharges his or her weapon while on duty or off duty under circumstances wherein a person could be struck by a bullet from the weapon, including situations wherein such officer discharges his or her weapon in the direction of a person, shall verbally report the incident immediately to his or her supervisor and shall prepare and file a written report of the incident within forty-eight hours of the occurrence of the incident.

B. A standardized use of force form should be used to document any reportable use of force incident. 21

C. Officers should document any requests for necessary medical or mental health treatment as well as efforts of police to arrange for such treatment.

D. Pursuant to NYS Executive Law 837-t, the Sheriff or his designee shall report to the Division of Criminal Justice, any instance or occurrence in which a police officer, as defined in subdivision thirty-four of section 1.20 of the Criminal Procedure Law, or a peace officer, as defined in section 2.10 of the Criminal Procedure Law employs any reportable use of force as follows:

1. Brandishes, uses or discharges a firearm at or in the direction of another person; or
2. 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; or
3. Displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas; or
4. Brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy; or
5. Brandishes, uses or deploys an electronic control weapon, including, but not limited to, an electronic stun gun, flash bomb or long-range acoustic device; or

21 Chiefs of police departments, County Sheriff's, and the Superintendent of the State Police should consider utilizing these forms to ensure compliance with the administrative reporting requirement of EXC §837-t.

6. Engages in conduct which results in the death or serious bodily injury of another person. Serious bodily injury is defined as bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss of impairment of the function of a bodily member, organ or mental faculty.
- E. A supplemental report will be filed prior to the completion of the tour of duty.
 - F. Beginning December 1, 2020, designated personnel of the Delaware County Sheriff's Office shall submit or cause to be submitted any instance or occurrence of the Use of Force (as defined in section E) that occur **on or after November 1, 2020**, through the Use of Force Reporting Interface accessible on the eJustice New York Integrated Justice Portal (IJ Portal). The **NYS Use of Force and Arrest Related Death Data Entry Interface User Guide** will assist the user with submitting Use of Force Incidents to DCJS.
 - G. In regard to NYS Executive Law 837-t guidelines, the Sheriff or his designee shall submit or cause to be submitted all Use of Force events that meet said guidelines, and DCJS shall be provided with the following information:
 1. The type of use of force;
 2. The date of the event;
 3. The village, town, or city and county of the location of the event;
 4. The law enforcement agencies involved in the event;
 5. A description of the circumstances of the event;
 6. The race, sex, ethnicity, and age (or, if unknown, approximate age) of all persons engaging in the use of force;
 7. The race, sex, ethnicity, and age (or, if unknown, approximate age) of all persons suffering an injury from the use of force.
 8. Any additional information that may be required by the Commissioner of DCJS including but not limited to, use of force events and incident information, subject information and officer information related to each event as required by the FBI in coordination with the FBI's Uniform Crime Reporting ("UCR") program.
 9. Each employer shall submit all information required to be reported in accordance with this section to DCJS in the form and manner as prescribed by DCJS.

H. Use of Force Incidents should be submitted to the State Division of Criminal Justice Services (DCJS) no later than 30 days after a month ends (i.e. November 2020 data may be submitted beginning December 1st, but no later than the end of December).

I. COMMISSION OF CORRECTION REPORTING REQUIREMENTS:

1. A Reportable Incident Report must be submitted to the eJusticeNY Integrated Justice Portal **immediately** upon:

a. **Any Firearm discharge occurring while one or more personnel are performing official facility-related duties**, except those occurring during practice or qualification procedures; or

b. **Any other firearm discharge occurring on facility property.**

c. **Any major disturbance.**

NOTE: A shift Supervisor is to complete and submit such report immediately.

2. A reportable Incident Report must be submitted to the eJusticeNY Integrated Justice Portal, **within 24 hours of:**

a. **Any minor disturbance which results in one or more of the following:**

i. treatment provided to one or more inmates, personnel or visitors at the facility medical unit, hospital or emergency room;

ii. property damage that limits the use of a correctional facility, or portion thereof (must involve the closing of more than one cell);

iii. intervention requiring the use of:

a) Impact weapons

b) Electronic devices

c) Chemical agents

d) Canines

e) Firearms; or

f) Medication ordered by a physician, physician's assistant or nurse practitioner as an emergency intervention.

3. Any individual inmate disturbance that results in one or more of the following:
 - a. **Treatment provided to one or more inmates, personnel or visitors at the facility medical unit, hospital or emergency room; or**
 - b. **Intervention requiring the use of:**
 - i. Impact weapons;
 - ii. Mechanical restraints other than for routine inmate movement;
 - iii. Electronic devices;
 - iv. Chemical agents;
 - v. Canines;
 - vi. Firearms; or
 - vii. Medication ordered by a physician, physician's assistant or nurse practitioner as an emergency intervention.

NOTE: A Shift Supervisor is to complete and submit such report within 24 hours of occurrence.

XII. PROCEDURES FOR INVESTIGATING THE USE OF FORCE INCIDENTS:

- A. A supervisor shall respond to the scene to begin the preliminary use of force investigation involving physical injury to any person, including an officer.
 1. Supervisors will determine if an investigator should be summoned to the scene of the incident and to what extent the services of the investigator will be needed.
 2. If an officer's immediate supervisor is not available, notifications will be made up the chain of command.
- B. Supervisors shall ensure that officer(s) and/or any injured subjects receive any necessary medical treatment.
- C. The chain of command will be advised of the facts and circumstances of incidents involving any use of force.
- D. 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.

1. In the event that a Deputy is unable to complete reports due to injury, his/her supervisor will prepare (or cause to have prepared) a synopsis of the event.
- E. After the immediate supervisor's review, all reports will immediately be forwarded to the Jail Administrator or Major.
- F. The Jail Administrator or Major will immediately receive and review the use of force report and conduct a follow-up investigation, if necessary, within 14 days, unless exigent circumstances exist. They shall also ensure the distribution of reports to the Undersheriff and Sheriff.
- G. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
- H. Finalized (complete w/signatures and dates) Use of Force reports shall be kept in CID in the appropriate Division Binder.
- I. Copies of all reports associated with a use of force incident shall be enclosed in the inmate's current booking file or the criminal case file and remain a permanent part thereof.
- J. Failure to adhere to these Use of Force guidelines will result in disciplinary action consistent with agency policy and procedures and collective bargaining agreements.²²

K. OFFICER INVOLVED SHOOTINGS:

1. The Sheriff or his designee will request and make arrangements for the NYS Attorney General's Office to respond to the scene and assume the investigation as the lead agency in the case. Such action will provide transparency as well as to protect the integrity of the investigation and The Office of the Sheriff.
2. A member of the Criminal Investigation Division shall be assigned as Liaison between the Sheriff's Office and the investigating agency to ensure the timely, smooth, and appropriate dissemination of information between agencies. Such Liaison will keep the Sheriff, Undersheriff and Major continuously apprised accordingly.

XIII. TRAINING:

- A. All officers shall 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.²³
- 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.

XIV. PUBLIC POSTING:

- A. This Use of Force Policy shall be posted in a conspicuous location on the Delaware County Sheriff's Office public website located at the following address:
 - 1. <http://www.co.delaware.ny.us/departments/shrf/shrf.htm>

²³ EXC §840(4)(d)(2)(vii)