



103-02 NON-LETHAL USE OF FORCE

ISSUE DATE: 7/21/2020	EFFECTIVE DATE: 7/21/2020	REVISES: 1/31/2020	CHAPTER: 103 – USE OF FORCE/WEAPONS
REFERENCES: <u>NEW YORK STATE ACCREDITATION STANDARDS</u> 20.1 (Use of Force: General) 32.4 (Use of Less Lethal Substances/Devices)			
SPECIAL INSTRUCTIONS: This policy supersedes all previous policies and procedures			
DISTRIBUTION: ALL MEMBERS OF THE DEPARTMENT			PAGE: - 146 -
ISSUING AUTHORITY: GREGORY J. AUSTIN, CHIEF OF POLICE			

PURPOSE:

The purpose of this order is to establish standard operating procedures and reporting requirements for use of non-deadly force by police officers. This procedure is intended to apply to the use of force for purposes of overcoming resistance to arrest or for defense against physical assault.

POLICY:

A police officer, in the course of effecting or attempting to effect an arrest, or preventing or attempting to prevent the escape from custody of a person whom he reasonably believes to have committed an offense, may use non-deadly force to the extent he reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody, or to defend himself, or a third person from what he reasonably believes to be the use or imminent use of physical force.

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.²⁵

Prior to engaging in non-deadly 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, members of the Rye Brook Police Department shall use only the force necessary to effect lawful objectives consistent with Article 35 of the NYS Penal Law. 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 non-deadly force and adhere to the escalation of force table on page 2 when circumstances necessitate the use of force.

DEFINITIONS:

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

²⁵ *Graham*, 490 U.S. at 396 (1989)

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.²⁶

NON-DEADLY FORCE: Necessary force which is not likely to cause death or great bodily harm.

RESTRAINING FORCE: Use of force which is limited to holding and restraining a person.

PHYSICAL FORCE: The necessary application of submission holds to overcome resistance.

DEFENSIVE FORCE: The necessary infliction of physical battery to overcome violent resistance or to protect self or others from assault or injury.

ESCALATION OF FORCE TABLE

VERBALIZATION: That verbal persuasion used by the officer in an attempt to defuse the situation or inform a suspect that he is under arrest.

RESTRAINT TECHNIQUES: Those techniques an officer feels necessary to use to effect "Take Down and Control Holds" by using his hands, O.C. Spray, Taser and/or handcuffs.

PERSONAL WEAPONS/IMPACT WEAPONS: The punching, kicking, etc. an officer may resort to in accomplishing lawful objectives or the Expandable Baton, when used as an impact instrument by the officer.

FIREARMS: The ultimate use of force when the officer is compelled to use his sidearm, Patrol Rifle or Patrol Shotgun.

NOTE: Effective June 12, 2020 New York State Penal Law section 121.13 A was signed into law by Governor Cuomo. This law makes it unlawful for a police officer to use a choke hold to restrain a subject.

Section 121.13-A Aggravated strangulation - New York State Penal Law

A person is guilty of aggravated strangulation when, being a police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law or a peace officer as defined in section 2.10 of the criminal procedure law, he or she commits the crime of criminal obstruction of breathing or blood circulation, as defined in section 121.11 of this article, or uses a chokehold or similar restraint, as described in paragraph b of subdivision one of section eight hundred thirty-seven-t of the executive law, and thereby causes serious physical injury or death to another person.

Aggravated strangulation is a class C felony.

²⁶ Graham, 490 U.S. 396 (1989)

PROCEDURE:

1. Choke holds are not an authorized method of restraint by members of this Department.
2. Any officer using Physical Force or Defensive Force pursuant to his/her duties as a police officer (whether on or off duty) shall report or cause to be reported, all facts relative to the incident on a Use of Force Report Form.
3. Sworn members shall report or cause to be reported all facts relative to the incident on a Use of Force Report Form and any required case and supplemental reports whenever an action is taken that results in, or is alleged to result in injury or death of another person.
4. Reporting Restraining Force will be left to the discretion of the arresting officer(s) and supervisor(s) unless the use of force causes a physical injury.
5. Only issued or approved equipment will be carried on duty and used when applying any level of Non-Deadly Force, except in emergency situations when an officer must use any resources at his disposal. The use of the Expandable Baton, Taser and O.C. Spray are considered a use of force and as such, necessary reports must be completed.
6. Officers must be trained in the proper use of less lethal substances and other devices in which they did not receive training in the basic course for police officers. All officers using less lethal substances or other devices must successfully complete an initial training course prior to issuance and annual retraining thereafter.

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.
7. Use of restraining devices is mandatory on all prisoners, unless in the officer's judgment unusual circumstances exist which make the use of restraining devices impossible or unnecessary (e.g.; prisoner is very elderly or handicapped etc...). The mere placing of handcuffs on a prisoner will not be construed to be a use of Physical Force. However, when the handcuffs become an appliance to exert force necessary to further subdue a prisoner or where the suspect physically resists the application of handcuffs, a use of Physical Force has occurred, and the necessary reports must be completed.

