



USE OF FORCE / DEADLY USE OF FORCE

Issuing Authority: David A. Dosin, Chief of Police

Date Effective: 12/27/2021

PURPOSE

To establish policy and procedures which will guide personnel in the use of physical force and deadly physical force.

BACKGROUND

All sworn personnel must have a thorough knowledge of Article 35 of the New York State Penal Law and should periodically review this article. Personnel must be aware that Article 35 of the Penal Law authorizes the use of physical force/deadly physical force but does not command its use. Personnel must also be familiar:

DEPARTMENT POLICY IS MORE RESTRICTIVE THAN ARTICLE 35 IN THE USE OF PHYSICAL FORCE/DEADLY PHYSICAL FORCE.

POLICY

In all cases, personnel are authorized to use only the minimum amount of force necessary to effect lawful objectives, consistent with Article 35 of the New York State Penal Law and Department procedures.

All sworn personnel will be issued a copy of the Department's procedures regarding the use of force and will be instructed in these procedures.

DEFINITIONS

Less-Lethal Force

Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.

Deadly Force

Any use of force that creates a substantial risk of causing death or serious bodily injury.

De-escalation

Acting or communicating verbally or non-verbally during a potential force encounter to stabilize the situation and reduce the immediacy of the threat so that more time, options and resources can be called upon to resolve the situation without force or reduce the force necessary.

De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

**DEFINITIONS CONTINUED****Objectively Reasonable**

The determination that the necessity for using force and the level of force used is based upon the officer's evaluation of the situation considering the totality of the circumstances are known to the officer at the time the force is used and upon what a reasonably prudent officer would use under the same or similar situations.

Physical Injury

Impairment of physical condition or substantial pain.

Serious Physical Injury

A physical injury that 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 any bodily organ.

Unnecessary force

Unnecessary force occurs when unjustified physical actions have been directed against a person or when it is apparent that the type or degree of force employed was neither necessary nor appropriate, or when any degree of force is utilized as a summary punishment or vengeance.

Chokehold

A chokehold shall include, but not be limited to, any pressure to the throat, windpipe, or neck which may prevent, or hinder breathing restrict air or blood flow.

PROCEDURE**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.
 - 2. The level and immediacy of threat or resistance posed by the suspect.
 - 3. The potential for injury to citizens, officers, and suspects.
 - 4. The risk or attempt of the suspect to escape.
 - 5. The knowledge, training, and experience of the officer.
 - 6. Officer/ subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects.
 - 7. Other environmental conditions or exigent circumstances



DUTY TO INTERVENE

- A. All members must intervene to stop another member of service from using excessive force. Failure to intervene in the use of force or report excessive force for an individual is serious misconduct that may result in criminal and civil liability and will result in department discipline.
- B. If a member becomes aware of the use of excessive force or failure to request or to ensure timely medical treatment for an individual, the member must report such misconduct to the Internal Affairs Division

USE OF FORCE

- A. Generally, members may use force in the performance of their duty in the following circumstances:
 - 1. To prevent the commission of a breach of the peace or other unlawful act.
 - 2. To prevent a person from injuring him/herself.
 - 3. To effect the lawful arrest of the person (s) resisting arrest or attempting to flee from custody.
 - 4. In self-defense or in defense of another person (s).
- 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 at the scene.
- C. Use of force should be discontinued when resistance ceases or when the incident is under control.

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 scientific testing in place of a court order where required.
- B. The use of chokeholds is strictly prohibited except in life-or-death situations.



USE OF DEADLY FORCE

- A. A member shall not use deadly force upon another person unless he/she has probable cause to believe that such other person is using or about to use deadly physical force against the member or a third person.
- B. A member shall not use deadly physical force to subdue a fleeing felon who presents no threat of imminent death or serious injury to themselves or another person present.
- C. When feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use deadly force.

DEADLY FORCE RESTRICTIONS

- A. Deadly force should not be used against persons whose actions are a threat only to themselves or property.
- B. Members are prohibited from firing warning shots.
- C. Firearms shall not be discharged at a moving vehicle unless:
 - 1. A person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle or
 - 2. The vehicle is operated in a manner deliberately intended to strike an officer or a third person, and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.
- D. Firearms shall not be discharged from a moving vehicle except exigent circumstances. In these situations, an officer must have an articulable reason for this use of deadly force.
- E. A member shall not use deadly physical force in defense of property.
- F. 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, or air circulation is prohibited unless in life-or-death situations.

USE OF FORCE CONTINUUM

- A. When appropriate and consistent with personal safety, members of service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force.



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USE OF FORCE CONTINUUM CON'T

- B. When de-escalation techniques are not effective or appropriate, members if appropriate and consistent with officer safety shall:
1. Advise the offender that he/she will be charged with an additional offense of resisting arrest.
 2. Devise a tactical plan with members present to restrain the subject while minimizing the possibility of injury to members of service, the subject, and bystanders.
 3. Advise the offender that physical force or other devices (e.g., O.C. pepper spray, baton /asp, etc.) will be used to handcuff/restrain him/her before applying such force, if appropriate.
- C. When the use of force is necessary and appropriate, members shall, to the extent possible, utilize an escalating scale of options and will not use more forceful measures unless it is determined that a lower level of force is inadequate.
- D. The scale of options in increasing severity:

1. Verbal Persuasion

The practice of courtesy in all public contacts encourages understanding and cooperation. Lack of courtesy arouses resentment and can lead to physical resistance. Therefore, if the circumstance allows, officers should attempt to develop a dialog by stating the officer's name and explaining the reason for police service.

