

USE OF FORCE				
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PURPOSE

To establish the policy and procedure for the use of force by sworn members of the Wappingers Falls Police Department. Sworn members are expected to use only such force as is reasonable and necessary. Establish clear guidelines for officers regarding the use of deadly physical force. Members of the Department have and continue to display commendable restraint in resorting to the use of deadly physical force. The irreversible consequences of such force places a responsibility on the Department to establish a policy that:

- A. Clearly guides personnel in its application.
- B. Maximizes officers' safety.
- C. Minimizes the possibility of injury to innocent persons.
- D. Eliminate the unnecessary loss of human life.

BACKGROUND

There is probably no more serious act that a law enforcement officer can engage in than the use of a firearm. The occasions for such use are life and death situations, which are invariably confusing and complex, affording little time for mediation or reflection. It is imperative then, that the officer, through training and the absorption of these guidelines, be able to respond quickly, confident that he or she is acting within the limits of this Department policy. This shall serve to protect the public from unlawful and unreasonable use of force; while at the same time, it shall enable officers to act without hesitation in protecting themselves or another person. Perhaps as equally important, it minimizes the second-guessing to which the officer is subjected when no such guidelines exist.

Members should have a thorough knowledge of Article 35 of the New York State Penal Law, and should periodically review this body of law. Members should bear in mind that Article 35 of the Penal Law only authorizes the use of physical force/deadly physical force; it does not command its use. Members should also be aware that **DEPARTMENT POLICY IS MORE RESTRICTIVE THAN ARTICLE 35 IN THE USE OF PHYSICAL FORCE/DEADLY PHYSICAL FORCE.**

Use of Force**POLICY**

It shall be the policy of the Wappingers Falls 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. In all cases, only the minimum amount of force necessary to effect lawful objectives, which is consistent with the accomplishment of the task in question, will be used and is authorized.

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.

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.

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.

Use of Force

PROCEDURE

Generally, sworn members may use force in the performance of their duty in the following circumstances:

-To effect the lawful arrest of person(s) resisting arrest or attempting to flee from custody. In self-defense or in the defense of another person.

-To prevent a person from injuring themselves.

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. Only equipment issued and approved will be used when utilizing physical force, except in an emergency, when the officer may use any resource at his/her disposal.

Progression of Force (Force Continuum)

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. If possible, the member should give the subject the opportunity to comply at each stage.

Once compliance is achieved, the escalation/progression and use of force ceases.

A stage in the progression may be skipped due to the circumstances and progression is not always upward.

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:

Physical Presence: In some instances, the mere presence of a uniformed police officer will serve to calm a situation and cause a potential situation to resolve itself. Officers are required to wear issued uniforms and at a minimum, issued police identifiers (Badges and/or identifiers such as "POLICE") need to be displayed on outer most garments, especially when assigned to plainclothes details. Should the identity of a plainclothes officer be questioned, a uniformed officer should be summoned.

Verbal Direction: This is the least intrusive level of force and may vary from a simple request to an emphatic command. Control may be achieved through advice, persuasion, and warnings, before resorting to actual physical force.

Physical Direction: Frequently, subjects are reluctant to be taken into custody and offer some degree of physical/verbal resistance. Normally, all that is required to overcome this resistance is physical strength and some skill in defensive tactics.

Inflammatory Agent / Conducted Energy Device (Taser): Oleoresin Capsicum (O.C.) and the C.E.D. (Taser) are normally used when lesser levels of force are ineffective or inappropriate. The use of O.C. should be used in accordance with section 105-4 and the use of Taser should be used in accordance with section 105-7. In any event, O.C. / Taser should only be used to the degree needed to gain control of the resisting subject.

Impact Weapons: The actions of a subject 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. The Police Baton should be used in accordance with section 105-5.

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

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;
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.

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.

PROCEDURE DEADLY PHYSICAL FORCE

An officer may discharge his or her firearm **only under the following situations:**

A. Confrontation Situations - To defend the officer or another from what the officer reasonably perceives as an imminent threat of death or serious physical injury when there is no apparent practical alternative.

B. Apprehension & Pursuit Situations –

When an officer acting on personally known information, has reasonable cause to believe that an armed and dangerous subject has committed a felony which involved the use or attempted use, or threatened immediate use of deadly physical force against a person; **and**,

There is substantial risk that the fleeing subject will cause death or serious bodily harm if not immediately apprehended; **and**,

There is no other reasonable means to effect the arrest; **and**, the discharge creates no foreseeable risk to innocent bystanders.

Where feasible and consistent with personal safety, a police officer should give some kind of warning, such as “POLICE DON’T MOVE” before using deadly physical force.

A police officer shall not use deadly physical force upon another person unless he/she has probable cause to believe that such other person is using or is about to use deadly physical force against the member or a third person.

A police officer shall not use deadly physical force to subdue a fleeing felon who presents no threat of imminent death or serious physical injury to themselves or another person present.

C. Animals - To kill a dangerous animal or an animal so badly sick or injured that it should be destroyed to prevent further suffering. All other reasonable options should first be exhausted. In addition, before shooting the animal, the safety of the general public must always be considered. Members are also referred to and must conform with the Agriculture and Markets Law of the State of New York which addresses humane destruction and other dispositions of animals.

