

USE OF FORCE

Date Issued 11/01/2019	Date Effective 12/01/19	Revision No. R19-01	Page 1 of 10
---------------------------	----------------------------	------------------------	-----------------

PURPOSE

To establish guidelines for the use of force by sworn members of the Pleasantville Police Department.

POLICY

It shall be the policy of the Pleasantville Police Department that sworn members shall utilize only the level of force required to accomplish the performance of their official duties in accordance with Article 35 of the New York State Penal Law, Department Policy and the current training standards of this Department. It is the responsibility of each sworn member to be aware of the requirements of Article 35 and to guide his/her actions based upon the Penal Law and these Rules, Regulations and Procedures.

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.”

Prior to engaging in less than lethal force with a person, the officer should, in the initial stages of the confrontation, attempt to resolve the matter by use of verbal persuasion. If the situation escalates further, officers should limit their response to what is necessary to accomplish their lawful objectives. This would include verbalizing at a safe distance until reinforcements or specialists could arrive on the scene, if at all possible. In any event, officers should use discretion when using less than lethal force and adhere to the progression of force table contained herein when circumstances necessitate the use of force.

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.
- 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

GUIDELINES

1. Generally, a sworn members may, in the performance of his or her duties, use force to the extent he / she reasonably believes is necessary in the following circumstances:
 - a. To effect the lawful arrest of person(s) resisting arrest or attempting to escape from custody of a person whom he/she reasonably believes to have committed an offense;
 - b. In self-defense or in the defense of another person from what he/she reasonably believes to be the use or imminent use of physical force;
 - c. To prevent a person from injuring themselves.
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 the scene.

Unless in an emergency situation, only equipment which is issued or approved will be carried on duty by sworn members trained and certified in the use of such equipment when applying physical force.

Progression of Force

1. When the use of force is necessary and appropriate, members shall to the extent possible, utilize an escalating scale of options and will not use a more forceful measure unless it is determined that a lower level of force is inadequate.
2. If possible, the member should give the subject the opportunity to comply at each stage.
3. Once compliance is achieved, the escalation ceases.
4. A stage in the progression may be skipped due to the circumstances and progression is not always upward.
5. The sworn member must continually assess the circumstances and, as appropriate, escalate or de-escalate the use of force.

Typically, levels of force which are available to officers are as follows:

- a. **Verbal Direction:** This is the least intrusive level of force and may vary from a simple request to an emphatic command.
- b. **Physical Direction:** Frequently, subjects are reluctant to be taken into custody and offer some degree of physical resistance. Normally all that is required to overcome this resistance is physical strength and some skill in defensive tactics.
- c. **Inflammatory Agent:** Oleoresin Capsicum (O.C.) aerosol spray. Normally used when lesser levels of force are ineffective or inappropriate.
- d. **Taser:** The actions of the opponent compel a member to use a more intensive level of force. This instrument when properly used, provides a control mechanism and can protect the member.
- e. **Impact Weapon:** The actions of an opponent compel a member to use a more intensive level of force, namely the Police Baton. This instrument when properly used, provides a control mechanism and can protect the member with defensive techniques.
- f. **Firearm:** The highest level of force available to a member. Firing a weapon at another person is restricted to those situations in which deadly physical force is justified.

DETERMINING THE OBJECTIVE REASONABLENESS OF 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.

USE OF FORCE/WEAPONS

SECTION 106-1, PAGE 4 OF 10

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 and 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 or subjects
 - g. Other environmental conditions or exigent circumstances

DUTY TO INTERVENE

1. 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.
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.

PROHIBITED USES OF FORCE

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.

RESPONSIBILITY TO RENDER MEDICAL AID

1. In the event a physical injury is inflicted upon, or alleged to have been inflicted upon, a person by a member(s) of the Department, appropriate and timely medical attention shall be provided to the injured party.

2. Any injuries resulting from a use of force incident shall result in the appropriate and timely medical attention being provided to the injured party.
3. Every member present at the time of injury or alleged injury shall prepare a comprehensive Supplemental Narrative in the Case Report detailing the circumstances surrounding the alleged injury. Such report will be submitted to the Tour Supervisor prior to the end of their tour of duty.
4. For all incidents as described above, a Departmental Aided Report will be filed as well.

NOTIFICATIONS, REPORTING, INVESTIGATING AND REVIEW OF USE OF FORCE INCIDENTS

Members involved in all use of force incidents as described below shall notify the Tour Supervisor as soon as practicable and shall complete a departmental use of force report.

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.

Responsibilities of Supervisors following a Use of Force Incident

Where practicable, a supervisor should respond to the scene to begin the preliminary force investigation.

A supervisor that is made aware of a force incident shall:

1. 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.
2. Photograph and document any injuries or lack thereof to officers or suspects.
3. Ensure that all appropriate aid is rendered.

USE OF FORCE/WEAPONS

SECTION 106-1, PAGE 6 OF 10

4. Ensure that every member present completes a Supplemental Narrative in the Case Report detailing the incidents, and that all reports are accurate, complete and submitted by the end of the Tour.
5. Notify the Appropriate Division Commander of the incident.
6. Report the use of force to NYS DCJS or central repository via the eJustice Portal or other reporting instrument as required. In addition, officers supervisors must be aware that incidents that were not previously considered use of force incidents are currently defined as such and require reporting.
7. Forward all completed reports to the Patrol Division Commander.

GUIDELINES ON THE 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 to others, and
 - c) There is no other reasonable means to effect the arrest; and
 - d) The discharge does not appear likely to injure innocent bystanders.