REPORTING AND REVIEWING THE USE OF FORCE

8. After any level of Non-Lethal Force is used, an officer shall immediately evaluate the need for medical attention or treatment for that person upon whom the force was used and arrange for such treatment when:
 - a. The person has a visible injury, or
 - b. Person complains of injury or discomfort, or requests medical attention.
9. Persons having visible injuries, complaining of injury or discomfort and refuses medical treatment must still be evaluated by EMS where the refusal will be witnessed by EMS and noted on Rye Brook Police Department Use of Force Report.
10. The officer shall immediately notify his immediate Supervisor of the incident. In case of off duty incidents, the officer shall notify (in person or via phone) the on duty patrol supervisor as soon as possible, and the local authority, (if necessary) if the incident occurred in another jurisdiction. The officer shall complete a departmental use of force report for:
 - 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.
 - d. Incidents where a conducted energy weapon (CEW) was intentionally discharged or accidentally discharged after being displayed.
 - e. Incidents where a firearm was discharged at a subject.
11. The officer shall attempt to locate and identify any witnesses, documenting their statements.
12. The officer shall prepare and submit the reports required by current directives. If more than one officer is involved in a Use of Force incident, each officer who uses force shall complete a Rye Brook Police Department Use of Force Report outlining their actions and observations in the incident. All copies of the report(s) will then be forwarded together, along with other applicable reports to the Patrol Supervisor for approval.

DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

11. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.
12. Factors that may be used in determining the reasonableness of force include, but are not limited to:
 - a. The severity of the crime or circumstance²⁷
 - b. The level and immediacy of threat or resistance posed by the suspect²⁸

²⁷ Ibid.

- c. The potential for injury to citizens, officers, and suspects²⁹
- d. The risk or attempt of the suspect to escape³⁰
- e. The knowledge, training, and experience of the officer³¹
- f. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects³²
- g. Other environmental conditions or exigent circumstances.³³

DUTY TO INTERVENE:

- 13. 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.
- 14. 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.

PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS:

- 15. The Supervisor shall respond to the scene of the incident as soon as possible.
- 16. The Supervisor shall insure that officers receive any necessary assistance, including medical treatment. The Supervisor shall also ensure that any injuries to officers are properly documented.
- 17. The Supervisor shall insure that medical treatment for the defendant is evaluated per paragraph 8.
- 18. The Supervisor shall determine if a detective should respond to the scene and the level of detective's services to be utilized (including photos, measurements, and diagrams). If an injury or complaint of pain exists, supervisors are encouraged to obtain photographs.
 - a. A photograph showing no injury may be as important as one which shows injury.
- 19. If determined that Restraining Force was used by subordinate personnel, the Supervisor shall investigate the incident. When use of Restraining Force has been made necessary by resistance without violence, and when there are not significant injuries, reports of the use of restraining force shall not be mandatory. The arrest

²⁸ Ibid.

²⁹ Scott v. Harris, 550 U.S. 372 (2007)

³⁰ Graham, 490 U.S. at 396 (1989)

³¹ 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)

³² Sharrar v. Felsing, 128 F. 3d 810 (3rd Cir. 1997) (numbers of officers or subjects)

³³ Courts have repeatedly declined to provide an exhaustive listing of factors. Chew v. Gates, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)

- incident and resisting arrest charges shall be left to the discretion of the arresting officer and Supervisor.
20. Upon notification of the use of Physical or Defensive Force by subordinate personnel, the supervisor shall initiate an investigation into the incident and prepare a supervisory memo to be distributed through the chain of command.
 21. The supervisor shall review the report(s) describing the use of force, and all other relative reports.
 22. In the absence of discrepancies or additional facts, the supervisor's memo shall briefly advise that a supervisory investigation has been conducted and that facts are as reported in the official incident report, and Use of Force Report.
 23. When the supervisory memo and pertinent reports cannot be routed through the Chain of Command immediately, the supervisory memo and pertinent reports will be routed directly to the Chief of Police and the incident shall be verbally reported through the Chain of Command at first opportunity.
 24. The supervisory memo shall be captioned with the type of force used (Restraining, Physical or Defensive) followed by the incident number.
 25. The Lieutenant shall be responsible for the following:
 - a. He shall insure that a thorough investigation was conducted and that all reports were prepared and submitted.
 - b. Prepare his own report, including any comments he may have regarding the incident, and how it was handled.
 26. The Lieutenant's report, the supervisory memo, the Use of Force Report, and a copy of the incident report shall be forwarded to the Chief of Police through the Chain of Command without delay.
 27. The Lieutenant will conduct an annual analysis of the Use of Force Reports to determine trends that may indicate training needs and/or policy modifications.
 28. Consistent with agency disciplinary protocols and any applicable collective bargaining agreements, agency policy should establish standards for addressing the failure to adhere to use of force guidelines.³⁴

TRAINING

29. All officers should receive training and demonstrate their understanding on the proper application of force.
30. 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.³⁵

³⁴ EXC §840(4)(d)(2)(vi)

³⁵ EXC §840(4)(d)(2)(vii)

31. 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.

Reporting Use of Force Incidents to DCJS

32. The categories of reportable Use of Force incidents include:
- a. **Display a chemical agent** – To point a chemical agent at a subject.
 - b. **Use/Deploy a chemical agent** – The operation of a chemical agent against a person in a manner capable of causing physical injury.
 - c. **Brandishes/Uses/Discharges a firearm** – The operation of a firearm against a person in a manner capable of causing physical injury.
 - d. **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.
 - e. **Uses a chokehold or other similar restraint** – Any application of sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce the intake of air.
 - f. **Conduct that Resulted in Death**
 - Serious bodily injury** – Bodily injury that creates or causes:
 - A substantial risk of death; or
 - Unconsciousness; or
 - Serious and protracted disfigurement; or
 - Protracted loss or impairment of the function of any bodily member, organ or mental faculty.
33. Use of Force incidents that fall into the above categories will be reported to DCJS by the Chief or Lieutenant in accordance with DCJS guidelines.