D. Firearms Practice - For target practice at an approved range, range site or location which does not infringe on the rights or safety of others.

Considerations and Prohibitions:

A. Juveniles - The provisions of this procedure are based on “DANGER”, and are not intended to distinguish between adults and juveniles. Only to the extent that age, and the related factors of size and strength, influence that capacity to inflict deadly physical force or serious harm, are they to be considered.

B. Moving Vehicles - Officers are prohibited from discharging firearms at or from a moving vehicle **unless** the occupant(s) of that vehicle are using deadly physical force against the officer, or another, by means other than the vehicle; **or** the occupants are utilizing that vehicle in an attempt to breach a security perimeter that has been established to protect an individual, or a vital or strategic asset against an act of sabotage or terrorism.

C. Warning Shots - No officer shall fire so-called “warning shots”.

D. Drawing or displaying firearms - An officer shall unholster or display a firearm only if directed by a competent authority, or there is reason to believe such may be necessary for the safety of the officer or others.

E. Dry firing- “Dry firing”, or snapping the action of a firearm is forbidden, except when authorized during firearms training, weapon cleaning or maintenance.

F. Firing shots for alarm - Firearms shall not be discharged to summons assistance except where the officer’s safety, or that of another is endangered, and there is no reasonable alternative. Extreme care must be exercised in such situations to prevent injury to another person.

The responsibility for the unholstering and/or use of a firearm shall be borne by the officer who unholsters or fires the weapon.

Procedure to be followed when force/deadly physical force is used:

Notification

1. Whenever a Department member uses force which causes injury to any person, or at **ANYTIME** discharges his or firearm other than in that instance cited in subsections 1(C) and 1(D) of this section, he or she shall immediately verbally notify his or her on-duty supervisor. If there is no supervisor on duty at the time, the

dispatcher is to notify the Commissioner of Police as soon as possible. The Commissioner may respond to the incident, or he or she may assign a supervisor to respond and supervise the investigation.

2. The member who used such force shall complete the appropriate written reports as soon as possible thereafter. A notation regarding the use of that force/deadly physical force shall be recorded on the respective case entry, and a Department Use of Force Report shall be submitted.

3. In that instance in which an officer discharges a firearm as in the case cited in subsection 1(C), he or she shall make a notation regarding said discharge in the appropriate case entry before submitting a copy of same to the Lieutenant.

4. If the member who used such force is injured and incapable of filing said reports as required, his immediate supervisor/officer in charge is responsible for filing a preliminary Department Use of Force Report as complete as possible pending further Departmental investigation.

Replacement of Firearm:

A. If the use of force by an officer involved the officer's Department issued handgun, and there is no reason to the contrary, such as the authorized destruction of an animal, his or her Department issued handgun is to be exchanged with the spare Department issued handgun kept in the Department Armory.

B. The firearm that was used in an incident in question is to be held for investigative purposes. The weapon should be taken in an "as is" condition from the officer, and no attempt should be made to unload the gun. Same should be turned over to a supervisor and treated as any loaded firearm is treated. If for any reason the gun must be made safe, a note should be taken of its condition. (Was there a round in the chamber, number of rounds remaining in the magazine or cylinder, type of ammunition found in the gun, or anything unusual such as any visible, obvious damage).

Loading and Unloading Firearms at Headquarters

Loading and unloading of handguns, long guns and tasers at headquarters will be accomplished at the loading/unloading port (Guardian Range System) located on main floor of police headquarters. Whenever a Weapon/Taser is loaded or unloaded for

any reason, it is to be done while the muzzle of the gun/taser is pointed into the designated port opening, straight down and centered.

Chokeholds and Obstruction of Breathing or Blood Circulation

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.

PROHIBITED USES OF FORCE

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.

Medical Aid and Reporting:

In the event a physical injury is inflicted upon a subject by a member (s) of the Department or a physical injury is alleged by a subject in police custody; the member(s) involved shall immediately notify and arrange for medical assistance.

In the event a physical injury is inflicted upon a subject by a member (s) of the Department or a physical injury is alleged by a subject in police custody; the member(s) involved shall immediately notify the tour supervisor or on-call supervisor.

Every member present at the time of injury or alleged injury shall prepare a comprehensive report detailing the circumstances surrounding the use of physical force or deadly physical force and submit such report to the supervisor prior to the end of their tour of duty. Investigating officers shall also secure

depositions from any civilian witnesses present at the scene. Deposition shall be submitted prior to the end of their tour of duty.

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.

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.

Investigation by a Supervisor:

The assigned supervisor shall prepare an administrative report concerning the utilization of any force that causes injury to a person, and it should contain, but is not limited to the following:

Were alternative measures available?

-Did subject resist, and if so, what was the nature of the extent of the resistance?

-Description of subject's physical and mental demeanor.

-Statements by defendant including statement/indications that subject is under the influence of an intoxicating substance.

-Was the officer in uniform, or did he or she make known his or her presence known, and by what authority?

