

# SCHEENECTADY COUNTY SHERIFF'S OFFICE

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| <b>REGULATION # 050</b>   |                              |
| <b>SUBJECT: USE OF PHYSICAL FORCE</b><br><b>AUTHORITY: SHERIFF DOMINIC DAGOSTINO</b>                                    |                              |
| <b>THIS POLICY REPLACES: DP-108</b><br><b>EFFECTIVE DATE: DECEMBER 1, 2020</b><br><b>REVISED DATE: JANUARY 22, 2021</b> |                              |
| <b>ACCREDITATION STANDARDS:</b>   | 20.1, 20.6, 20.7, 21.2, 32.4 |

## **PURPOSE**

The purpose of this regulation is to establish guidelines for the reasonable and legitimate use of physical force by law enforcement officers. Law enforcement agencies must recognize and respect the value and dignity of every person. In vesting law enforcement officers with the lawful authority to use force to protect the public welfare, a careful balancing of human interests is required.

Courtesy in all public contacts encourages understanding and cooperation. The most desirable method for effectuating an arrest is where a suspect complies with simple directions given by an officer. When officers are confronted with a situation where control is required to effect an arrest or protect the public safety, officers should attempt to achieve control through verbal advice, warnings and persuasion. Where such verbal persuasion has not been effective, is not feasible, or would appear to be ineffective, an officer may use force that is reasonably necessary.

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

## **POLICY**

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness. 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.”

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.

## **DEFINITIONS**

1. **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.
2. **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.
3. **PHYSICAL INJURY** - Impairment of physical condition or substantial pain.
4. **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.

## **USE OF PHYSICAL FORCE**

1. 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.
2. Under the 4<sup>th</sup> 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.

## **DETERMINING THE OBJECTIVE REASONABLENESS OF PHYSICAL FORCE**

1. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.
2. Factors that may be used in determining the reasonableness of force include, but are not limited to:
  - A. The severity of the crime or circumstance;
  - B. The level of immediacy of threat or resistance posed by the suspect;
  - C. The potential for injury to citizens, officers and suspects;
  - D. The risk or attempt of the suspect to escape;

- E. The knowledge, training and experience of the officer;
- F. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers and/or subjects;
- G. Other environmental conditions or exigent circumstances.

### **DUTY TO INTERVENE**

1. Any officer present and observing another officer using physical 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.
2. An officer who observes another officer use force that exceeds the degree of force as described in subdivision 1 of this section should promptly report these observations to a supervisor.

### **USE OF DEADLY PHYSICAL FORCE**

1. 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.
2. Deadly physical force may be used to stop a fleeing suspect where:
  - A. 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,
  - B. The officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officer or others.
  - C. Where feasible, some warning should be given prior to the use of deadly physical force.
3. Chokeholds and Obstruction of Breathing or Blood Circulation
  - A. 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.

## **PROHIBITED USE OF PHYSICAL FORCE**

1. Force shall not be used by an officer for the following reasons:
  - A. To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;
  - B. To coerce a confession from a subject in custody;
  - C. 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;
  - D. 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.
  - E. Force should never be used to torture or punish someone;
  - F. Officers should seek to de-escalate a situation, if possible, before using force.
  - G. Officers are not permitted to fire "warning shots."
  - H. Officers can use deadly force against an animal if the animal is a threat or if it's badly injured, diseased or is preventing an officer from accomplishing a lawful objective.

## **REPORTING AND REVIEWING THE USE OF PHYSICAL FORCE**

1. Any injuries resulting from a use of force incident shall result in the appropriate and timely medical attention being provided to the injured party.
2. 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 physical force report.
  - A. Use of force that results in a physical injury.
  - B. Use of force incidents that a reasonable person would believe is likely to cause an injury.
  - C. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
  - D. Incidents where any of the following Less-Lethal Devices were utilized on a subject; oleoresin capsicum "pepper" spray, conducted electrical weapon (Taser) collapsible baton or wooden baton.
  - E. Incidents where a firearm was discharged at a subject.
3. A Use of Physical Force Report shall be completed to document any reportable use of physical force incident.

