Use of Force

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. This policy is designed 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. Its purpose is to establish procedural guidelines governing the use of physical force for the Police Officer to follow in the performance of his/her official duties, and to establish a system for reporting, documenting and reviewing incidents involving the use of force.

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. 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]

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 one's self 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]

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 shall 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]

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.

D. Whenever a Cohoes Police Officer uses deadly physical force upon another person:

1. The **Supervisor** will:

    A)   Ensure that any and all injured persons receive medical attention.
    B)   Immediately secure and protect the scene and preserve all evidence.
    C)   Make required notifications.
    D)   If an Officer's firearm was discharged, secure the firearm(s) and all magazines and turn them over to the responding Commander or Chief of Police. (If an object other than a firearm was used, secure the object according to standard procedure.)
    E)   Remove the Officer(s) involved in the incident from the scene as soon as reasonably possible.
    F)   Identify and detain all witnesses.
    G)   Brief the first Commander to arrive at the scene and await further instructions.
    H)   Ensure that all paperwork is completed in a timely manner.

2. The **C.I.D Commander** will:

    A)   Head the investigation and shall assign a Detective(s) to assist.
    B)   Notify the District Attorney's Office of the circumstances of the incident.
    C)   Be responsible for processing the scene to include the collection of all evidence.
    D)   Interview Officer(s), witnesses and victims.
    E)   Continually brief the Assistant Chief and Chief of Police as to the status of the investigation.

3. The **Assistant Chief** and/or **Patrol Commander** Will:

    A)   Assist the C.I.D Commander as necessary.
    B)   Ensure that another weapon is issued to any Officer whose firearm was secured as a result of the incident (if appropriate).
    C)   In any case where death or serious physical injury occurs as a result of the action of an Officer(s), that Officer(s) should be considered for assignment to temporary Administrative duty.
    D)   Make arrangements for trauma crisis counseling for any Officer or employee involved in the incident (if requested or deemed necessary).
    E)   Make or cause to be made any "Next of Kin" notifications regarding death or injury.
    F)   Address all administrative matters as appropriate.
    G)   Initiate an Internal Complaint and Investigation File in accordance with Departmental Policies and Procedures.

4. The **Chief of Police** Will:

    A)   Consider the need for assistance from outside agencies.
    B)   Address all press or media inquiries.
    C)   Direct the investigation as appropriate.
    D)   Make any additional notifications as appropriate.
    E)   Based on available information and the results of the investigation, make any and all determinations regarding the actions of the Officer(s) involved.

F)   Act as a liaison with any assisting outside agencies to include the District Attorney's Office and notify Officer(s) of any subsequent court proceedings or hearings resulting from the incident.

G)   Address all pertinent issues with the Public Safety Commissioner and, or, Mayor.

ALL OFFICERS INVOLVED IN A FIREARM DISCHARGE OR ANY INCIDENT INVOLVING THE USE OF DEADLY PHYSICAL FORCE AS INDICATED IN THIS POLICY SHALL BE AFFORDED ANY AND ALL RIGHTS SECURED BY THE U.S. CONSTITUTION, ANY OTHER APPLICABLE LAW AND THE COLLECTIVE BARGAINING AGREEMENT.

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;

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. REPORTING & REVIEWING THE USE OF FORCE

A. Any injuries resulting from a use of force incident shall result in the appropriate and timely medical attention being provided to the injured party.

B. Members involved in use of force incidents shall notify their supervisor as soon as practicable and shall complete a departmental use of force report.

C. A standardized use of force form should be used to document any reportable use of force incident.[18]

X. USE OF FORCE DATA COLLECTION

For reporting purposes, Executive Law 837-t requires each police department, county sheriff, and the state police to report any occurrence in which a police officer or peace officer employs use of force as listed below:

A. When an officer 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. When one of the following is initiated by an officer:
  - Brandishes, uses or discharges a firearm at or in the direction of another person;
  - 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;
  - Displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas;
  - Brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy;
  - Brandishes, uses or deploys an electronic control weapon, including, but not limited to, an electronic stun gun, flash bomb, or long range acoustic device.
  - Uses a chokehold or 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.

Beginning July 11, 2019, each law enforcement agency will be responsible for reporting information for their own officers who are involved in use-of-force incidents that meet the criteria of the data collection. Law enforcement agencies will be required to submit details of the incident to DCJS, including, but not limited to date of incident, agency involved, county, town/city, description of circumstances, and demographics of all persons engaging in the use of force or suffering such injury.

The permanent data collection mechanism can be located on the EJustice Portal.

Law enforcement agencies are required to report each incident of use of force as defined by the legislation. For each incident of use of force your agency reports to DCJS, please complete all portions of the online form and click on the submit button to transmit the information to DCJS as required by law.

