
	Town of East Hampton Police Department POLICY AND PROCEDURE MANUAL	
Section 4, Article IV	NON-LETHAL USE OF FORCE	EFFECTIVE DATE 05/05/2015

PURPOSE: The purpose of this order is to establish rules, regulations and procedures for the use of Non-Lethal Force by members of the Department.

POLICY: A. Members of the Service shall use only the force necessary to effect lawful objectives. Members shall use the amount of force necessary to effect cooperation and control of a situation which requires police intervention, and then only when all other reasonable alternatives have been exhausted or are not available. **(GO-2021-01)**

B. The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness. The amount of force that is used by members of the Service shall be the amount of force that is objectively reasonable under the circumstances for the member of the Service 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 members of the Service with guidelines for the use of force, including deadly physical force. **(GO-2021-01)**

1. As the Supreme Court has recognized, this reasonableness inquiry embodies "allowance for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation." [*Graham v. Connor*, 490 U.S. 386 at 396 (1989)]

DEFINITIONS

- A. Instrument - Any article, device, object, apparatus, implement or tool used to effect cooperation and control by forceful means.
- B. Restraining Force - Is the use of a minimal amount of physical strength or energy exerted to hold, restrain, control etc., required to overcome resistance or reluctance to obey the direction of an officer.
- C. Physical Force - Is the striking, kicking, fighting or any other physical or violent confrontation and force greater than restraining force not amounting to deadly physical force.
- D. Physical Injury - Is the impairment of physical condition or substantial pain.

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- E. Serious Bodily Injury (Serious Physical Injury) – Bodily injury that creates or causes:
 - a. a substantial risk of death; or
 - b. unconsciousness; or
 - c. serious and protracted disfigurement; or
 - d. protracted loss or impairment of the function of any bodily member, organ or mental faculty.

- F. Deadly Physical Force – Physical force which is readily capable of causing death or other serious physical injury.

- G. 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*, 490 U.S. at 396 (1989)]

- H. “Display a chemical agent” – To point a chemical agent at a subject.

- I. “Use/Deploy a chemical agent” – The operation of the chemical agent against a person in a manner capable of causing physical injury.

- J. “Brandishes/Uses/Discharges a firearm” - The operation of a firearm against a person in a manner capable of causing physical injury.

- K. “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.

- L. “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 intake of air.

- M. “Mere Pointing of a firearm, impact weapon or electronic control device at a subject” – Is a reportable Use of Force incident.

REFERENCES

- A. Article 35 of the New York State Penal Law

- B. New York State Division of Criminal Justice Services’ Municipal Police Training Council’s Use of Force Model Policy (September 2020)

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- C. New York State Executive Law § 837-t and § 840, subdivision (4) (d) (3)
- D. 9 New York Codes, Rules, and Regulations (NYCRR) Section 6058
- E. New York State Civil Rights Law Article 3, Section 28
- F. New York State Mental Hygiene Law Section 9.41

4.1 RULES AND REGULATIONS:

- A. Physical force, when used, shall be the minimum force necessary for a given situation and shall be reasonable in degree to the extent that it is necessary to effect cooperation and control of the situation. 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.
 - 1. No member of the Service shall exceed the limits of his/her authority under Article 35 of the New York State Penal Law known as the Defense of Justification.
- B. Only issued or approved equipment shall be used when applying physical force, except in emergency situations when it may be necessary to use any instrument at the disposal of the officer(s) involved.
- C. Whenever a person or persons are engaged in passive resistance demonstrations, "Pain Compliance" come-along holds shall not be used unless specific authorization has been given to use such holds by a member of the Service holding the rank of Sergeant or above. This limitation applies **only** to passive resistance demonstrations and is not a restriction upon an officer's authority to use reasonable force when the officer is any way endangered, is the subject of an attack or is confronted by someone actively resisting arrest as opposed to passive non-cooperation.
- D. Under the Fourth 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. [*Graham*, 490 U.S. at 396 (1989)]
- E. Failure to adhere to Departmental use of force guidelines and use of force reporting requirements may result in disciplinary action.

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4.2 **PROCEDURE:**

A. Physical force may be used when it is lawful and when the exercise of persuasion, advice and/or warning is found to be insufficient to obtain cooperation and control.

B. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.

C. 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; [*Graham*, 490 U.S. at 396 (1989)]
2. The level and immediacy of threat or resistance posed by the suspect; [*Graham*, 490 U.S. at 396 (1989)]
3. The potential for injury to citizens, officers, and suspects; [*Scott v. Harris*, 550 U.S. 372 (2007)]
4. The risk or attempt of the suspect to escape; [*Graham*, 490 U.S. at 396 (1989)]
5. The knowledge, training, and experience of the officer; [*Graham v. Connor*, 490 U.S. 386 (1989), *Terry v. Ohio*, 392 U.S. 1 (1968)]
6. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects; [*Sharrar v. Felsing*, 128 F. 3d 810 (3rd Cir. 1997)]
7. Other environmental conditions or exigent circumstances. [*Chew v. Gates*, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)]

D. Duty to Intervene

1. Any member of the Service present and observing another member of the Service 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.