Simple directions that are complied with while the member accompanies the subject is the most desirable method of dealing with an arrest situation. Control may be achieved through advice, persuasion, and warnings before resorting to physical force.

The above should not be interpreted to suggest that members should ever relax and lose control of a situation, thus endangering personal safety or the safety of others.

2. Physical Strength

At times, subjects are reluctant to be taken into custody and offer physical resistance. Often physical strength and skill in defensive tactics will overcome this resistance.

3. Department Issued OC Spray

Authorized members use will on those occasions where the use of lesser force is or would be ineffective to achieve the intended objective. OC spray should only be used to overcome physical force or resistance, which seems likely to result in injury to the suspect, the officer, or another person (s).

**The scale of options in increasing severity CON'T****4. Conducted Energy Weapon (CEW)**

Officers may use Conducted Energy Weapons to immobilize an individual. Conducted Energy Weapons discharge a high-voltage, low-amperage jolt of electricity at a distance. Clear guidelines for officers regarding the use of Conducted Energy Weapons are established in the Department Manual.

5. The Police Baton

This Department considers it an escalation in the use of force to a level more significant than the use of Conducted Energy Weapons. Improper or unreasonable use of the police baton may cause serious physical injury or death. The police baton should be used only when lesser means of force have failed or are inappropriate.

6. Bean Bag Ammunition & Firearms

Clear guidelines for officers regarding the use of bean bag ammunition and deadly physical force and firearms are established in the Department manual.

E. Use of Weapons Not Issued by the Department

1. Every other reasonable alternative means will be used before an officer resorts to using an instrument or object not issued explicitly as a weapon by the Department, and then only in an extreme emergency and when other options have been exhausted or cannot be utilized.

RENDERING AID

- A. Whenever a weapon, or any physical force, is used by a member of this Department while in the performance of police duty;
 1. Position the subject to promote free breathing as soon as safety permits by sitting the person up or turning the person on his/her side.
 2. Immediately evaluate the need for medical assistance and, if necessary, arrange for such assistance.
 3. Failure to request or ensure timely medical treatment for an individual is serious misconduct that may result in criminal and civil liability and will result in department discipline.



REPORTING & REVIEWING THE USES OF FORCE

- A. Members involved in the use of force incidents as described below shall notify their supervisor as soon as possible and complete a departmental use of force report.
 - 1. Use of force that results in any 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 handcuffing.
 - 4. Incidents where a conducted energy weapon (CEW) was intentionally discharged or accidentally discharged after being displayed.
 - 5. Incidents where a firearm was discharged at a subject.
 - 6. Any other incident where force is used.
- B. The on-duty supervisor shall be notified immediately whenever a weapon is displayed or used or a member of this Department uses any physical force. The notification shall include the type of force used, the reason the force was used, and injury to any person involved.
- C. Whenever a firearm is displayed while confronting a person, a memo will be sent by the officer drawing the firearm to the officer's immediate supervisor and division commander detailing the events of the display of the firearm.
- D. Whenever a weapon, or any physical force, is used by a member of this Department while in the performance of police duty;
 - 1. blotter event and a Use of Force report will be created to document the event.
- E. Whenever serious physical injury or death occurs because of the use of force by a department member, the Chief of Police or his designee will be notified immediately.
- F. If an officer uses such physical force while off duty and acting officially as a Police Officer, the Officer will notify the Hastings Police Department Desk Officer of the action as soon as possible after the event. The Desk Officer will assist in providing medical assistance if needed and will proceed as directed in sub-section D and E above.



USE OF FORCE INVESTIGATIONS

- A. When practicable, a supervisor should respond to the scene to begin the preliminary force investigation.
- B. 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 the reportable use of force and, to the extent practical, record all officers present.
- C. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
- D. All Use of Force Reports shall be investigated jointly by the Patrol Division Commander, the Detective Division Commander, and the reporting Officer's Tour Supervisor following department procedure. Such report shall be submitted in writing to the Chief of Police.
- E. Officers found not in compliance with the use of force guidelines is a serious misconduct that may result in criminal and civil liability and will result in department discipline.

TRAINING

- A. All officers will receive annual training and demonstrate their understanding on the proper application of force.
- B. Training topics will include but may not be limited to reviewing the use of force procedures, Article 35 of Penal Law, conflict resolution and negotiation, de-escalation techniques and strategies, and duty to intervene and prohibited conduct.
- C. All use of force training shall be documented.



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POLICY REVIEW / REVISION HISTORY

<u>NO</u>	<u>Note</u>	<u>Date</u>
1	Original Policy Section 103-3 / Original Effective Date	11/3/2003
2	Reformatted / New Policy Section / Revision Date	12/27/2021
3	NYS Accreditation Standard 20.1 Use of Force	