

OLD WESTBURY POLICE DEPARTMENT

PATROL

Sec: 3.7300

Title: Use of Force

Standards: 20.1, 20.5, 21.1, 43.8

Authority: Police Manual

I. PURPOSE

The use of force, especially deadly force, by police officers is a serious matter which has far reaching consequences for both the officers involved, and the citizens who are the object of such force. It is, therefore, imperative that all members of the Department be guided by law, morality, good judgment, and accepted practice. The purpose of this policy statement, and directive, shall be to provide the officer with a basis for such guidance.

II. POLICY

- A. 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.

- B. 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.
- C. This policy is not intended to create confusion in the mind of an officer at a critical moment. It provides basic guidelines so that the officers may be confident in exercising judgement as to the use of force.

Standards: (20.1 - Necessary Force), (20.5 - Firearms), (21.1 - Review of Firearms Use), (43.8 – Health of Persons in Custody)

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**III. DEFINITIONS**

- A. **Force** – Means the following actions by a member: any physical strike or instrumental contact with a person, or any significant physical contact that restricts movement of a person. The term includes, but is not limited to, the use of electronic control devices (ECDs); chemical spray; empty hands; the taking of a person to the ground; physical force such as kicks, punches, or martial arts techniques; compliance and control holds such as twist locks, wrist locks, pressure point; or the deployment of a canine. **The term does not include escorting or handcuffing a person, with no or minimal resistance.**
- 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.
- C. **Physical Injury** – Impairment of physical condition or substantial pain.
- 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.
- E. **Reasonable and Necessary** - Facts and circumstances, including rational inferences drawn there from, known to the Police Officer at the time of the use of force, that would cause an objectively reasonable Police Officer to conclude the force used is warranted.
- F. **Totality of Circumstances** - A term used to refer to all facts and circumstances known to the police officer at the time, reasonably perceived by the police officer, as the basis for the use of force decision.
- G. **Intermediate Weapons** - O/C Pepper Spray, Taser (ECD), Expandable Baton
- H. **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.

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Standards: (20.1 - Necessary Force), (20.5 - Firearms), (21.1 - Review of Firearms Use), (43.8 – Health of Persons in Custody)

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**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 others.
- B. 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.
- C. A situation may arise in which the use of deadly force is not reasonable and necessary, yet something more than manual restraint is required to subdue a subject. Intermediate weapons, such as O/C Pepper Spray, the ASP Expandable baton, and Taser, electronic control device (ECD), have been proven effective in such situations.
  - 1. Police officers are not permitted to use an intermediate weapon unless qualified in its proficient use as determined by training procedures.
  - 2. Officers shall carry only the intermediate weapons authorized by the Department.

**Note:** See also Manual index under "**OC PEPPER SPRAY**", **Expandable Police Baton**, and **Taser (ECD)**

**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;
  - 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;

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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

**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 should 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.
- 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.
- C. In order to use deadly force, the officer need not wait to be shot or stabbed. The threat of violence from an attack of deadly force must, however, be imminent and real based on the officer's reasonable belief. The Department does not expect an individual officer to **unreasonably**, or **unnecessarily**, endanger himself/herself in order to conform to this policy.
- D. All personnel are reminded that the baton ("impact weapon"), depending on how it is used, may constitute deadly force. Careful judgment, and

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discretion, must be exercised by an officer to avoid the use of this weapon in situations where such use may not be justified by the circumstances.

- E. The Department acknowledges that extraordinary circumstances may compel deviation from the letter of this policy. The basis for such a determination depends on the totality of circumstances known or reasonably perceived by a member of the Department at the time.
- F. Where feasible, some warning should be given prior to the use of deadly physical force.
- G. 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.

