



RULE & PROCEDURE

No:502

SUBJECT: Operations – Use of Physical Force (Non-Lethal)	
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ISSUING AUTHORITY: MICHAEL J. TRACEY, CHIEF OF POLICE	

I. Purpose

To establish Rules and Procedures, outline Department Policy and set operational guidelines for the use of non-lethal physical force. These rules have been developed, not to restrict you from properly performing your duties, but rather to make it incumbent upon you to use good judgment before using physical force. This Rule and Procedure is intended to eliminate inappropriate use of non-lethal physical force.

II. Justification

This Rule and Procedure defines Department Policy governing the use of physical force which will ensure that all personnel conform to the mandates set forth by law. The primary responsibility of this Department and each of its members is to protect the lives of the citizens we serve. It is critical that every action taken by this Department and each of its members be consistent with this responsibility.

III Definitions

- A. 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.
- B. 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.
- C. Physical Injury – Impairment of physical condition or substantial pain.
- D. 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.
- E. Display a Chemical Agent – To point a chemical agent at a subject

- F. Brandishes/Uses/Discharges a firearm – The operation of a firearm against a person in a manner capable of causing physical injury
- G. Brandishes/Uses/Deploys an impact weapon or electronic control weapon – The operation of an impact weapon or electronic control weapon against a person in a manner capable of causing physical injury
- H. Uses a Chokehold or other similar restraint – Any application of a sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air.
- I. Serious Bodily Injury – Bodily injury that creates or causes:
 - 1. A substantial risk of death; or
 - 2. Unconsciousness; or
 - 3. Serious or protracted disfigurement; or
 - 4. Protracted loss or impairment of the function of any bodily member, organ or mental faculty.

III. **Policy**

Police officers have been delegated the substantial responsibility to protect life and property and to apprehend criminals. Because of this responsibility, you may be called upon to use physical force during the course of your duties. It is imperative that you, through training and the absorption of these rules, be able to respond quickly, confident that you are acting within the limits of the department rules. This will enable you to act without hesitation to protect yourself or another and also serve to protect the public from unlawful, unreasonable or the unnecessary use of force.

IV. **Training**

A training officer, designated by the Chief of Police, shall annually review this Rule and Procedure with all department personnel. Any amendments to Article 35 - Defense of Justification as specified in the New York State Penal Law shall immediately be brought to the attention of all members.

V. **Procedure**

- A. Your use of physical force shall in every instance conform to the provisions of Article 35 - Defense of Justification as specified in the New York State Penal Law and this Rule and Procedure. All Officers are responsible for maintaining a working knowledge of Article 35, specifically, Section 35.05-1 -Justification; generally; Section 35.15 - Justification; use of physical force in defense of person; Section 35.30 - Justification; use of physical force in making an arrest or in preventing an escape. The nonconformance of Article 35 by any member may constitute a crime, as well as result in civil litigation.

- B. In addition to conforming to Article 35 of the New York State Penal Law, you will conform to all defensive tactics, and weapons training requirements as prescribed by this agency.
- C. You are authorized and justified in using physical force or control only to the degree NECESSARY to overcome resistance. When force is used, it should only be to the degree which is objectively reasonable given the circumstances perceived by the officer at the time of the event.
1. Resistance - unlawful actions directed by another against you.
 2. Control - force you use to influence or neutralize the unlawful physical actions of another person.
 3. Justified use of necessary force:
 - a. To stop potentially dangerous and/or unlawful behavior;
 - b. To protect the officer or another from injury or death;
 - c. To protect another from injuring themselves;
 - d. To effect a lawful arrest when another offers resistance.
 4. Justification of force in the judicial system is measured by two (2) broad standards. First, your use of control methods must be a RESPONSE to another's resistance. Second, the level of force used must be NECESSARY but NOT EXCESSIVE and objectively reasonable when compared to the level of resistance offered by another.

D Determining the Objective Reasonableness of Force

Once you determine that you must use physical force, the force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event. The level of force used will be dependent upon your perception of resistance and danger of that resistance, and whether that resistance is placing you or another in jeopardy of serious injury or death. 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.

