

New York State University Police

	<small>SUBJECT</small> <b>Use of Force</b>	<small>GENERAL ORDER NUMBER</small> <b>130.10</b>
	<small>DCJS STANDARDS</small> <b>20.1, 20.5, 20.6, 21.1, 21.2, 32.3</b>	<small>EFFECTIVE DATE</small> <b>April 1, 2015</b>
	<small>APPROVAL</small>  	<small>REVISION DATE</small> <b>November 17<sup>th</sup>, 2020</b>
	<b>Richard Bialkowski, Chief of University Police</b>	 <b>April 8<sup>th</sup>, 2019</b>

**A. POLICY:**

It is the policy of the New York State University Police Department at SUNY Cobleskill that officers use only that level of force, up to and including deadly physical force, which is reasonably necessary to control an incident, to effect an arrest, or to protect themselves or others from personal harm or death. The degree of force used by the officer should be within the limits established and authorized by Article 35 of the New York State Penal Law, and consistent with the training given by the NYS University Police Department at SUNY Cobleskill. If circumstances dictate, the officer may bypass lower levels of force and immediately respond with a higher level.

**B. DEFINITIONS:**

- a. **Non-Deadly Force**: The use of force which is applied to affect an arrest or protect the officer or others from attack, physical resistance, harm, or death but is not intended or expected to cause death.
- b. **Deadly Physical Force**: Physical force, including but not limited to the use of an issued firearm, which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.
- c. **Physical Injury**: Impairment of physical condition or substantial pain
- 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.
- e. **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.
- f. **Officer(s)**: Any duly appointed police officer of any rank employed as a member of the NYS University Police Department at SUNY Cobleskill.
- g. **Command Staff**: Any member of the department holding the rank of UPO2 or higher.

**C. DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE:**

- a. When used, force should be only that which is objectively reasonable, as established by the US Supreme Court in *Graham v. Connor*, 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;
  2. The level and immediacy of threat or resistance posed by the suspect;
  3. The potential for injury to citizens, officers, and suspect(s);
  4. The risk or attempt of the suspect to escape;
  5. The knowledge, training, and experience of the officer;
  6. Officer/subject considerations such as age, size, relative strength, skill level, injury and/or exhaustion, and the number of officers or suspects;
  7. Other environmental and/or exigent conditions and circumstances.

**D. TRAINING:**

- a. All officers shall receive training in the MPTC Basic Course for Police Officers and during annual in-service training thereafter relating to the use of force, and should be able to demonstrate their understanding of the proper application of force.
- b. Additional in-service training may be provided covering conflict prevention, conflict resolution and negotiation, de-escalation techniques, duty to intervene, and prohibited uses of force.

**E. GUIDELINES FOR THE USE OF FORCE:**

- a. Force is authorized to be used by officers 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 others.
- b. Under the 4<sup>th</sup> 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.
- c. By law, an officer need not retreat in performance of their lawful duties, but a tactical retreat in the face of overwhelming odds may be a wise choice.
- d. Only NYS University Police issued and approved equipment, and only that equipment which an officer is currently trained in, qualified on, and possesses any and all necessary certifications in the use of, will be carried on duty and used to apply force, except in emergency situations when an officer must use any resources at his or her disposal.
- e. Issued equipment carried under the provisions of Section E(4) that may be used in the application of force includes but is not limited to:
  1. OC Spray
  2. Impact weapon (i.e. ASP Baton)
  3. CED (Conducted Energy Device i.e. Taser)
  4. Handcuffs, leg irons, and/or restraint belt
  5. Firearm (handgun, patrol rifle)

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- f. Use of restraint devices (hand-cuffs at a minimum, and leg irons and/or restraint belt if necessary) is mandatory on all persons in custody, unless in the officer's judgement, unusual circumstances exist which make the use of restraining devices impossible or unnecessary. Merely placing restraints on a person is not considered a use of force, but if the restraints become a mechanism for the application of force to further restrain a person or where the subject resists the application of the restraints, then a use of force has occurred.
- g. Deadly Physical Force
  - 1. 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.
  - 2. Deadly Physical Force may be used by an officer to prevent the actual commission of a violent felony, as those crimes are defined in NYS Penal Law sections 35.20 and 35.30, when a person is in imminent risk of serious physical injury or death.
  - 3. Deadly Physical Force may be used by an officer to stop a fleeing suspect where the officer has probable cause to believe that the suspect has committed a felony involving serious physical injury or death to another person and the officer reasonably believes that the suspect poses a continued and imminent threat of serious physical injury or death to others.

### **F. USE OF FIREARMS**

- a. Officers shall respond to any complaints or incidents involving armed individuals or other dangerous incidents.
- b. All officers are required to successfully qualify with their issued sidearm and any other departmentally-issued firearms, such as patrol rifle, twice per year.
- c. The only firearm(s) officers are authorized to carry and use while on duty shall be their NYS University Police issued firearms.
- d. Firearms and ammunition issued to officers and carried on duty will be only those firearms and ammunition authorized by the Board of Trustees.
- e. All officers are responsible for the safe storage, handling, care, and use of their issued firearm(s) at all times.
- f. Officers may discharge their issued firearm(s) during range practice/qualification, to destroy an animal that represents an immediate threat to humans or as a humanitarian measure if the animal is seriously injured, or in accordance with the provisions of this policy.
- g. Officers are not required to retreat in lieu of the justifiable use of deadly physical force. However, deadly physical force must never be used if a less drastic means can be used without unreasonably endangering the officer or other persons.
- h. Officers must keep in mind that they alone are responsible for their acts and that they will be required to justify them in an administrative hearing and/or a court of law.
- i. Drawing/displaying an issued firearm without firing same is considered a use of force.
- j. Unauthorized use of any issued firearm shall be cause for disciplinary action, up to and including termination. The reckless or criminally negligent use of a firearm by an officer will result in that officer being personally responsible for justifying their conduct.
- k. Officers who are off-duty are not required to carry their issued duty weapon.

