

DEPARTMENT POLICY - 89-01

RESPONSE TO RESISTANCE

Police Officers are often confronted daily with situations where compliance/control must be exercised to affect arrests and to protect the safety of the general public. Compliance/control may be achieved through advice, warnings, persuasion, or by the use of necessary physical force.

The use of excessive force (illegal or unreasonable use of force) can cause serious injury or death and can lead to numerous negative consequences such as community complaints, distrust of police, civil lawsuits and criminal arrest/prosecution, civil unrest, and federal injunctive orders. It is the policy of this department that all members will not use unnecessary or excessive force on anyone while performing their responsibilities as a sworn member of the department. Violations of this policy will result in disciplinary action up to and including termination and referral to appropriate State and Federal agencies.

NOTE: While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or to be exposed to possible physical injury before responding to resistance or aggression and applying reasonable force in accordance with Department policy.

DEFINITIONS

FORCE: Any non-negotiable use of police authority to influence citizen behavior. This includes verbal commands or use of restraints, Intermediate Weapons options as well as the use of deadly physical force. The mere presence of a police officer, because of his or her implied authority of the uniform, is included in this broad definition. Physical force should only be used when de-escalation methods have failed or are not feasible at the time, taking into consideration the totality of the circumstances. When safe and practicable to do so, officers should make every effort to identify themselves and give appropriate warning before the use of physical force.

DEADLY PHYSICAL FORCE: Any force that creates a substantial risk of causing death or serious physical injury.

RESPIRATORY NECK RESTRAINT: A neck restraint (“Choke Hold”) that uses direct mechanical compression or pressure over the anterior (front) structures of the neck which compresses the trachea and restricts a persons’ ability to breathe.

VASCULAR NECK RESTRAINT: A neck restraint that employs bilateral compression of the carotid arteries and jugular veins at the sides of the neck which results in diminished cerebral cortex circulation.

DE-ESCALATION: Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt 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 the use of force or with a reduction in the force necessary.

De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasions, and tactical repositioning. De-escalation tactics should be used when it is safe to do so under the totality of the circumstances without compromising law enforcement priorities.

OBJECTIVELY REASONABLE: An objective standard used to judge officers’ 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 the officer at the time that the force was used.

Members of the Department may only use that level of physical force necessary in the performance of their duties within the limits established by [Article 35 of the New York State Penal Law](#) and [Graham v. Connor 490 U.S. 386, 395 {1989}](#) and consistent with training given by this department. It is the responsibility of each member to be aware of the requirements of Article 35 and Graham v. Connor and to guide their actions based upon that law and Department policy.

Generally, members may only use the required level of force that is objectively reasonable to bring an incident under control. The following is a list of potential situations where appropriate force may be necessary:

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 persons resisting arrest or attempting to flee from custody.
4. In self-defense or in the defense of another person.

Only issued and approved equipment will be carried on duty and used when applying physical force, except in an emergency when the officer may use other resources at his disposal.

HEALTH OF PERSONS IN CUSTODY

Any member that has custody of a person must provide attention to the medical and mental health needs of the person in their custody and obtain assistance and treatment of such needs, which are reasonable and in good faith.

1. This includes appropriate and timely medical attention being provided to a party injured as a result of a use of force / response to resistance 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 serious harm to themselves or others.

PROHIBITED FORCE:

Force shall not be used for the following reasons:

- To extract an item from the anus of vagina of a subject without a warrant, except where exigent circumstances are present.
- To coerce a confession from a suspect in custody.
- 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.
- Against persons who are handcuffed or restrained unless it is used to prevent injury, escape, or otherwise overcome active or passive resistance by the subject.
- **The use of any “Respiratory Neck Restraint” or “Vascular Neck Restraint” is prohibited. 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 and the officer reasonably believes that the force is being used to prevent imminent serious physical injury or death to the officer.**

UNNECESSARY FORCE DEFINED

Unnecessary force occurs when the unjustified physical abuse of a person has occurred 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 summary punishment or vengeance. The use of indiscriminate force is prohibited.

