

ULSTER POLICE DEPARTMENT GENERAL OPERATIONS MANUAL

Use of Force
Sec. 900.00

Date Issued: 07/02/10 Date Revised: 10/24/2019 Date Effective: 10/24/2019

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Date Reviewed 03/31/2022

I. PURPOSE:

As long as we live in a free society, it will be necessary for Police Officers to be armed. Since society has given law enforcement the authority to be armed, society must also retain the right to control the use of such weapons. It is therefore the responsibility of this administration to provide Police Officers of the Town of Ulster Police Department with guidelines on the use of deadly and non-deadly force.

Within Article 35 of the Penal Law of the State of New York are specific instances wherein a Police Officer is justified in the use of force, and deadly force. However, in any given situation a police officer's use of force, though justified, must be objectively reasonable.

II. POLICY

This department recognizes and respects the value and sanctity of each human life. In vesting police officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Therefore, it is the policy of this department that police officers shall use only that force that is objectively reasonable to effectively bring an incident under control, while protecting the lives of the officer or others.

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. (Graham v. Connor, 490 U.S. 386 at 396(1989))
- B. Deadly Physical Force: Physical force which, under the circumstances in which is used is readily capable of causing death or other serious physical injury. (Article 10.00 Subd. 11. NYS Penal Law)

- 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. Non-deadly Physical Force:
Any use of force other than that which is considered deadly force.

IV. PROGRESSIVE USE OF FORCE STATEMENT

- A. Any time a police officer considers the use of force it shall be incumbent on that officer to assess the situation and use ONLY that level of force which is objectively reasonable.
The officer(s) observations and assessments are crucial. Because the officer must determine whether the actions of the individual(s) are such that compliance to the police officer are being met or to be met, or if the individual(s) are to remain non-compliant or increase their actions which have been deemed to be improper or illegal.
- B. Levels of Force progress in "Stages". These "Stages" are:
 - 1. **Presence**
This is the least intrusive Stage.
 - 2. **Verbal Direction**
The Levels of Force within this stage progress from a simple request, to a direct compliance command.
 - 3. **Physical Direction**
This Stage often requires physical contact with the person. The amount of physical direction and extent varies with the situation and circumstance. This stage shall be determined to mean that the officers contact can be as slight as a mere touch, to using grab holds, restraint and come-along techniques as adopted through Department training.
 - 4. **Electronic Control Device – Advanced Taser X26 / PhaZZer Enforcer II**

This stage is a less than lethal stage of force where the officer uses a device that utilizes nitrogen to propel probes that embed themselves in a subject's clothing or skin. The device then sends an electrical signal to the probes via attached wires that temporarily disrupt the body's ability to communicate messages from the brain to the muscles causing motor skill dysfunction in an effort to gain the compliance of an individual **OR**

4a **Oleoresin Capsicum Deployment**

This stage is a less than lethal stage of force wherein the officer uses this biodegradable, natural substance in the effort to gain compliance of an individual(s) **OR**

4b **Strong Physical Directive Measures**

This Stage of Force at this point are such, or have progressed to the point where the police officers must use physical "take-down" techniques to even more extreme measures of delivering blows with the hand, fist, or feet in an effort to gain compliance from an individual(s).

5. **Impact Weapons**

An individual's actions or potential may compel the officer to move to a more intrusive state such as a baton. This weapon when used properly provides a control mechanism which also gives the officer a measure of safety. It should be noted that, depending on the circumstances, the use of the baton may constitute deadly physical force.

6. **Firearms**

The highest Stage of force available to a Police Officer is the firearm. The use of this force at this stage is restricted to those situations in which deadly physical force is justified.

C. Principles of the Progression of Force

1. The actions of an individual or the totality of circumstances in a given incident may require that stages in the progression of force or stages within a specific level of force be bypassed, skipped or used in an order other than that listed. The progression of force listed is a logical guide for personnel.
2. If possible, the Officer should give the subject an opportunity to comply at each level. Once compliance is achieved, escalation in force ceases. To do otherwise constitutes Excessive Force.