-The complete name, address (residence and work), DOB and phone numbers (residence and work) of any and all witness/victims.

-The extent and treatment of injuries to anyone involved. Photographs must be taken of any and all alleged injuries.

-If able to offer a professional assessment from the facts available, was the utilization of force found to be necessary in the case in question?

Use of Force

Firearms Discharge Review Board

The Commissioner of Police shall cause the Firearms Discharge Review Board to convene whenever necessary. Actual Board members shall be named in a special Personnel Order issued by the Commissioner of Police. The Firearms Discharge Review Board will consist of:

- Commissioner of Police
- One Lieutenant
- One Sergeant
- One Detective
- One Police Officer

The Board shall carefully evaluate every situation placed before it, and will submit in writing to the Commissioner of Police and the Village Board, citing policy compliance or non-compliance as the case may be, and recommendations for training, police revisions, changes in equipment, or any other recommended course of action.

All use of force reports should be forwarded to the Police Commissioner/Officer in charge for review.

Use of Force**References**

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. *Scott v. Harris*, 550 U.S. 372 (2007)
11. *Graham*, 490 U.S. at 396 (1989)
12. 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)
13. *Sharrar v. Felsing*, 128 F. 3d 810 (3rd Cir. 1997) (numbers of officers or subjects)
14. Courts have repeatedly declined to provide an exhaustive listing of factors. *Chew v. Gates*, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)
15. NY Penal Law and § 35.30(1)(c)(McKinney 2013)
16. 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.
17. NY Penal Law § 121.13-a establishes the crime of Aggravated Strangulation.
18. NY Civil Rights Law § 28
19. NY Mental Hygiene Law § 9.41
20. 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.
21. 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.

- 22. NY EXC § 840(4)(d)(2)(vi)
- 23. EXC § 840(4)(d)(2)(vii)

WAPPINGERS FALLS POLICE DEPARTMENT USE OF FIREARMS/FORCE REPORT

INCIDENT#:	DATE:	TIME:	RELATED CASE#:
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SUBJECT (NAME, ADDRESS & PHONE NO.)			
DOB:	SEX/RACE:	HEIGHT:	WEIGHT:

WITNESSES TO INCIDENT:	ADDRESS	TELEPHONE NO.	
_____	_____	_____	DAY NIGHT
_____	_____	_____	DAY NIGHT
_____	_____	_____	DAY NIGHT
_____	_____	_____	DAY NIGHT
_____	_____	_____	DAY NIGHT

NATURE OF INJURIES BEFORE FORCE USED: _____
NATURE OF INJURIES AFTER FORCE WAS USED: _____
SUBJECT: ___ REQUESTED MEDICAL TREATMENT ___ REFUSED MEDICAL TREATMENT
NAME OF WITNESS TO TREATMENT REFUSAL: _____
SUBJECT TRANSPORTED TO HOSPITAL VIA: ___ AMBULANCE ___ OTHER (LIST) _____
NAME OF HOSPITAL: _____ NAME OF DOCTOR: _____
SUBJECT AT HOSPITAL WAS: ___ ADMITTED ___ TREAT/ RELEASE ___ NOT TREATED ___

NAMES OF OTHER OFFICERS AT SCENE:	OFFICER INJURED?
	YES NO
	YES NO
	YES NO

REPORTING OFFICER:
DISPATCHER:
SUPERVISOR REVIEWING REPORT:
2/2

WAPPINGERS FALLS POLICE DEPARTMENT USE OF FORCE REVIEW

This report is to be completed by the Supervisor responsible for the officer(s) involved. Completed reports will be forwarded to the Commissioner of Police. Attached to this report will be any related materials involved with the incident i.e., medical reports, witness statements, incident report, etc.

Case # _____

Supervisor at scene: _____

Dispatcher: _____

Officer(s) involved:

POLICY REVIEW - The intent of this report is to determine if Department policy was followed, the need for retraining, as well as a review of the use of any physical force used.

1. Did the officer(s) follow Department policy regarding the use of physical force or the use of deadly physical force in this incident?

SIGNATURE SUPERVISOR COMPLETING REPORT: _____ DATE

SIGNATURE COMMISSIONER OF DEPARTMENT: _____ DATE

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2. Did the officer(s) use the escalating scale of options available to him/her/them?

SIGNATURE SUPERVISOR COMPLETING REPORT _____ DATE

SIGNATURE COMMISSIONER OF DEPARTMENT _____ DATE

2/5

3. Did the officer(s) use more force than was necessary to control the situation?

SIGNATURE SUPERVISOR COMPLETING REPORT _____ DATE

SIGNATURE COMMISSIONER OF DEPARTMENT _____ DATE

3/5

4. Does the action or lack of action from any officer involved required retraining?

SIGNATURE SUPERVISOR COMPLETING REPORT _____ DATE

SIGNATURE COMMISSIONER OF DEPARTMENT _____ DATE

4/5

5. Recommendations/comments regarding this incident.

SIGNATURE SUPERVISOR COMPLETING REPORT _____ DATE

SIGNATURE COMMISSIONER OF DEPARTMENT _____ DATE