### **G. PROHIBITIONS ON THE USE OF FORCE**

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- a. Force shall not be used by an officer at any time for the following reasons:
  1. To extract an item of contraband or evidence from a body cavity of a person without a warrant, except where exigent circumstances exist;
  2. To coerce a confession from a person;
  3. To obtain blood, saliva, urine, or other bodily fluids or cells, from a person for the purposes of scientific testing in lieu of a court order when required.
  4. Against any person(s) who is/are handcuffed or restrained, unless it is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the person(s).
  5. Officers are prohibited from firing any firearm either from a moving vehicle while in same as a driver or passenger, or at a moving vehicle, except under the limitations of NYS Penal Law section 35.30.
  6. Warning shots are prohibited.
- b. 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.

### **H. DUTY TO INTERVENE**

- a. Any officer present and observing another officer using force against any person(s) that he/she reasonably believes to be clearly beyond that which is objectively reasonable under the circumstances shall intercede to prevent the use of such unreasonable force against such person(s).
- b. Any officer witnessing another officer use force against any person(s) that he/she believes to be clearly beyond that which is objectively reasonable under the circumstances shall report such unreasonable use of force to a supervisor as soon as practicable.

### **I. ACTIONS TO TAKE AFTER THE USE OF FORCE**

#### **a. Medical Attention**

1. Officers shall immediately evaluate the need for medical treatment for any person(s) upon whom the force was used, and officers shall arrange for the immediate medical treatment of any person upon whom force was used if such treatment is needed, if the person has a visible injury, complains of injury, or requests medical attention.

#### **b. Reporting**

1. Officers involved in use of force incidents as described below shall notify their supervisor as soon as practicable:
  - a. Any use of force that results in physical injury to any person;
  - b. Incident(s) where a CED (Conducted Energy Device) was intentionally or accidentally discharged after being displayed.
  - c. Incidents where a firearm was displayed but not discharged.

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2. A Use of Force Report (Attachment A) is to be completed whenever force is used by any officer(s). Witnessing officer(s) should also complete the Use of Force Report. A Use of Force Report can document uses of force by up to three police officers or against up to three subjects. Involvement of more officers or subjects requires additional forms.
3. In any circumstance where a subject is placed in handcuffs and subsequently not arrested a Use of Force Report should be completed to document the incident.
4. The officer will forward a copy of the report prior to the end of shift to the supervisor for; review, comments, and recommendations.
5. After review for accuracy and completeness the shift lieutenant on duty at the time of the incident will record comments and recommendations prior to the end of shift and forward same to the Chief of Police.

### c. Discharge of a Firearm

1. If an officer discharges an issued weapon in the course of duty, they shall make immediate notification to a member of the Command Staff. The member of the Command Staff receiving the notification from the officer will then immediately notify the Chief of University Police.
2. After a firearm is discharged (firing of a weapon) a Department Use of Force Report must be completed immediately by the officer and witnessing officers involved.
  - a. The officer will forward a copy of the report prior to the end of shift to the supervisor for; review, comments, and recommendations.
  - b. After review for accuracy and completeness, the lieutenant on duty at the time of the incident will record comments and recommendations prior to the end of shift and forward same to the Chief of Police.
3. In the event of a discharge of a sidearm which involves the shooting of a suspect or person, the Chief of Police will be notified immediately. The Chief or his designee shall notify the District Attorney's Office in a timely manner.
4. An internal investigation shall be commenced by the Chief.
5. The Chief in turn, must report the finding of said investigation to the Vice President of Student Affairs within 48 hours.
6. A determination will be made as to whether the firing of the weapon was justified with the guidelines of N.Y.S. Penal Law, guidelines of the Chancellor and the Rules and Regulations of the NYS University Police by the Chief.
7. The District Attorney's Office is to determine whether the shooting was within the guidelines of the N.Y.S. Penal Law, and if necessary, the results of said investigation will be forwarded to a Grand Jury and/or the New York State Attorney General's Office to determine if the firing of the weapon was within the law.
8. Each NYS University Police Officer shall immediately report in person or by telephone (followed by the completion of the Department Use of Force Report) to the Chief of NYS University Police Department the voluntary or involuntary discharge of a firearm, while on or off duty, excluding recreational shooting and firearms training session. The report shall include the full circumstances of the weapon's discharge and all relevant information related to the incident.
9. Each time a NYS University Police Officer draws his or her sidearm in the line of duty (other than for routine maintenance or training), that officer, as well as witnessing officers, shall, within 24 hours, file a Department Use of Force Report with the Chief of

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State University Police Department, describing circumstances surrounding the drawing of their sidearm.

### **J. Investigating Use of Force Incidents**

1. All use of force incidents shall be reviewed by a member of the command staff to ensure compliance with this policy and any and all applicable laws, rules, and regulations.
2. If any use of force by an officer of this agency involves the serious physical injury or death of any person, the Chief of University Police will contact the New York State Police and request an independent investigation of the incident.
3. The failure of any officer to adhere to the procedures set forth in this policy will be addressed consistent with current departmental disciplinary protocols, any applicable provisions of current collective bargaining agreements, and Human Resources policies and procedures, in addition to any applicable sections of local, state, and/or federal law.