## **DUTIES OF MEMBERS**

1. Members may not use a level of physical force, i.e. oleoresin capsicum (pepper) spray, until they have successfully completed an approved training program relative to the proper use of such force.
2. Any member using physical force pursuant to their duties shall report or cause to be reported all facts relative to the incident on a Use of Physical Force Report.
3. Use of restraining devices as stated in this manual will not be construed as a use of physical force. However, when the handcuffs become an appliance to exert force necessary to subdue a person, or when the person physically resists the application of handcuffs, a use of physical force has occurred and the necessary reports must be submitted.
4. Subsequent to the use of physical force the member shall, if possible, immediately evaluate the need for medical attention for that person and arrange for treatment when any person has a visible injury or complains of injury or pain and requests medical attention.
5. Persons with a visible injury who are refusing medical treatment may be transported to a hospital where the refusal can be witnessed by hospital personnel. Any refusal must be documented on the Use of Physical Force Report.
6. Members shall immediately notify an on duty Patrol Supervisor of any incident involving the use of physical force whether it occurs on-duty or off-duty.
7. 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.
  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.

## **DUTIES OF THE SHIFT COMMANDER/PATROL SUPERVISOR**

1. Ensure all members and other persons receive necessary assistance, including medical treatment and that all injuries are properly documented.
2. Ensure a complete investigation is conducted and a report is prepared and submitted.
3. Determine if an investigator should be called to the scene.

4. Ensure detailed photographs are taken of any injuries, lack of injuries under certain circumstances, or complaints of injury/pain, from any involved person(s); i.e. defendants, detainees, officers, involved third parties, etc.

5. Make an Administrative Notification, as outlined in this manual, if a defendant or third party is physically injured or requires any type of medical treatment as a result of the use of physical force.

6. For reporting purposes, NYS Executive Law §837-t requires police agencies report any occurrence in which a police officer employs use of physical force as described below. The duty Shift Commander shall submit a report to the NYS Division of Criminal Justice Services (DCJS) each time a member:

A. 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 or impairment of the function of a bodily member, organ, or mental faculty;

B. Brandishes, uses or discharges a firearm at, or in the direction of, another person;

C. Displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas;

E. Brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy; or

F. Brandishes, uses or deploys an electronic control weapon, including, but not limited to, a conducted electrical weapon (Taser), electronic stun gun, flash bomb, or long range acoustic device.

7. The Shift Commander shall submit a report to DCJS each time a member uses physical force as defined by legislation and the criteria described above. Reports shall be entered via the DCJS reporting tool at: <https://www.surveymoz.com/s3/5075589/NYS-Use-of-Force-Reporting>. Complete all portions of the online form and click the submit button to transmit the data to DCJS as required by law.

### **DUTIES OF INVESTIGATORS**

1. Respond as directed by a member holding the rank of Lieutenant or higher.
2. Obtain written statements from all involved parties and witnesses of the incident.

### **DUTIES OF ADMINISTRATION**

1. Review all reports, photographs and documents relating to all use of physical force incidents.

2. Ensure a file is maintained, including all reports submitted in connection with the incident.

### **PROCEDURES FOR INVESTIGATING USE OF PHYSICAL FORCE INCIDENTS**

1. Whenever practical, a supervisor should respond to the scene to commence a preliminary use of physical force review, and/or investigation if applicable.
2. The Shift Commander shall ensure the completion of a use of force report by all officers engaging in a reportable use of force incident and, to the extent practical, make a record of all members present.
3. Detailed photographs should be taken which sufficiently document any injuries, lack of injuries under certain circumstances, and/or complaints of injury/pain, from any involved person(s); i.e. defendants, detainees, officers, involved third parties, etc.
4. A Lieutenant shall receive and review every Use of Physical Force Report that is filed and ensure a thorough investigation is completed, when necessary.
5. Excessive, unreasonable and/or unnecessary use of physical force may be cause for disciplinary action and/or criminal prosecution.

### **TRAINING**

1. All officers should receive training and demonstrate their understanding on the proper application of physical force.
2. Training topics will include use of physical force, conflict prevention, conflict resolution & negotiation, and de-escalation techniques and strategies. These strategies shall include, but not be limited to, interacting with persons presenting in an agitated condition as well as duty to intervene and prohibited conduct.
3. This policy is not intended to be a substitute for proper training in the use of physical force. Comprehensive training is the key to the real-world application of the concepts addressed in this policy.