

USE OF FORCE

Revised: 06/11/2020

- I. **Purpose:** To establish the policy and procedure of the Ossining Police Department in the use of physical force, including deadly force.
- II. **Policy:** It is the policy of Ossining Police Department that officers may use only the level of physical force that is objectively reasonable and necessary in the performance of their duties within the limits established by the 4th Amendment of the Constitution, as held in *Graham v. Connor*, by article 35 of the New York State Penal Law, and consistent with the training and policies of the Ossining Police Department. The appropriateness of the force used is determined by the “totality of the circumstances” at the moment of the force is exerted.

Every officer must be trained and understand the Use of Force Continuum. Specifically, that officers have at their disposal an escalating series of actions that may be taken to resolve a situation.

It is important to note that the Use of Force policy of the Ossining Police Department is more restrictive than the limits established by the New York State Penal Law. Officers are not required to utilize each and every level of force in succession order to comply with this order. However, officers are expected to use the minimum amount of force necessary in any given situation. It is the responsibility of all members of the Ossining Police Department to be aware of the requirements as stated herein and to guide their actions based upon the above laws and department policy and training.

- III. **Definitions:**
- A. Force – Any intentional physical strength or energy exerted or brought to bear upon or against a person for the purpose of compulsion, constraint, or restraint.
 - 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.¹
 - C. Less lethal force – Any use of force other than that which is considered deadly physical force that involves physical effort to control, restrain, or overcome the resistance of another.
 - D. Physical Injury – Impairment of physical condition or substantial pain.²
 - E. Serious physical injury – Means 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 as defined in Article 10, section 10 of the New York State Penal Law.³

¹ NY Penal Law §10(11) (McKinney 2013)

² NY Penal Law §10(9) (McKinney 2013)

³ NY Penal Law §10(10) (McKinney 2013)

- F. Objectively reasonable force –The appropriate level of force used by the officer(s) after the officer(s) have evaluated each situation in light of known circumstances, including but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject, and the danger to the officer(s) and the community. Based upon the totality of the circumstance known to the officer(s), objectively reasonable force is the amount of force necessary to effect an arrest, overcome resistance, control an individual or situation, defend self or others, or prevent a subject's escape.⁴
- G. Chokehold – A physical maneuver that applies pressure to the throat or neck and thereby restricts an individual's ability to breathe for the purpose of incapacitation. This includes vascular neck restraints.
- H. Warning shot – Discharge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury.

IV. **Procedure:**

- A. Officers shall only carry such equipment that is issued or approved by the Department and, then, only when trained in the use of such equipment.
- B. Authorized Use of Force^{5 6} – Generally, officers may use such physical force which is the minimum amount of force necessary to safely overcome resistance in the performance of their duties given the totality of the circumstances known to them to:
 - 1. In self-defense or the defense of another person
 - 2. To effect a lawful arrest of a person resisting arrest or attempting to flee from custody
 - 3. To prevent a person from injuring him or herself
 - 4. To prevent the commission of a breach of peace or other unlawful act
- C. Whenever feasible and consistent with personal safety of the officer or a third party, a verbal warning should be given prior to using force that is reasonably likely to cause serious physical injury.
- D. Whenever feasible and consistent with personal safety of the officer or that of a third party, officers should give subjects the opportunity to comply with instructions prior to employing a higher degree of physical force.
- E. Whenever feasible and consistent with personal safety of the officer or that of a third party, officers should use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force.
- F. Officers using physical force should continually assess the circumstances and, as appropriate, reevaluate the use of force given the totality of the circumstances as known to them.

⁴ Graham v. Connor, 490 U.S. 386 (1989)

⁵ NY Penal Law § 35.30(1) (McKinney 2013)

⁶ 8 Graham, 490 U.S. at 396 (1989)

- G. Officers authorized to use agency-approved, less lethal force techniques and issued equipment:
 - 1. To protect the officer or others from immediate physical harm,
 - 2. To restrain or subdue an individual who is actively resisting or evading arrest, or
 - 3. To bring an unlawful situation safely and effectively under control
 - 4. To prevent a person from injuring him or herself
- H. Officers may use deadly physical force to defend the officer or another person from what the officer reasonably believes to be the use, or imminent use of deadly physical force.^{7 8}
- I. While the use of force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would be ineffective under the particular circumstances. The application of deadly physical force is the most extreme action an officer may take. Its use is appropriate only where the gravity of the situation reasonably appears to warrant deadly physical force and it does not appear likely that a lesser application of force would lead to safe control.
- J. Shots fired at or 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. Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle. Officers may not discharge firearms, rifles or shotguns from a moving vehicle unless deadly physical force is being used against them or other persons present, by means other than a moving vehicle.
- K. Officers may not fire warning shots.
- L. Officers may not discharge a firearm, rifle, or shotgun to summon assistance except in such instances when their safety or that of others is endangered and there is no reasonable alternative.
- M. The use of a chokehold is expressly prohibited unless the officer is authorized to use deadly physical force and no reasonable alternative exists.

