

NORTH GREENBUSH POLICE DEPARTMENT

Administrative Procedure

NO: 20 **SUBJECT:** Use of Force

EFFECTIVE: 12/05/2020 **RESCINDS:** 4/15/2020 **DISTRIBUTION:** All Personnel

Accreditation Standard Number & Topic:

20.1 - Use of Force

43.8 – Health of Persons In Custody

I. Purpose

The purpose of this policy is to establish guidelines for the use of force by members of the Town of North Greenbush Police Department. A use of force decision is dependent on a variety of circumstances and events which are unique to almost every situation where force may be appropriate.

II. Policy

In a complex society, officers are confronted daily with situations where control must be exercised to effect arrest and to protect the public safety. Control will be achieved through advice, warnings, persuasion, and by the use of physical or deadly physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless all other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers are permitted by New York State Penal Law Section 35.00 to use whatever force is reasonable and necessary to protect others and themselves from bodily harm. Officers shall bear in mind that Article 35 of the Penal Law only authorizes use of physical or deadly physical force; it does not command its use.

The Federal and State Standards by which use of force is measured are both founded in the basic premise of objective reasonableness.¹ 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.

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.

As the Supreme Court has recognized, this reasonableness inquiry embodies “allowance for the fact that police officers are often forced to make split-second judgements- in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.”²

This policy is written in recognition of the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires a careful balancing of all interests.

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.³
- 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.⁴
- C. Physical Injury: Impairment of physical condition or substantial pain.⁵
- 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 health or protracted loss of any bodily organ.⁶

IV. Use of Force

- A. Since no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain or unreasonably risk physical injury before applying reasonable force to effect arrest, overcome resistance or prevent escape.
- B. 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

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)

custody, or in defense of one's self or another.⁷

- C. 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.⁸

V. 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;⁹
 2. The level and immediacy of threat or resistance posed by the suspect;¹⁰
 3. The potential for injury to citizens, officers, and suspects;¹¹
 4. The risk or attempt of the suspect to escape;¹²
 5. The knowledge, training, and experience of the officer;¹³
 6. Officer/subject consideration such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;¹⁴
 7. Other environmental conditions or exigent circumstances.¹⁵

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

⁷ NY Penal Law and § 35.30(1) (McKinney 2013)

⁸ *Graham*, 490 U.S. 396 (1989)

⁹ *Ibid*

¹⁰ *Ibid*

¹¹ *Scott v. Harris*, 550 U.S. at 396 (1989)

¹² *Graham*, 490 U.S. at 396 (1989)

¹³ 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)

¹⁴ *Sharrar v. Felsing*, 128 F. 3d 810 (3rd Cir. 1997) (numbers of officers and subjects)

¹⁵ Courts have repeatedly declined to provide an exhaustive listing of factors. *Chew v. Gates*, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)

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. Use of Deadly Physical Force

- A. 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.¹⁶
- B. Deadly physical force may be used to stop a fleeing suspect where:
 - 1. 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,
 - 2. The Officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officer or to others.
 - 3. Where feasible, some warning should be given prior to the use of deadly physical force.¹⁷
- C. Even in a case where deadly physical force is both authorized by law and objectively reasonable under the circumstances, the officer must consider the safety of innocent bystanders (e.g. firing in a crowded street). The fact that an officer is legally justified using deadly physically force does not constitute a license for reckless conduct by the police officer and such officer may be held criminally and /or civilly liable.
- D. Chokeholds and Obstruction of Breathing or Blood Circulation
 - 1. 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.¹⁸

¹⁶ NY Penal Law and § 35.30(1)(c) (McKinney 2013)

¹⁷ 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.

¹⁸ NY Penal Law § 121.13-a establishes the crime of Aggravated Strangulation.

VIII. Prohibited Uses of Force

A. Force shall not be used 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.

B. Shooting at or From Moving Vehicles

1. Shots fired from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.
2. Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

C. Warning Shots

1. At no time will any members of this department fire so called "warning shots".
2. Article 35 of the Penal Law only allows for the firing of a weapon when deadly physical force becomes necessary due to a potentially life threatening situation.
3. A member may be held criminally and civilly liable for the death or injury of a person caused either intentionally or accidentally.