The foundation of this policy is found in Section 35.30 of the Penal Law as modified by the holding of the United States Supreme Court in *Tennessee V. Garner*. That court held that the firing at a fleeing felon is unconstitutional unless the discharging officer has probable cause to believe that the suspected person poses a significant threat of death or serious physical injury to the officer or others. Officers should be thoroughly familiar with the above section and the Courts ruling in *Tennessee V. Garner*.

3. Where feasible, some warning (such as "POLICE. DON'T MOVE.") should be issued before using deadly physical force.
4. A member shall not use deadly physical force in defense of property.
5. Choke holds, carotid holds and similar compressions of the neck represent potential use of deadly force and shall never be used unless an officer or another

person is in imminent danger of death or serious physical injury, and all other measures to reasonably repel the attack have been exhausted.

6. No distinction shall be made relative to the age of the intended target of deadly physical force. Self- defense and imminent threat shall be the only procedural guidelines for employing deadly physical force.
7. Under no circumstance shall a member of service discharge their firearm to fire a warning shot.
8. Firearms shall not be discharged to summon assistance except where the officer's safety or that of another is seriously endangered and he/she believes there is no reasonable alternative. Extreme care must be exercised in such situations to prevent injury to the officer or other persons.

NOTIFICATIONS AND REPORTING OF USE OF DEADLY PHYSICAL FORCE

1. The applicable Division Lieutenant and the Chief of Police shall be notified of any incident involving an officer involved shooting. For chain of command purposes, the tour supervisor shall contact or cause to be contacted the Division Lieutenant who in turn will contact the Chief of Police.
2. In addition, in the event that a police officer utilizes deadly physical force which results in the death of a civilian, the tour supervisor shall notify the Westchester County District Attorney's Office at 914-813-7257 or 914-995-3414 (if after hours contact the Westchester County Police Department at 914-864-7700 and request that the on-call assistant district attorney contact police headquarters). The tour supervisor shall brief the assistant district attorney as to the elements of the incident to determine if the New York State Attorney General's Office needs to be notified. The District Attorney or his/her designee will determine if the New York State Attorney General's Office needs to be contacted regarding the officer involved shooting or death to a civilian. If the New York State Attorney General's Office needs to be notified, the District Attorney's Office will make the notification or direct the tour supervisor to make such notification.

STEPS TO TAKE WITH INVOLVED EMPLOYEES

In every instance in which an officer, whose action(s) or use of force in an official capacity, uses deadly physical force and where such use of force results in the death or bodily injury to another person, or where an employee is involved in an auto accident which results in the death or serious physical injury to another person, the following procedure shall be followed:

1. If the incident involves an officer's weapon, it will be replaced with another weapon and all weapons carried by the officer at the time of the incident will be safeguarded and turned over to the investigating officer.
2. The involved officer will be given the opportunity to call his/her family as soon as practicable to avoid the possibility of their learning about the incident through other sources (i.e. media, radio, T.V. etc).
3. The involved officer shall be evaluated by a physician at a medical facility. An officer shall accompany the involved officer to the medical facility. Whenever practical, separate hospitals should be used for the officer and the civilian involved in the incident.
4. The officer shall not be permitted to speak with the press. All information regarding the incident will be given out through the Chief of Police or the Public Information Officer.
5. The initial on scene supervisor shall not order any involved officer to provide any information regarding the shooting other than public safety information. Public safety information shall be limited to such things as outstanding suspect information, number and direction of any shots fired, perimeter of the incident scene, identity of known potential witnesses and any other pertinent information.
6. Prior to the officer making a written statement, he/she shall be provided the opportunity to consult with an attorney.
7. The officer shall be relieved from regular duty in good standing pending an investigation and subsequent reinstatement back to full duty by the Chief of Police. Assignment to being relieved from regular duty status shall be non-disciplinary with no loss of pay or benefits. Officer(s) so relieved from regular duty shall remain on a "limited duty" status and shall assure their availability to the police department, county, state, and federal authorities to assist, when necessary, in the investigation of the incident until it is concluded, and there is an administrative review.
8. Relief from regular duty with full pay and benefits is intended to serve two purposes:
 - i. to address the personal and emotional needs of the officer involved in the use of deadly physical force which resulted in injury or death; and

USE OF FORCE/WEAPONS

SECTION 106-1, PAGE 9 OF 10

- ii. To assure the community that verification of all the facts surrounding such incidents are fully and professionally explored.
- 9. The release of the officer's name involved in above described incidents shall be released by the Chief of Police or his/her designee or the Public Information Officer only. Issues taken into consideration regarding the timing of the release of this information shall be:
 - A. The officer has had the opportunity to notify his/her family;
 - B. The officer has had the opportunity to make arrangements to have his/her family moved for safety purposes, if warranted; and
 - C. The release of the information does not or will not impede the investigation of the incident.

Review of the Use of Force

The Patrol Division Commanding Officer shall review all reports of the Use of Force by members of the Department to insure:

- a) The force used was lawful and in accordance with Department Rules, Regulations and Procedures;
- b) That the incident is properly documented;
- c) That no training deficiencies exist.

The Internal Affairs Officer will receive the supervisor's report and conduct an investigation, if necessary.

Evaluation

If the Patrol Division Commanding Officer determines that there was an improper Use of Force, the incident was not properly documented or training deficiencies exist, he/she shall prepare an Inter-Departmental memorandum documenting his/her findings as well as corrective actions and forward same to the Chief of Police for final review.

TRAINING

- A. All officers should receive annual training and demonstrate their understanding on the proper application of force. Training topics will include:
 - a. use of force,
 - b. conflict prevention, conflict resolution and negotiation, and

- c. de-escalation techniques and strategies; including, but not limited to,
 - i. interacting with persons presenting in an agitated condition
 - ii. duty to intervene, and
 - iii. prohibited conduct.