

USE of FORCE			
<input type="checkbox"/> new: <input type="checkbox"/> rescinds <input checked="" type="checkbox"/> amends: All previous		cross-reference: NYS Penal Law – Article 35	
effective date: October 20, 2008		accreditation standards: NYSLEAP: 20.1, 21.1, 21.2 & 43.8	
amend date: June 24, 2020			

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 on these standards but is not intended to be an exhaustive recitation of state and/or federal legal framework governing the use of force. The purpose of this Order is to establish policies and procedures for the use of physical force and deadly physical force in general and firearms in particular.

II. POLICY

The University Police Department recognizes and respects the value and sanctity of each human life. The department also recognizes and accepts the profound responsibility that our lawful authority to use force and deadly physical force carries with it.

The federal and state standards by which use of force is measured are both founded on the basic premise of objective reasonableness.¹ The amount of force used by the officers shall be the amount of force that is objectively reasonable and necessary under the circumstances for the officer involved to effect an arrest, prevent an escape, or defend themselves or others. The standard of objective reasonableness established by the United States Supreme Court in *Graham v. Connor* is used in this policy. It 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

A copy of this policy shall be conspicuously posted on the department's website.

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

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).

³ *Graham v. Connor*, 490 U.S. 386 at 396 (1989)

- 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 that creates a substantial risk of death or 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. **Defensive Action Report**- (Use of Force Report) is the official form used to document a physical use of force, deadly physical force, or the display of a weapon to control a person's actions.

IV. USE OF FORCE

- A. In general terms, force is authorized to be used when 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
In addition, an officer acting under a reasonable belief that another person is about to commit suicide or inflict serious physical injury upon him/herself may use force upon such person only to the extent that he reasonably believes it is necessary to prevent such a result.
- 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. In using force or deadly physical force, officers should avoid creating an unreasonable risk to bystanders or persons other than the intended subject of the force. However, nothing in this Order should be construed to restrict or limit an officer's legal right to self-defense or defend another person.

V. DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

- A. When used, force should be only reasonable and necessary given the circumstances perceived by the officer at the time of the event.
- B. Factors that should 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 the experience of the officer; ¹³

⁴ NYS Penal Law § 10 (11) (McKinney 2013)

⁵ NYS Penal Law § 10 (9) McKinney 2013)

⁶ NYS Penal Law § 10 (10) McKinney 2013)

⁷ NYS Penal Law and § 35.30 (1) McKinney 2013)

⁸ Graham v. Connor, 490 U.S. 386 at 396 (1989)

⁹ Graham v. Connor, 490 U.S. 386 at 396 (1989)

¹⁰ Graham v. Connor, 490 U.S. 386 at 396 (1989)

¹¹ Scott v. Harris, 550 U.S. 372 (2007)

¹² Graham v. Connor, 490 U.S. 386 at 396 (1989)

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. "DE-ESCALATION"

1. "De-escalation tactics and techniques are proactive actions and approaches used by officers to gain voluntary compliance, reduce or eliminate the need to use force, and improve officer safety.
2. Before resorting to the use of force, officers shall attempt, whenever possible, to *slow the situation down* so that more time, options, and resources are available to resolve the incident. Rarely is immediate action required.
3. Officers must strive to recognize when an individual is in crisis. Often there is a precipitating event that the individual is unable to resolve for themselves. Officers shall consider whether a subject's lack of compliance is likely to be intentional or is resulting from an inability to comprehend and/or comply based on, but not limited to the following:
 - Medical condition;
 - Developmental disability;
 - Physical/hearing impairment;
 - Language barrier;
 - Substance abuse or impairment;
 - Mental or behavioral crisis or condition.
4. An officer's awareness of these possibilities, when time and circumstances permit, shall then be balanced against the facts of the incident facing the officer when deciding which options are the most appropriate to bring the situation to a safe resolution. Mitigating the immediacy of threat gives officers time to utilize extra resources and increases the time available to call more officers, specialty units, or outside resources.