E. Levels of Resistance

Is resistance offered by another that is usually physical, the type and amount of resistance an officer meets is determined by the subject's level of intent. The intent of a subject may range from passive resistance to an active, aggressive attack on the officer. Resistance may be categorized into three (3) broad areas:

1. Verbal Resistance - i.e., denial of lawful orders of arrest or commands, verbal threats or assaults.
2. Physical Resistive Actions - i.e., passive resistance/active aggression.
3. Aggressive Acts - i.e., against the officer, often leading to severe physical injury.
4. Your actions to resistance will be based upon your perception of the level of resistance. You have been trained to use the necessary amount of force to control a subject offering any level of resistance.

a. Psychological Intimidation:

Non-verbal actions, often called body language, often influences your decision on how to approach a subject or what level of force to use if a subject starts to resist an arrest. Non-verbal intimidation actions may include clenching of fists, widening of foot stance or a blank expression that may warn you of a subject's potential for violence, when the subject has offered no verbal threats. However, your reaction to a subject's non-verbal intimidation signals should be used as information to mentally propose your alternatives to possible attack, not as a justification for attack. Your reading the non-verbal signals and belief that physical control is necessary to prevent a subject from injuring himself, others or you, may initiate action before any overt moves are made by the subject

b. Resistive Dialogue:

A subject's dialogue that offers a threat of physical resistance to your commands is not normally considered resistance until he/she physically resists an officer's attempts at control. However, dialogue in the form of threats of physical injury may influence your opinion as to the amount of force needed to effect control. An offender may boast of his/her fighting skills and/or his/her intention to injure you or assume a fighting stance such as raised hands or clenched fists.

Verbal threats or psychological threats may influence our judgment to attempt either empty hand control, impact weapons, or even firearms if the subject has a weapon or has such great physical skills that threat of life is real. The reaction to verbal threats made by a subject may differ from officer to officer. Your decision of

the level of force necessary to control a subject will be based on your perception of the threat and the subject's ability to carry out that threat. An additional factor is your knowledge of your physical ability to manage the threat presented. If you believe that you do not have sufficient skill to establish control with empty hand methods, you have been trained to escalate the level of force.

c. Passive Physical Resistance:

Passive Resistance is the lowest level of physical resistance. The subject resists control through passive, physical actions. *At this the offender never makes any attempt to defeat the physical contact of the officer.* Passive Resistance is usually in the form of relaxed or "dead weight" posture intended to make you lift, pull or muscle the subject to establish control.

d. Defensive Physical Resistance:

Quite often, you may find yourself confronting a suspect who is resisting your attempt to control him/her by directing overt, defensive, physical actions. With this level of resistance, the offender attempts to push or pull away in a manner that does not allow you to establish control. However, the subject never attempts to strike you.

e. Active Physical Aggression:

Active Physical Aggression is when a suspect attacks you to defeat attempts of control. The attack is a physical assault on you in which the offender strikes or uses techniques in a manner which may result in injury to you or others.

f. Aggravated Active Physical Aggression:

Aggravated Active Physical Aggression is when a subject uses a level of physical force resulting in a situation in which you usually must use, or at least are justified in using, deadly force. At this level, you may not only face resistance to an arrest, but also overt, physical actions of force where the subject is assaulting you with a weapon and/or used techniques or objects which could result in death or bodily harm.

F. Levels of Control

Is force that you use to gain control over a subject's resistant actions. Levels of Control are divided into the areas of Officer Presence, Verbal Direction, Empty Hand Control, Intermediate Weapons and Lethal Force.

1. Officer Presence:

Your mere arrival in uniform, at an incident, in a marked police unit might be sufficient to defuse the situation.

2. Verbal Direction:

The majority of situations can be resolved by good communication skills or verbal direction. Often, your mere presence and proper verbal direction will be sufficient to persuade most individuals to follow your direction. In any verbal confrontation, fear and anger must be defused before a suspect will be able to understand your commands; this will require good communication skills and patience. Successful communication techniques can prevent many physical confrontations from escalating to higher levels.

3. Empty Hand Control:

Empty Hand Control physical contact techniques cover a number of subject control methods. Some of these methods may be subtle as gently guiding a subject's movements, to more dynamic techniques as strikes and kicks which may have a higher potential of injury. There are two (2) categories of Empty Hand Control. Soft Empty Hand Control (techniques that have minimal implication of injury) and Hard Empty Hand Control (techniques that have a higher probability for subject injury).

a. Soft Empty Hand Control: This level of control is designed to control primarily low levels of resistance, but can be used to control any level of resistance. Soft Empty Hand Control techniques are techniques that have minimal or nonexistent possibility of injury. Generally, these techniques are used to control passive types or demonstrator types of resistance and defensive resistance. However, Soft Empty Hand Control techniques can be utilized for any level of resistance.

b. Hard Empty Hand Control: This level of control is for high levels of defensive resistance, active aggression, or aggravated active aggression. THESE TECHNIQUES ARE APPLIED WHEN LOWER FORMS OF CONTROL HAVE FAILED OR WHEN NOT APPLICABLE BECAUSE THE SUBJECT'S RESISTANCE

LEVEL IS AT A PERCEIVED DANGEROUS LEVEL OF CREATING SOFT OR CONNECTIVE TISSUE DAMAGE, SKIN LACERATIONS THAT REQUIRE MEDICAL ATTENTION, AND/OR BONE FRACTURES. Although the use of these techniques may create some minimal injury to the offender, you may be risking injury to yourself or have to utilize higher levels of control (such as intermediate weapons) if Hard Empty Hand Control is not used. Techniques that are considered as Hard Empty Hand tactics are:

1. Striking Techniques - Techniques that may be delivered with your open hand, fist, forearm, leg or foot. Preferably, the target points for these types of strikes will be delivered to major muscle mass such as the legs, arms, shoulders, or side of the neck. If the targets are these, the strikes will create muscle cramping, thus inhibiting muscle action.

