

# DEPARTMENT MANUAL

## Section 05-1

CHAPTER 05:

### Use of Force

SUBJECT:

### Use of Force

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#### 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. The Policy is designed in accordance with Executive Law §840(4)(d)(3).

#### 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<sup>1</sup>. 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 affect 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.
- B. 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”.<sup>2</sup>
- C. 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.

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<sup>1</sup> Force which is objectively reasonable is insulated from criminal liability through Article 35 of the NYS Penal Law and civil liability by the 4<sup>th</sup> Amendment standard of objective reasonableness.

<sup>2</sup> *Graham v. Connor*, 490 U.S. 386 at 396 (1989)

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### 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.<sup>3</sup>

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.

- B. **Reasonable Cause to Believe**- Reasonable cause to believe that a person has committed an offense exists when evidence or information that appears reliable, discloses facts or circumstances that are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it. Except as otherwise provided in the Criminal Procedure Law, such as apparently reliable evidence may include or consist of hearsay.
- C. **Physical Injury** – Impairment of physical condition or substantial pain. <sup>4</sup>
- 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.<sup>5</sup>

<sup>3</sup> Graham, 490 U.S. 396 (1989)

<sup>4</sup> NY Penal Law § 10 (9) (McKinney 2013)

<sup>5</sup> NY Penal Law § 10 (10) (McKinney 2013)

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- E. **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.<sup>6</sup>
- F. **Defensive Force** -The necessary infliction of physical force to overcome violent resistance or to protect self or others from assault or injury.
- G. **Nondeadly Force**- Necessary force that is not likely to cause death or great bodily harm.
- H. **Physical Force** - The necessary application of submission techniques to overcome resistance.
- I. **Restraining Force** - Use of force that is limited to holding and restraining a person.
  - 1. To affect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of one's self or another.

#### IV. PROCEDURE

##### A. USE OF FORCE

- 1. In general terms, force is authorized to be used when reasonably believed to be necessary to affect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of one's self or another.<sup>7</sup>
- 2. 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 scene.<sup>8</sup>

<sup>6</sup> NY Penal Law § 10 (11) (McKinney 2013)

<sup>7</sup> NY Penal Law and § 35.30(1) (McKinney 2013)

<sup>8</sup> Graham, 490 U.S. at 396 (1989)

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### B. DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

1. 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.<sup>9</sup>
  - b. The level and immediacy of threat or resistance posed by the suspect.<sup>10</sup>
  - c. The potential for injury to citizens, officers, and suspects.<sup>11</sup>
  - d. The risk or attempt of the suspect to escape.<sup>12</sup>
  - e. The knowledge, training, and experience of the officer.<sup>13</sup>
  - f. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects.<sup>14</sup>
  - g. Other environmental conditions or exigent circumstances.<sup>15</sup>

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Scott v. Harris, 550 U.S. 372 (2007)

<sup>12</sup> Graham, 490 U.S. at 396 (1989)

<sup>13</sup> Analysis of cases under the 4<sup>th</sup> 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)

<sup>14</sup> Sharrar v. Felsing, 128 F. 3d 810 (3<sup>rd</sup> Cir. 1997) (numbers of officers or subjects)

<sup>15</sup> Courts have repeatedly declined to provide an exhaustive listing of factors. Chew v. Gates, 27 F. 3d 1432, 1475 n.5 9<sup>th</sup> Cir. (1994)

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#### C. DUTY TO INTERVENE

1. Any officer (regardless of rank or seniority) present and observing another officer (regardless of rank or seniority) 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.
2. 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.

#### D. 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.<sup>16</sup>
2. Deadly physical force may be used to stop a fleeing suspect where:
  - a. The officer has reasonable 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 to others.

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<sup>16</sup> NY Penal Law and § 35.30(1)(c) (McKinney 2013)

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- c. Where feasible, some warning should be given prior to the use of deadly physical force.<sup>17</sup>

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.<sup>18</sup>

#### E. PROHIBITED USES OF 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 person(s) who are handcuffed or restrained unless it is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the subject.

<sup>17</sup> 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 in the officer or others’ in describing the limited circumstances under which deadly force can be used to prevent the escape of a felon.

<sup>18</sup> NY Penal Law § 121.13-a establishes the crime of Aggravated Strangulation.

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#### F. REPORTING AND REVIEWING THE USE OF FORCE

1. 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.<sup>19</sup>
  - a. This includes appropriate and timely medical attention being provided to a party injured as a result of a use of force incident.
  - b. 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.<sup>20</sup>
2. Members involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete a departmental use of force report (DF-99):
  - 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.

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<sup>19</sup> NY Civil Rights Law § 28

<sup>20</sup> NY Mental Hygiene Law § 9.41

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d. Incidents where a conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed.

e. Incidents where a firearm was discharged at a subject.<sup>21</sup>

3. The Use of Force Report (DF-99) will be filed to document any reportable use of force incident.<sup>22</sup>
4. Officers should document any requests for necessary medical or mental health treatment as well as efforts of police to arrange for such treatment.

#### G. PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS

1. Where practicable, a supervisor should respond to the scene to begin the preliminary use of force investigation.
2. A supervisor that is made aware of a force incident shall ensure the completion of a use of force (DF-99) report by all officers engaging in reportable use of force and, to the extent practical, make a record of all officers' present.
3. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or subjects.
4. If the use of force by the officer violates Section IV.E of this policy, the Supervisor of the Detective Bureau will be notified.
5. The patrol lieutenant will receive the supervisor's report to ensure accuracy and completeness.

<sup>21</sup> NY EXC § 837-v requires that any discharge of a weapon, while either on duty or off duty, in the direction of a person be verbally reported to the involved officer's supervisor within six hours and a written report prepared within forty-eight hours of occurrence.

<sup>22</sup> 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.



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6. The completed report shall then be submitted to the Chief of Police for final review.

#### H. TRAINING

1. All officers should receive training and demonstrate their understanding on the proper application of force.
2. 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.<sup>23</sup>
3. 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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<sup>23</sup> EXC § 840(4)(d)(2)(vii)