**VIII. SAFETY IN REGARDS TO USING FIREARMS AS A MEANS OF USING DEADLY PHYSICAL FORCE**

- A. Warning shots are prohibited; they shall not be fired at any time.
- B. Police Officers shall not fire their weapons at a moving vehicle, or from a moving vehicle, unless such action is the only possible way to prevent serious injury, or death, to the officer himself or another person.
- C. Except for maintenance, or during training, police officers shall not draw or exhibit, their firearms unless circumstances create a reasonable belief that it may be necessary to use the weapon in conformance with this policy. At all times that a firearm is drawn, it shall be handled in a safe manner.
- D. Members shall not fire upon a suspect holding an innocent person hostage. The appropriate special unit (Hostage Negotiations, Emergency Services, BSO) should be requested from the Nassau County Police Department.
- E. Members shall not surrender their firearms (unless as a last resort, and only after using every tactical tool at their disposal). Surrender of a firearm rarely de-escalates a situation and can, in fact, place an officer, or other innocent persons, in severe jeopardy.

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F. Whenever a member discharges a firearm, whether on or off duty, except for Department approved training or competition, he shall prepare a Department *'Firearm Discharge Report'* of the incident, indicating the necessity for the discharge of the weapon, and will submit same to his immediate supervisor, who will review the report, indicate on same (or by separate attachment) his concurrence, or non-concurrence, with the decision to discharge the firearm, and forward the report, through normal channels, to the Chief of Police.

**IX. 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.

**X. MEDICAL AND MENTAL HEALTH NEEDS OF A PERSON IN CUSTODY**

A. A member of this department 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.

B. Officer should document any requests for necessary medical or mental health treatment as well as efforts of police to arrange for such treatment.

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**XI. REPORTING & REVIEWING THE USE OF FORCE**

- A. Members involved in use of force incidents as described below shall notify their supervisor as soon as practicable.
  - 1. Use of force that results in a physical 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 compliant handcuffing.
  - 4. Incidents where a conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed.
  - 5. Incidents where a firearm was discharged at a subject.
  - 6. Incidents where an officer deploys a chemical agent at a subject.
- B. A standardized use of force form should be used to document any reportable use of force incident.

**XII. INVESTIGATION OF INCIDENTS**

- A. Whenever force is used that results in a physical injury to any person, the incident will be investigated as outlined herein.

**B. Investigation Procedure:**

Whenever an incident occurs involving the use of force by a member of this Department which requires investigation pursuant to this policy, the Lieutenant will be notified immediately.

- 1. Command at Scene - the officer assigned the original call is in command until properly relieved by a supervisory officer.
- 2. The Lieutenant will assign a supervisor to take charge of the scene and investigate the incident. Depending on the severity of the incident, the Lieutenant may conduct the investigation of the incident.

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**3. Initial Action:**

- a) The investigating officer will be responsible for control of the scene.
- b) The investigating officer will identify all personnel involved in the incident.
- c) The investigating officer will make recommendations to the Lieutenant concerning the status of any arrests, and the need for further investigation.
- d) The investigating officer will ensure the completion of a use of force report by all officers engaging in reportable use of force.

**4. Information and Evidence Required:**

- Personnel involved
- Witnesses, if any.
- Color photos of injuries, or lack thereof, to any persons (including officers) taken prior to treatment, if possible.
- Any other information, or evidence, available and required for proper investigation.

**5. Investigating Officer will promptly prepare a written report to the Chief of Police that will fully document the incident, and will maintain personal notes of the incident, as required. The following guidelines will apply:**

- a) Summary of the nature of the incident where force was used, including date and time, location, and case number.
- b) Name, rank, of all officers at the scene including outside agencies.
- c) Names, addresses, telephone numbers, and statements of any, and all, witnesses.
- d) The circumstances that led to the use of force.

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- e) The exact nature of the force used by each officer involved.
  - f) Describe the injuries to all persons involved (including officers). Include photos and description of medical treatment received, including the name of the treating facility, doctor's name, and a copy of treatment slip (medical lines).
  - g) Include copies of all reports pertaining to the incident.
  - h) Description of any direct action taken by the investigator of the incident.
  - i) Include personal conclusions and recommendations, along with any information, and/or evidence, not specifically mentioned above, which is deemed pertinent to the investigation.

**XIII. TRAINING**

Subject to available resources:

- A. All officers will receive periodic training on this policy and demonstrate their understanding on the proper application of force.
- B. Training topics will include use of force, conflict prevention, 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.