DUTY TO INTERVENE

Any member present and observing another member using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, safely intercede to prevent the use of such excessive force. Members shall promptly report these observations to a supervisor.

LEVELS OF FORCE

Policing requires that at times an officer must respond to the actions of a violent, assaultive, or resisting individual to make an arrest, or to protect the officer, other officers, or members of the general public from a risk of imminent harm. Members should use de-escalation techniques whenever it is safe and feasible to do so under the totality of the circumstances. De-escalation tactics may minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.

Police and Peace Officers should only use an amount of force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of officers and others.

When the use of force is reasonable and necessary, officers should, to the extent possible, consider other appropriate options and not employ more forceful means unless it is determined that a lower level of force would not be, or has not been, adequate. Each situation is unique. Good judgment and the circumstances of each situation will dictate the level of force at which members of this department will utilize. Depending on the circumstances, officers may find it necessary to escalate or de-escalate the use of force. The level of force must always be necessary. The levels of force that this department will follow are listed below:

A. POLICE PRESENCE

The mere presence of a police officer, with the implied authority of the uniform, is considered a use of force. This requires the officer to use proper actions and language when confronted with any given situation that might require any level of force. The conduct of the officer from the onset could have a direct impact on the success or failure of the overall incident.

In all use of force/response to resistance situations, de-escalation tactics should always be considered: verbalization, creating distance, tactical repositioning and the availability of back up responders.

B. VERBAL PERSUASION

1. The practice of courtesy in all public contacts encourages understanding and cooperation. Officers should attempt to achieve control through non combative communication. Lack of courtesy arouses resentment, and often physical resistance.
2. Simple directions which are complied with while you accompany the subject are by far the most desirable method of dealing with an arrest situation. Control may be achieved through advice, persuasion and warnings before resorting to actual physical force.

3. In any given potential use of force/response to resistance event, officers should continually assess the situation and seek to safely de-escalate the situation. Officers should seek to take action or communicate verbally or non-verbally during a force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat, so that more time, options, and resources may be called upon to resolve the situation without the use of force or with a reduction of the force necessary.
4. The above should not be construed to suggest that officers should ever relax and lose control of a situation, thus endangering personal safety or the safety of others.

C. EMPTY HAND CONTROL

There are times when subjects are reluctant to be taken into custody and offer some degree of physical resistance including spitting and/or aerosolizing bodily fluids. Normally, all that is required to overcome this resistance is physical strength and skill in defense tactics. (Officers use bodily force to gain control of a situation) and proper application of equipment.

- **Soft Technique**: Officers use grabs, holds and joint locks to restrain or gain the compliance of an individual.
- **Hard Technique**: Officers use bodily force (i.e. punches and kicks) to restrain or gain the compliance of an individual.
- **Spit Sock**: “Spit sock” is a manufacture name for a full head covering that assists in containing bodily fluids that are being projected or aerosolized by a subjects’ mouth or nose. This device is constructed in such a manner that the subject can still see his surroundings but has a lightweight and breathable fabric in the area which covers the mouth and nose.
 - The spit sock shall only be used when a subject is actively projecting / aerosolizing fluids or is threatening to do such (either verbally or physically). The spit sock is only to be used as an officer / EMT safety tool and not to punish, dehumanize or humiliate the subject.
 - Once the spit sock is deployed, officers should continuously monitor the subject for any changes in medical condition.

D. INTERMEDIATE WEAPONS OPTIONS

1. Only Authorized Intermediate Weapons are to be used in accordance with the training techniques of the Department. Only those members who have received department approved training in a specific option are authorized to use same as a defensive/offensive weapon. Utilization of any Authorized Intermediate Weapon requires the completion of a Response to Resistance form in accordance with the “Reporting” section of this policy.