IX. PAIN COMPLIANCE TECHNIQUES

- A. Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:
1. The degree to which the application of the technique may be controlled given the level of resistance.
 2. Whether the individual can comply with the direction or orders of the officer.
 3. Whether the individual has been given sufficient opportunity to comply.
 4. The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

X. Reporting and Reviewing the Use of Force

- A. A police or peace officer or other law enforcement entity who has custody of a person must provide attention to the medical and mental health needs of a person in their custody and obtain assistance and treatment of such needs, which are reasonable and provided in good faith.¹⁹
1. This includes appropriate and timely medical attention being provided to a party injured as a result of a use of force incident.
 2. The immediate mental health needs of a person shall be based upon the reasonable Cause to believe that a person, who appears to be mentally ill, is conducting themselves in a manner which is likely to result in a serious harm to themselves or others.²⁰ (SEE ALSO PRISONER TRANSPORT OPERATION 22)
- B. Members involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete a departmental use of force report.
1. Use of force that results in physical injury.
 2. Use of force incidents that a reasonable person would believe is likely to cause an injury.
 3. Use of force incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
 4. Use of force is used on a subject who resists and must be physically subdued and restrained whether injured or not.

¹⁹ NY Civil Rights Law § 28

²⁰ NY Mental Hygiene Law § 9.41

5. Incidents where a conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed.
 6. The individual subjected to the force was rendered unconscious.
 7. An individual was struck or kicked.
 8. Anytime a less lethal device or lethal device is displayed at an individual.
 9. Incidents where a firearm was discharged at a subject.²¹
- C. A standardized use of force form should be used to document any reportable use of force incident.²²
- D. Officers should document any requests for necessary medical or mental health treatment as well as efforts of police to arrange for such treatment.
- E. Use of restraining devices is mandatory on all prisoners unless in the employee's judgment, unusual circumstances exist which make the use of restraining devices impossible or unnecessary; i.e., prisoner is very elderly, has special needs, etc. The mere placing of handcuffs on a prisoner will not require a Police report. However, if the handcuffs become an appliance to exert pressure necessary to further control a prisoner, or where a suspect physically resists the application of handcuffs, a Use of Force report must be completed.
- F. Any employee or an off-duty member involved in a UOF incident (not associated with other authorized law enforcement employment) must immediately notify the shift supervisor of the incident as soon as practical. Any discharge of a weapon, 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 be prepared within forty-eight hours of occurrence.

XI. Procedures For Investigating Use of Force Incidents

- A. Where practicable, a supervisor should respond to scene to begin the preliminary force investigation.
- a. Notification shall be made to the Chief of Police.

²¹ NY EXC § 837-v requires that any discharge of a weapon, either in 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 be prepared within forty-eight hours of occurrence.

²² EXC § 837-t.

- B. A supervisor that is made aware of a force incident shall 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.
- C. The supervisor shall ensure that employees receive any necessary assistance including medical treatment. They shall also ensure that any injuries to employees are properly documented on a separate Police Report.
- D. Ensure that any need for medical treatment for the subject is evaluated.
- E. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
- F. The Lieutenant will receive the supervisor's report and conduct an investigation and will ensure that a thorough investigation is conducted and that all reports are prepared and submitted, including the Use of Force Report. In the event that an employee is unable to complete reports due to injuries, the Shift Supervisor/ Lt. shall prepare or cause them to be prepared, along with his own reports of incident. All reports shall be forwarded to the Chief of Police for review.
- G. The Police Chief Shall:
 - 1. Approve all Use of Force reports.
 - 2. Maintain a copy of all Use of Force Reports.
 - 3. It is the duty of the Chief of Police or his designee to coordinate and make available post critical incident counseling for any officer involved in a use of force incident where another officer or any citizen suffers a serious physical injury or death.
 - 4. Failure to adhere to the Use of Force Policy will result in disciplinary actions will consistent with disciplinary policy and collective bargaining agreement.

XII. 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 prohibit 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.

XIII. Use of Force Policy and Agency Website

- A. The current North Greenbush Police Department Use of Force Policy will be conspicuously posted on the official North Greenbush Police Website.