VII. DUTY TO INTERVENE

- A. Any officer present and observing another officer using force that they reasonably believe 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 employee use force that exceeds the degree of force as described in subdivision A of this section should promptly report these observations to a supervisor.

¹³ Analysis of cases under the 4th Amendment require the focus to be on the perspective of a reasonable officer on the scene which included the training & 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) (number of officers or subjects)

¹⁵ Courts have repeatedly declined to provide an exhaustive listing of factors. *Chew v. Gates*, 27 F. 3^d 1432, 9th Cir. (1994)

VIII. 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 on a fleeing suspect where there is a **significant threat** of serious physical harm to the officer or others:
 - 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 others.
 - 3. Where feasible, some warning should be given before the use of deadly physical force.¹⁷

IX. PROHIBITED USES OF FORCE

A. Chokeholds

- 1. "Chokeholds" shall be defined as any techniques that use mechanical or physical force to restrain, incapacitate or disable a person by applying force or pressure to an individual's neck, which creates a substantial risk of restricting breathing (airflow) or circulation of blood to and from the brain.
- 2. Members of the University Police department **will not** use chokeholds.
- 3. New York State Penal Law Section 121.13A- Aggravated Strangulation (Class C Felony) has been added to the Penal Law for police officers or peace officers where such officer commits the crime of criminal obstruction of breathing or blood circulation or uses a chokehold or similar restraint, and causes serious physical injury or death. **Added 06/24/2020**

B. 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 purpose 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.

X. MEDICAL ASSISTANCE & EVALUATION

When a person is under arrest or otherwise in the custody of a police officer or peace officer, such officer shall have a duty to provide attention to the medical and mental health needs of that person and obtain assistance and treatment of such needs, which are reasonable and provided in good faith under the circumstances. **Added 06/24/2020**

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

¹⁷ NYS Penal Law and § 35.30 (1) as restricted by Tennessee v. Garner, 471 U.S. (1985) (restricting the use of deadly physical force as it relates to fleeing felons).

- A. University police officers shall assess and observe subjects for physical injuries and mental health concerns as soon as reasonably practical and feasible in all use of force incidents.
- B. University police officers shall promptly request medical or mental health assistance for subjects who exhibit signs or symptoms of injury or illness or otherwise request medical assistance as soon as reasonably practical and feasible in all use of force incidents.
- C. Officers shall render emergency first aid within the limits of their individual skills, training, and available equipment until professional medical care providers arrive on the scene, if necessary and feasible under the circumstances.

XI. REPORTING AND REVIEWING THE USE OF FORCE

- A. Anytime a university police officer uses force **beyond cooperative handcuffing** for any reason, including displaying a weapon, a *Defensive Action Report* shall be completed (see GO 902).
- B. Anytime a university police officer uses any physical force or deadly physical force, the supervisor shall complete the *Supervisor Inquiry of Officer Defensive Action Report*. (See GO 902 Defensive Action Report).
- C. See *General Order 903 Investigating Use of Deadly Physical Force* when investigating deadly uses of force.

XII. PROCEDURES FOR INVESTIGATING THE USE OF FORCE INCIDENTS

- A. In incidents where deadly physical force is used, department personnel shall follow *General Order 903 Investigation of Use of Deadly Physical Force*.
- B. Where practicable, a supervisor should respond to the scene to begin the preliminary force investigation to include notating the officers that are present, secure photographs, and interviewing witnesses.
- C. The on-duty supervisor shall investigate the initial incident, documented on a Supervisor Inquiry of Officer Defensive Action Report, and the proper notifications made.
- D. The on-duty supervisor will then forward the Defensive Action Report, the Supervisor Inquiry of Officer Defensive Action Report, and any investigative reports or notes to the Asst. Chief of Police and the Chief of Police.
- E. The Chief of Police will then review the incident with the Assistant Chief, the Training Coordinator, and/or the District Attorney's Office. If deemed necessary, another outside law enforcement agency may be utilized. The Chief of Police shall determine necessary steps to resolve the matter.
- F. Consistent with our agency's disciplinary protocols, failure to adhere to the use of force guidelines may result in the university's disciplinary action.¹⁸

