

Use of Force Policy

A1 Policy

Effective: 10/01/19

Rescinds: --/--/-- version

- a. The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness.
- b. It is the policy of the State Police, that the amount of force that is used by its Members shall be the amount of force that is objectively reasonable and necessary under the totality of the circumstances for the Member involved to effect an arrest, prevent an escape, or in defense of themselves or others.
 1. 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.
 2. 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.”

Refer: *Graham v. Connor*, 490 U.S. 386 at 396-97 (1989)
- c. This policy is written in recognition of the value of all human life and dignity without prejudice to anyone.
 - Vesting Members with the authority to use reasonable force to protect the public welfare requires a careful balancing of all interests.

A2 Definitions

Effective: 11/10/20

Rescinds: 04/08/20 version

- 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.

Refer: Penal Law §10 (11)
- c. Physical Injury - Impairment of physical condition or substantial pain.

Refer: Penal Law §10 (9)
- 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.

Refer: Penal Law §10 (10)
- e. Serious Bodily Injury - Bodily injury that creates or causes:
 1. A substantial risk of death; or
 2. Unconsciousness; or
 3. Serious and protracted disfigurement, or
 4. Protracted loss or impairment of the function of any bodily member, organ, or mental faculty.

Refer: Executive Law §837-t(1)(f)
- f. ► Display a chemical agent - To point a chemical agent at a person(s).
- g. ► Deploy/Use a chemical agent - The operation of the chemical agent against a person(s) in a manner capable of causing physical injury, as defined in PL Article 10.

- h. ► Brandishes a firearm - To point a firearm at a person(s).
- i. ► Discharges/Uses a firearm - The operation of a firearm against a person in a manner capable of causing physical injury.
- j. ► Brandished an electronic control weapon - To point an electronic control weapon at a person(s).
- k. ► Deploys/Uses electronic control weapon - The operation of an electronic control weapon against a person in a manner capable of causing physical injury as PL Article 10.
- l. ► Brandishes an impact weapon - To point an impact weapon at a person(s).
- m. ► Deploys/Uses an impact weapon - The operation of an impact weapon against a person(s) in a manner capable of causing physical injury as defined in PL Article 10.
- n. 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.
- o. Noise-Flash Diversionary Device (NFDD) is the device used by Members of the State Police that is referenced in Executive Law §837-t as a “flash bomb.”

Refer: Executive Law §837-t

- p. Conducted Energy Weapon (CEW) is the device used by Members of the State Police that is referenced in the Executive Law § 837-t as an “electronic control weapon (ECW).”

Refer: Executive Law §837-t

A3 Use of Force

Effective: 10/01/19
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- 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.

Refer: Penal Law §35.15 (1) and §35.30(1)

- b. Under the 4th Amendment, a police officer may use only such force as is “objectively reasonable” under the totality of the circumstances. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene.

Refer: *Graham v. Connor*, 490 U.S. at 396

A4 Determining the Objective Reasonableness of Force

Effective: 10/01/19
Rescinds: --/--/-- version

- a. When used, force should be only that which is reasonable and necessary given the totality of 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.

Refer: *Graham*, 490 U.S. at 396 (1989)

2. The level and immediacy of threat or resistance posed by the suspect.

Refer: *Graham*, 490 U.S. at 396 (1989)

3. The potential for injury to citizens, officers, and suspects.

Refer: *Scott v. Harris*, 550 U.S. 372 (2007)

4. The risk or attempt of the suspect to escape.

Refer: *Graham*, 490 U.S. at 396 (1989)

5. The knowledge, training, and experience of the officer.

Note: 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.

Refer: *Graham v. Connor*, 490 U.S. 386 (1989)

Refer: *Terry v. Ohio*, 392 U.S. 1 (1968)

6. Member/Subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects.

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

7. Other environmental conditions or exigent circumstances.

Note: Courts have repeatedly declined to provide an exhaustive listing of factors.

Refer: *Chew v. Gates*, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)

A5 Duty to Intervene	Effective: 10/01/19
	Rescinds: --/--/-- version

- a. Any Member 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. A Member who observes another officer use force that exceeds the degree of force as described above should promptly report these observations to a supervisor.

A6 Use of Deadly Physical Force	Effective: 11/10/20
	Rescinds: 10/01/19 version

- 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.

Refer: Penal Law §35.30 (1)(c)

- 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.

Refer: Penal Law §35.30(1)

Refer: *Tennessee v. Garner*, 471 U.S. 1 (1985)

Refer: *Graham v. Connor*, 490 U.S. 386 (1989)

- c. ► Use of any choke holds which may hinder or reduce the intake of air should only be employed when deadly physical force is justified.
 - ► An application of pressure to throat or neck of a person, or blocking the nose or mouth of a person, with the intent to impede the normal breathing or blood circulation of a person, without justification, is prohibited by law when not objectively reasonable.

Refer: Penal Law Article 35, §121.11, §121.13, and §121.13(a)

A7 Prohibited Uses of Force	Effective: 10/01/19
	Rescinds: --/--/-- version

Force shall not be used by a Member 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 fluids 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.

A8 Reporting and Reviewing the Use of Force

Effective: 11/10/20

Rescinds: 04/08/20 version

- a. ► A Member 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 under the circumstances.

Refer: Civil Rights Law 28

1. ► This includes appropriate and timely medical attention for a person 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 serious harm to themselves or others.

Refer: MHL 9.41

- b. Members involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete all required documentation.

1. Use of force that results in a physical injury, serious physical injury, serious bodily injury, or death.
2. Use of force incidents that a reasonable person would believe is likely to cause a physical injury, serious physical injury, serious bodily injury, or death.
3. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
4. Incidents where a chemical agent was displayed or used/displayed.
5. Incidents where an impact weapon or Conducted Energy Weapon (CEW) was deployed/used/brandished.
6. Incidents where a firearm was discharged/used/brandished against a person.
7. Incidents where a restraint that applies pressure to the throat or windpipe of a person in a manner that is intended to hinder breathing or reduce intake of air was used.
8. Incidents where a Noise-Flash Diversionary Device (NFDD) was deployed/used.
9. Incidents where a long range acoustic device was deployed/used in its sonic capacity.
10. Incidents where tear gas was deployed/used.

- c. Reported uses of force are reviewed by appropriate supervisors.

A9 Procedures for Investigating Use of Force Incidents

Effective: 10/01/19

Rescinds: --/--/-- version

- a. Where practicable, a supervisor should respond to the scene to begin any required investigation.
- b. A supervisor that is made aware of a use of force incident shall ensure the completion of all appropriate documentation, which includes all officers engaging in a reportable use of force and, to the extent practical, ensure that (a) record(s) of all Members present has been created.
- c. When appropriate, photographs should be taken which sufficiently document any injuries or lack thereof to Members or suspects.
- d. The Professional Standards Bureau will receive use of force reports and ensure that any required investigation is completed.
- e. Failure to adhere to use of force guidelines will be addressed pursuant to existing disciplinary procedures.

A10 Training

Effective: 10/01/19
Rescinds: --/--/-- version

- a. All Members 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 an agitated condition as well as duty to intervene and prohibited conduct.