Under NO circumstances will excessive force be tolerated.

3. It is not the Officer who is the aggressor. A subject escalates the use of force by non compliance. In failing to comply, the subject compels the Officer to progress to the next level.
4. Progression is NOT always upward. Situations in which force is used are often in flux; therefore, the Officer must continuously assess the circumstances and as appropriate, escalate or de-escalate the level of force.
5. Remember that ALL force situations are judged in the light of **"Objective Reasonableness."**

V. PROCEDURES

A. Parameters for the use of Deadly Force:

1. Police Officers are authorized to fire their weapons in order to:
 - a. Protect themselves or others from what is reasonably believed to be an immediate threat of death or serious bodily harm; or
 - b. Under those conditions or circumstances permitting the use of Deadly Physical Force pursuant to Article 35 of the Penal Law of the State of New York.
2. Before using a firearm, police officers, whenever possible, shall identify themselves and state their intent to shoot, where feasible.
3. Police officers may also discharge a weapon under the following circumstances:
 - a. During range training, practice or competitive sporting events;
 - b. To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured, maimed, disabled or sick.
4. Police Officers shall adhere to the following restrictions when their weapon is exhibited:
 - a. Except for maintenance, inspection or during training, police officers shall not draw their firearms unless circumstances create reasonable cause to believe that it may be necessary to use the firearm in conformance with this policy.

- b. Warning shots are prohibited.
- c. Police Officers shall not fire their weapons at or from a moving vehicle, unless the vehicle is being used as a deadly weapon and there is no avenue of escape.
- d. Firearms shall not be discharged when it appears likely that an innocent person may be injured.

B. Parameters for use of Non-deadly Force:

- 1. Where deadly force is not authorized, officers should assess the incident in order to determine which non-deadly force technique or weapon (progressive force level) will best de-escalate the incident and bring it under control in a safe manner.
- 2. Police Officers are authorized to use department approved non-deadly force techniques and issued equipment for resolution of incidents, as follows:
 - a. To protect themselves or another from physical harm; or
 - b. To restrain or subdue a resistant individual; or
 - c. To bring an unlawful situation safely and effectively under control.

C. Injury; During the Use of Force

- 1. Whether the force used is Deadly Force or Non-Deadly Force
 - a. Immediately after the person and scene are secured, first aid shall be administered by members on scene and EMS shall be called, if injury is obvious.
 - b. If Non-Deadly force is used and injury is not obvious, then as soon as the scene is secured, members on scene shall ASK if the person is injured, if they are, first aid shall be administered and EMS called.
 - c. If the person is injured, but refuses medical attention, EMS shall still be called and be allowed to make a determination of medical treatment and the ability for the person to refuse medical attention.

- d. If the person in question is a juvenile then EMS shall be called, whether injury is reported or not, so an evaluation can be made.
2. Refer to the General Operations Manual - Arrest Procedures under section 1000.10 subsection III D. for dealing with Injured, Intoxicated or Mentally Disturbed Arrests for more details
- D. A Supervisor shall be notified immediately through the chain of command on all use of force incidents.

E. Training and Qualifications

1. Deadly Weapons:

- a. On-duty officers will carry only firearms and ammunition authorized by the department. In addition, the officer must meet department qualifications standards with the firearm.
- b. Off duty officers may carry their issued weapon.
- c. Officers, in an off-duty capacity, may carry their own weapons which have been recorded with the department as off duty weapons. They must qualify with these weapons yearly.
- d. Officers must meet department qualification standards for off-duty weapons or any weapon carried while off duty.
- e. The Police department shall schedule regular training and qualification sessions for firearms, which will be graded on a pass/fail basis.
- f. Officers who fail to receive a passing rating with their duty weapons, in accordance with the established departmental qualification standards, shall be reported to the Chief of Police.