XI. PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS

A. Where 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 reportable use of force and, to the extent practical, make a record of all officers present.

C. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.

D. The Chief or Designee will receive the supervisor's report and conduct an investigation if deemed necessary.

E. Consistent with agency disciplinary protocols and any applicable collective bargaining agreements, agency policy should establish standards for addressing the failure to adhere to use of force guidelines.[19]

XII. TRAINING

A. All officers should 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.[20]

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.

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[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,* 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)

[7] NY Penal Law and § 35.30(1) (McKinney 2013)

[8] *Graham*, 490 U.S. at 396 (1989)

[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 the 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. Che*w v. Gates*, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)

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

[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] Chiefs of police departments, County Sheriffs, and the Superintendent of State Police should consider utilizing these forms to ensure compliance with the administrative reporting requirement of EXC §837-t.

[19] EXC §840(4)(d)(2)(vi)

[20] EXC §840(4)(d)(2)(vii)

Use of Force

NEW YORK STATE | **Division of Criminal Justice Services**

The Division of Criminal Justice Services (DCJS) is not authorized to provide legal advice; however, it may provide general information. DCJS is responsible for collecting, maintaining and reporting use of force information. The Division does not make any officer or officer employer discretion determinations regarding this data, such decisions are reserved for the officer or the officer's employer. Accordingly, you may wish to contact your county attorney, or other legal counsel, for any specific or legal questions that you may have.

To ensure the appropriate staff at your agency receives future reporting alerts and program updates related to Use of Force reporting, please supply the contact information at the end of the report. Thank you for your participation.

Please select or fill in the information below.

Agency Name: *

| -- Please Select -- | V |

1. Incident Number: *

2. Incident Date: *

3. City/Town/Village (location where incident occurred): *

| -- Please Select -- | V |

4. County (location where incident occurred):

| -- Please Select -- | V |

5. Circumstance: *

| -- Please Select -- | V |

6. Subject Details:

	Subject's Age	Sex	Race	Ethnicity
1		-- Please Select --	-- Please Select --	-- Please Select --
2		-- Please Select --	-- Please Select --	-- Please Select --
3		-- Please Select --	-- Please Select --	-- Please Select --
4		-- Please Select --	-- Please Select --	-- Please Select --
5		-- Please Select --	-- Please Select --	-- Please Select --
6		-- Please Select --	-- Please Select --	-- Please Select --
7		-- Please Select --	-- Please Select --	-- Please Select --
8		-- Please Select --	-- Please Select --	-- Please Select --
9		-- Please Select --	-- Please Select --	-- Please Select --
10		-- Please Select --	-- Please Select --	-- Please Select --

7. Officer Details: *

When choosing Use of Force type, please select all that apply. Move slider bar to the right to view all Types of Force options

Select all that apply
Type of UOF

	Officer's Age	Sex	Race	Ethnicity	Brandished Firearm	Discharged Firearm	Used Firearm	Displayed Chemical Agent	Deployed Chemical Agent	Used Chemical Agent	Brandished an Impact Weapon	Deployed an Impact Weapon	Used an Impact Weapon	Brandished an Electronic Control Weapon	Deployed an Electronic Control Weapon	Used an Electronic Control Weapon	Used a Chokehold or Similar Restraint that may Hinder Breathing or reduce intake of air	Conduct that Resulted in Serious Bodily injury	Conduct that Resulted in Death
1	☐	-- Please Select -- ∨	-- Please Select -- ∨	-- Please Select -- ∨	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
2	☐	-- Please Select -- ∨	-- Please Select -- ∨	-- Please Select -- ∨	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
3	☐	-- Please Select -- ∨	-- Please Select -- ∨	-- Please Select -- ∨	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
4	☐	-- Please Select -- ∨	-- Please Select -- ∨	-- Please Select -- ∨	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
5	☐	-- Please Select -- ∨	-- Please Select -- ∨	-- Please Select -- ∨	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
6	☐	-- Please Select -- ∨	-- Please Select -- ∨	-- Please Select -- ∨	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
7	☐	-- Please Select -- ∨	-- Please Select -- ∨	-- Please Select -- ∨	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
8	☐	-- Please Select -- ∨	-- Please Select -- ∨	-- Please Select -- ∨	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
9	☐	-- Please Select -- ∨	-- Please Select -- ∨	-- Please Select -- ∨	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
10	☐	-- Please Select -- ∨	-- Please Select -- ∨	-- Please Select -- ∨	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

Please provide contact information

First Name: *

Last Name: *

Title:

Phone:

Email: *

Confirm Email: *

Please contact DCIS at useofforce@dcjs.ny.gov for more information and/or questions about the reporting process.

Submit