4. Intermediate Weapon Control

This level of control employs the use of department approved tools that provide a method of controlling subjects WHEN DEADLY FORCE IS NOT JUSTIFIED, BUT WHEN EMPTY HAND CONTROL TECHNIQUES ARE NOT SUFFICIENT IN EFFECTING AN ARREST. Whenever you use an intermediate weapon for control, it should always be with the intent to temporarily disable an offender, and never with the intent of creating permanent injury. When intermediate weapons are used, it is quite likely that some form of skin irritation, bruising, soft or connective tissue damage or bone fractures may occur. This department authorized the use of four (4) intermediate weapons:

- a. Impact Weapon/Police Baton - RULE AND PROCEDURE: SECTION 303
- b. Chemical Agent/Oleoresin Capsicum (Pepper Spray) - RULE AND PROCEDURE: SECTION 304
- c. Kinetic Energy Impact Weapon and Projectiles - RULE AND PROCEDURE: SECTION 305
- d. Conducted Electrical Weapons - RULE AND PROCEDURE: SECTION 306

5. Deadly/Lethal Force - RULE AND PROCEDURE: SECTION 501

G. Medical Requirements

Any officer using physical force upon another person, will seek immediate medical attention for that person, if:

1. The person subjected to physical force states that they are injured.

2. The person subjected to physical force is visibly injured, even if medical attention is refused.
3. The person is subjected to physical force by means of an impact weapon, chemical agent, Conductive Electrical Weapon, or is rendered unconscious.
4. The person is having difficulty breathing, sweating profusely, or exhibiting signs of excited delirium, See Rule and Procedure 540 Emotionally Disturbed Persons and Excited Delirium.
5. The person has an altered mental state, is delusional, or otherwise displaying signs of a Emotionally Disturbed Person, See Rule and Procedure 540 Emotionally Disturbed Persons and Excited Delirium.

H. Incident and Use of Force Report

An Incident Report, Department and New York State Use of Force Report will be filled whenever an officer uses physical force against another. Additionally, officers are required to file said reports when they Display a Chemical Agent, Brandishes, Uses, or Discharges a Firearm, Brandishes, Uses, Deploys an impact weapon, Uses a chokehold or similar restraint, or otherwise causes Physical Injury, Serious Physical Injury, Serious Bodily Injury or Death to another. Reports will be filed, as soon as possible, with a superior officer.

2. The Incident Report will include:
 - A. Officer Arrival
 - i. Type of police unit (marked or unmarked)
 - ii. Type of clothing (uniform or plainclothes)
 - iii. Number of officers
 - B. Approach
 - i. What you observed
 - ii. Your initial verbal commands
 - C. Subject's Actions
 - i. Verbal responses
 - ii. Body language
 - iii. Physical actions
 - D. Officer's Action
 - i. Type of control methods used.
 - ii. Duration of resistance
 - iii. Type of de-escalation methods used
 - iv. Handcuffed and double-locked
 - E. Transport Procedure
 - i. Subject's demeanor and actions.
 - ii. Where transported to
 - iii. Length of transport
 - F. Injuries
 - i. Indicate in detail Injuries Sustained by officer's and suspects
 - ii. Indicate medical attention given, when given and by whom

iii. Attach photos of injuries and medical reports

2. The following Use of Force Reports will be filed:
 - A. Officers will complete the Department issued Use of Force Report.
 - B. Officers will complete the New York State Online Use of Force Report

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. **Discipline**

Disciplinary action will be initiated whenever a member fails to comply with the Department Rules and Procedures as specified herein. All superior officers will be held responsible and accountable for ensuring that these Rules and Procedures are strictly complied with.

VIII. **Legal Disclaimer**

This Rule and Procedure is for department use only, and does not apply in any criminal or civil proceeding. The department policy should not be construed as a creation of higher legal standard of safety or care in an evidential sense with respect to third party claims. Violations of this Rule and Procedure will only form a basis of departmental administrative sanctions. Violations of law will form the basis of criminal and civil sanctions in a recognized judicial setting.

Accreditation Standard Reference

- 20.1 Necessary Force
- 20.6 Non-Lethal Substances and Devices
- 20.7 Reporting Requirements
- 21.1 Review of Firearms Use
- 21.2 Review of Force Causing Injuries
- 32.4 Use of Less than Lethal Substances