¹⁸ EXC §840(4)(d)(2)(vi)

XIII. TRAINING

- A. All officers will be trained annually and will 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 a duty to intervene and prohibited conduct.
- 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. CONSIDERATIONS FOR USE OF FIREARMS

An authorized university police officer shall adhere to the following restrictions when any firearm is exhibited:

A. Warning Shots

1. Warning shots are not permitted.

B. Moving Vehicles

1. University Police officers will not discharge a firearm from a moving vehicle.
2. University Police officers are prohibited from firing at a moving vehicle unless an officer reasonably believes or perceives that any occupant(s) of the vehicle is using or is about to use deadly physical force against the officer or another person. The officer reasonably believes there are no other reasonable means available to avert the threat posed by the vehicle or its occupants.
3. When confronted by an oncoming vehicle, officers will not position themselves in the path of the vehicle. They will make every attempt to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.
4. Officers should not discharge their firearm at a vehicle when it is reasonable to believe that the vehicle may contain others not involved in the deadly force action or reasonably foreseeable that doing so may cause the vehicle to careen out of control injure others.
5. Officers should not discharge their firearms at any part of a vehicle in an attempt to disable the vehicle.

C. Intentional Discharge of Firearm

1. A university police officer will not intentionally discharge a firearm unless:
 - The officer reasonably believes that circumstances exist which justify the use of deadly physical force under this Order;
 - The officer reasonably believes that circumstances exist justifying the use of a firearm against an injured animal or an animal that represents an immediate threat to human life;
 - The discharge is part of department-authorized training.

2. A university police officer shall not draw or exhibit any firearm unless circumstances create reasonable cause to believe that it may be necessary to use the firearm in conformance with this policy.
3. All intentional discharges of a firearm, with the exception of training and dispatching an animal, will be reported on a *Defensive Action Report*.
4. In considering the use of a firearm, university police officers must keep in mind that the individual officer alone is responsible for their acts and that they may be required to justify them in administrative hearings and courts of law.

D. Accidental Discharge of Firearm

1. Immediately after the round is fired, the officer must first holster the weapon securely.
2. The officer must then notify the supervisor in charge immediately and make certain that no persons have been injured in any way.
Note: Officers will report off-duty accidental discharges of other firearms in accordance with applicable laws.
3. If any person is injured as a result of the accidental discharge, the incident will be investigated as a deadly physical force incident in accordance with the procedures outlined in department *General Order 903 Investigation of the Use of Deadly Physical Force*.
4. The supervisor in charge shall immediately notify the Assistant Chief of Police or the Chief of Police.
5. The Assistant Chief and the Chief of Police will immediately respond and investigate the circumstances of the incident. If circumstances call for further assistance, the Assistant Chief will direct other department personnel to assist in the investigation.
6. A Firearms Incident Review Report shall be completed by the Assistant Chief and submitted to the Chief of Police for final review.

The Chief of Police shall determine follow-up action ranging from counseling, discipline, additional training, etc. A determination shall be made within a reasonable time.

E. Firearm Discharge Reporting

1. Any law enforcement officer (including police officers) or peace officer who discharges their 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 their weapon in the direction of a person, shall do the following:
 - Verbally report the incident to their superiors within six hours of the occurrence of the incident;
 - Prepare and file a written report of the incident within forty-eight hours of the occurrence of the incident.

Added 06/24/2020

Note: Nothing in this section shall prevent any officer from invoking their constitutional right to avoid self-incrimination.

BY ORDER OF
Mark T. DePaul
Mark T. DePaul
Chief of Police