2. A member of the Service who observes another member of the Service use force that exceeds the degree of force as described above shall promptly report these observations to a supervisor.

E. Prohibited Uses of Force

1. Force shall **not** be used by a member of the Service for the following reasons:

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- 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.

F. Health of Persons in Custody

In accordance with New York State Civil Rights Law Article 3, Section 28, 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.

1. If it is necessary to use physical force, the officer shall immediately determine if the subject requires medical attention. If the subject suffered a physical injury and/or complains of injury or pain, the member of the Service involved shall transport, or cause the subject to be transported, to the nearest medical facility for a clinical evaluation.

2. In accordance with New York State Mental Hygiene Law Section 9.41, 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 serious harm to themselves or others. Department members can locate pertinent information on addressing the mental health needs of individuals within the following components of the Rules and Procedures: Section 6, Article I ("Prisoner Detention Procedures") Section 6, Article VII ("Prisoners Needing Medical Aid").

a. When circumstances indicate immediate emergency medical care is needed, the individual with mental health needs will be transported to the closest available hospital regardless of whether it is a mental health facility.

G. If any physical injury occurs a supervisor must be notified. The supervisor will investigate the circumstances and take any other measures deemed appropriate at the time such as:

1. Ensure the member receives medical treatment if necessary and the **Injured Employee Report** is completed.
2. Ensure the subject receives medical treatment if necessary.
3. Notify the Detective Division as appropriate.

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H. Use of Force Reporting

Except for those use of force cases investigated by the Suffolk County Police Homicide Section (i.e., police shootings resulting in physical injury or death, death in custody, etc.), when a member of the Service uses physical force, including deadly physical force, whether an arrest is made or not and/or in any case where a person is charged with Resisting Arrest (205.30 N.Y.S. P.L.) wherein any level of force is used, all involved officers shall, prior to the end of their tour, prepare a **Use of Force Report**, to detail their respective involvement and submit this report for supervisory approval. If a member is incapacitated, his or her immediate supervisor shall prepare and submit the **Use of Force Report**. If the use of physical force is only threatened, notification to a supervisor is not required.

1. In the event an involved officer is unable to complete the required paperwork prior to the end of the tour due to injury or other exigent circumstances, the officer may, upon approval of his or her immediate supervisor, complete it during his or her next tour.

2. In the event an involved officer's unavailability to complete the required paperwork extends beyond his or her next tour, the officer's immediate supervisor will ensure that a designated member of the Service completes all required reports.

3. In addition to the aforementioned use of force reporting requirements and in accordance with New York State Executive Law § 837-t and 9NYCRR 6058, members of the Service shall also submit the **Use of Force Report** for the following use of force incidents, (For definitions, refer to page 4-10.):

- a. Brandishing, using or discharging a firearm at or in the direction of another person; or
- b. Any application of sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air; or
- c. Displaying, using or deploying a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas; or
- d. Brandishing, using or deploying an impact weapon, including, but not limited to, a baton or billy; or
- e. Brandishing, using or deploying an electronic control weapon, including, but not limited to, an electronic stun gun, flash bomb or long range acoustic device; or
- f. Engaging in conduct which results in the death or serious physical/bodily injury of another person.
- g. If any physical injury occurs a supervisor must be notified.

NOTE: Routine handling, maintenance, storage, cleaning or training is excluded.

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I. Required Photographs

Photographs will be taken if a person is subjected to any force in excess of restraining force, or is charged with Resisting Arrest, whether or not the person is injured or alleges injury. In addition, photographs will be taken whenever a person subjected to restraining force is injured, alleges injury, or is arrested. The required photographs are taken in addition to mug shots.

1. The Detective Division will take the photographs, whenever possible. Digital cameras will be used. If the Detective Division is not available, any personnel and/or equipment may be used. The photographs will clearly depict the following body areas of the person:
 - a. Overall front and back areas.
 - b. Close-ups of all exposed areas.
 - c. Close-ups of all injured areas.
 - d. Close-ups of all areas alleged by the person to be injured.
 - e. Upon consent of the person, close-up photographs of the following unclothed body areas: front and rear torso (male), rear of torso (female), legs and feet. No efforts shall be made to compel or force a person to submit to any photographs of the foregoing body areas.
2. Photographs will be taken of the scene and any evidence pertaining to the person's injury / alleged injury, if applicable.

J. Use of Force Training

In accordance with New York State Law Enforcement Accreditation Program standard 33.1, members of the Service receive annual training regarding the use of force and the use of deadly physical force via a Department training video entitled "Deadly Physical Force/Physical Force-Less Lethal".

K. In accordance with New York State Executive Law Section 840 and New York State Law Enforcement Accreditation Program standard 20.1, the Department shall conspicuously post the Department's use of force directive(s) on the public website.