V. Duty to Intercede:

- A. Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force.
- B. An officer who observes another employee use force that exceeds the degree

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

⁸ 8 Graham, 490 U.S. at 396 (1989)

VI. Discharge of Firearm, Shotgun, or Rifle:

A. An officer may discharge a firearm, shotgun, or rifle only in the following situations

1. Confrontation situations: To defend the officer or another as outlined in Section IV of this order.
2. Dangerous Animals: To kill a dangerous animal or an animal so seriously ill or injured that it should be destroyed to prevent further suffering. All other options should be exhausted, however and before shooting the animal all other department procedures governing same must be adhered to.
3. Firearms Practice: For target practice at an approved range.

VII. Reporting:

A. Reporting requirements will be triggered when, in the performance of their duties, an officer uses physical force (other than guiding, escorting or handcuffing/shackling where no injury occurs), including, but not limited to:

1. Force that results in physical injury or serious physical injury,
2. Incidents where a Taser, less-lethal projectile or chemical agent was used, displayed, or discharged,
3. Incidents in which a tactical diversionary device was deployed,
4. Incidents in which an impact weapon was used, displayed, or deployed,
5. Incidents in which a firearm was used, displayed, or deployed,
 - a. Officers, whether on- or off-duty, shall report to the tour supervisor within six hours of the occurrence of the incident, any discharge of a firearm, rifle, or shotgun. Officers shall then complete and submit a written report of the incident within 48 hours of the occurrence of the incident.⁹
 - b. Note: This requirement does not include recreational activities, including but not limited to, hunting or target shooting, unless shots were fired in the direction of a person, whether or not the act was intentional.
6. All incidents involving deadly physical force.

B. Procedure:

1. Notify the Tour Supervisor as soon as is practicable
2. Include the details of such use of physical force in the related department report.
3. As soon as is practicable complete an Ossining Police Use of Force Report, attaching the completed form to the applicable blotter/case report
4. Forward completed Ossining Police Use of Force Report and association documents to the Records Unit.

⁹ NY Executive Law §837-v (McKinney 2013)

- C. If such physical force is used by more than one officer, the assigned officer will relate the details of his or her use of such physical force in the report and each additional officer who used such physical force shall relate the details of same in a supplemental report. All such officers will complete and submit an Ossining Police Use of Force Report.
- D. In the case of the euthanizing of an animal pursuant to department policy, the narrative relating the details of same shall be set forth in a blotter entry.
- E. At the responding Supervisor's discretion, the Supervisor should take, or cause to be taken, photographs of the subject of such physical force.
 - 1. Persons not in custody have the right to refuse to be photographed.
 - 2. A photograph showing lack of injury may be as important as one that shows an injury.
- F. When the discharge of a firearm, rifle or shotgun, by an officer results in the physical injury or death of a person, the responding supervisor shall assign a detective to remove all such weapons from the officer. The supervisor will provide the officer with a replacement duty weapon as soon as possible.
- G. Any incident where officers' actions result in injury or death of another person shall be investigated by the Detective Commander, and his/her findings forwarded to the Chief or his/her designee for final review.
- H. Any incident where an officer discharges a firearm, shotgun, or rifle in a confrontation situation as described in Section VII, the Tour Supervisor shall notify the Patrol Commander and Detective Commander as soon as is practicable.
- I. Any incident where an officer discharges a firearm, shotgun, or rifle in a confrontation situation as described in Section VII, or where an officers' actions result in serious physical injury or death the Tour Supervisor shall preserve the scene until the arrival of the Detective Commander or his designee.
- J. Any incident where officers' actions result in injury or death of another person shall be investigated by the Detective Commander, and his/her findings forwarded to the Chief or his/her designee for final review.
- K. For incidents resulting in Serious Physical Injury or Death, the Detective Commander shall notify the Office of the Westchester County District Attorney to determine whether an outside agency or special prosecutor is required.
- L. The Support Services Division Commander shall be tasked with completing periodic reporting of data related to use of force as may be required by New York State Law.