Authorized Intermediate Weapons:

- **Oleo-Capsicum Spray**
- **Pepperball Delivery System**
- **Impact Weapons-** to include collapsible baton, PR-24, riot-control baton, and the less lethal shotgun delivery system.
- **Conducted Energy Devices**
- **Specialized Chemical Agents** (other than Oleoresin Capsicum Spray and the Pepperball Delivery System) may only be used by authorized personnel, and then only with prior permission from the Commissioner of Public Safety, Chief of Police, or their designee.

- **Specialized Impact Munition Systems** (other than the less-lethal Shotgun delivery system) may only be used by authorized personnel, and then only with prior permission from the Commissioner of Public Safety, Chief of Police, or their designee.

E. DEADLY PHYSICAL FORCE

1. A police officer in the City of White Plains may use deadly physical force when he reasonably believes it is necessary to prevent or terminate the use or threatened imminent use of deadly physical force against himself or a third person, or to prevent serious physical injury to himself or a third person.
2. A police officer in the City of White Plains may use deadly physical force in effecting the arrest of a person that he reasonably believes has committed a felony in which the use or threatened imminent use of deadly physical force has been used by the suspect.
3. The fact that a police officer is justified in using deadly physical force, under circumstances prescribed in this policy, does not constitute justification for reckless conduct by such police officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody.

*** Note: Above reprinted from Department Policy 82-01 Firearms Policy**

UNAUTHORIZED NON-LETHAL WEAPONS

The carrying or use of any instrument as an offensive or defensive weapon not specifically authorized or issued as a weapon by the Police Department is prohibited. Examples of unauthorized weapons include, but are not limited to, the following: Blackjacks, weighted gloves, stun guns, and brass knuckles.

Flashlights or other standard issue / approved equipment are not authorized as an offensive weapon for impact force to quell resistance except in extreme cases when no other adequate instrument is available.

REPORTING

After physical force is used, the officer shall immediately evaluate the need for medical assistance, and if necessary, arrange for such attention. Notification to the immediate superior officer must be made without delay followed by a Department "Response to Resistance" Report to the Chief of Police.

REVIEW

All "Response to Resistance" reports will be reviewed by the Chief of Police and the Department Captains.

The Office of Professional Standards in conjunction with the Training Division shall review all TASER AXON FLEX body worn audio/visual recording system data related to each "Response to Resistance" incident.

INVESTIGATION

The Office of Professional Standards will conduct an investigation on all complaints where the use of excessive physical force was alleged to be involved. All reports, including the "Response to Resistance" forms, statements,

evidence, and recommendations, will be handled by the Office of Professional Standards and forwarded to the Chief of Police when completed.

Investigations involving injury/death incidents by police officers will be conducted in conjunction with the District Attorney's Office or Office of the New York State Attorney General, as outlined in section 70-b of the Executive Law. The Office of Professional Standards will ensure the proper forms have been completed by the officer involved and that an appropriate preliminary investigation has been conducted by the investigating supervisor.

WHISTLEBLOWER PROTECTION

All personnel shall be aware of certain protections offered under the NYS Civil Service Law which states as follows:

CVS § 75-b. 2(a) A public employer shall not dismiss or take other disciplinary or other adverse personnel action against a public employee regarding the employee's employment because the employee discloses to a governmental body information: (i) regarding a violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety; or (ii) which the employee reasonably believes to be true and reasonably believes constitutes an improper governmental action. "Improper governmental action" shall mean any action by a public employer or employee, or an agent of such employer or employee, which is undertaken in the performance of such agent's official duties, whether or not such action is within the scope of his employment, and which is in violation of any federal, state or local law, rule or regulation.

References:

Title 18 Civil Rights Act (1968)

Article 35 NYS Penal Law

Tennessee v. Garner, 471 U.S. 1 (1985)

Graham v. Connor, 490 U.S. 386 (1989)

Civil Service Law § 75-b

United States Department of Justice / National Institute of Justice (NIJ)

International Chiefs of Police Association (I.A.C.P.)

New York State Division of Criminal Justice Services (DCJS)