The Chief of Police shall review such report and may render any of following decisions:

1. Reassignment to non-enforcement duties.
 2. Referral to remedial training.
 3. Disciplinary action based on incompetence in performance of duties related to employment.
- g. A police officer who has taken extended leave or suffered an illness or injury that could affect the ability or skill of an

officer in the use of an issued firearm will be required to requalify before returning to enforcement duties.

- h. In those situations referred to in (f) and (g) above, the Chief of Police shall have the authority to recall all issued firearms until such time as the officer in question is qualified by a department firearms instructor.

2. Non-deadly force weapons and methods.

- a. A police officer is not permitted to use a non-deadly weapon unless qualified in its proficient use as determined by relevant training procedures.
- b. Non-deadly weapons authorized by the department are the Police Expandable Baton, Oleoresin Capsicum and the Electronic Control Device or “Taser or PhaZZer”.

F. Reporting use of force:

- 1. A written report will be required by Officers and a Supervisor will be immediately summoned and will comply with investigative procedures as required by the department in the following situations:

- a. When a firearm is discharged outside of the firing range.

- 1. A Use of Force report shall be completed during Deadly Force Situations

- aa. A Supervisor shall immediately respond and notification shall be made through the chain of command immediately and an investigation will ensue.

- 2. Firearm Discharge report, for discharges involving dangerous, diseased or injured animals

- 3. Supplemental report for any other firearms discharge, including but not limited to accidental discharges.

- aa. A Supervisor shall immediately respond and notification shall be made through the chain of command and an investigation will ensue.

- b. When an Electronic Control Device or “Taser or PhaZZer” is discharged.

- 1. Use of ECD Report

- 2. Use of ECD Supervisory Report

aa. A Supervisor shall immediately respond and notification shall be made through the chain of command and an investigation will ensue.

- c. When Oleoresin Capsicum is discharged.
 - 1. OC Report of Use

d. When physical force is utilized that could result in injury to anyone involved, or when a subject complains that injury has been inflicted, or When the use of force results in the death or serious physical injury.

- 1. Use of force report shall be completed
- 2. If a complaint of injury has occurred to anyone involved or if the use of force results in serious injury or death, then a Supervisor shall immediately respond and notification through the chain of command shall be made and an investigation will ensue.

G. Departmental Response

1. Deadly force incident:

- a. Where a police officer's use of force causes death or serious physical injury, the officer shall be placed on administrative leave after complying with the internal investigation requirements of the department.
- b. The department shall conduct both an administrative review and a criminal investigation into the incident.
- c. Such officer shall remain on leave until the administrative review and criminal investigation are complete and it is determined by medical, mental and/or EAP professionals that the officer is fit to return to duty.
- d. The Chief of Police will notify the Town Board regarding these incidents, but in a fashion not to adversely affect any administrative review or criminal investigation. Upon conclusion of both the Town Board will be updated fully of the findings.

2. Administrative review of use of force incidents:

- a. All reported use of force incidents will be reviewed by the Lieutenant and the Chief of Police to determine:

1. If the use of force was justified according to Departmental rules, policy or procedures;
 2. If the use of force was justified according to Article 35 of the New York State Penal;
- b. All findings of policy violations and or violations of a crime shall be reported to the appropriate authority for resolution and or discipline.
 - c. All use of force reports shall be retained as required by law.
 - d. There will be a regular review of the use of force incidents by the Lieutenant and Chief of Police to ascertain training and policy need.
3. Criminal Investigations as related to use of force incidents:
 - a. If a review of a use of force incident determines a finding of criminal conduct, then said investigation will be forwarded to the District Attorney for a determination of prosecution.
 - b. A criminal investigation is required for all use of force incidents, which involve deadly force, or serious physical injury.
 1. The District Attorney will be made aware of the investigation from the onset.
 2. At the conclusion of the investigation, all findings will be forwarded to the District Attorney for a prosecutorial decision, prior to any other action being taken. The Town Board will be made aware of the findings.