



GENERAL ORDERS

Use of Force

Section 1: Reporting Section 2: Use of Firearms & DPF
Section 3: Less Lethal Weapons & Equipment

General Order		Reference: Administration – General Regulations
<input checked="" type="checkbox"/> Rescinds:		Accreditation standard: NYS L.E.A.P.: Standards 20.1, 20.4, 20.6, 20.7, 21.1, 21.2, & 32.4
<input checked="" type="checkbox"/> Amends:		
Effective date: 02-27-07	Amend date: 12-2019	

Purpose

To establish guidelines for the use of physical force.

Policy

Members of the Service shall use only the force necessary to effect lawful objectives. Members shall use the least 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. 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.

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.

B. 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.

C. Deadly Physical Force (DPF) - physical force which is readily capable of causing death or other serious physical injury.

D. Physical Injury - Is the impairment of physical condition or substantial pain.

E. 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.

F. Instrument - Any article, device, object, apparatus, implement or tool used to effect cooperation and control by forceful means.

G. 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.

H. Brandish/Displayed Act of pointing a weapon at Subject.
(QVPD-71 REQUIRED!)

I. Discharge/Deployed Act of firing a weapon at a Subject.
(QVPD-71 REQUIRED!)

J. Used Employ Device/Technique Whereby Subject is Struck/Restrained/Held.
(QVPD-71 REQUIRED!)

USE OF FORCE

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.

B. 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.

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
2. The level and immediacy of threat or resistance posed by the suspect
3. The potential for injury to citizens, officers, and suspects
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 or exhaustion, and the number of officers or subjects
7. Other environmental conditions or exigent circumstances.

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 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.

REFERENCES

Article 35 of the New York State Penal Law.

9 *Ibid.*

10 *Ibid.*

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

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 or 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)

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.

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

REFERENCES

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.

PROHIBITED USES OF FORCE

A. Force shall not be used by an officer 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.

REFERENCES

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.

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.

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.

TRAINING

A. All officers will 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 prohibited conduct.

VIEW DCJS TRAINING AT:

<http://criminaljustice.ny.gov/ops/training/other/DCJS%20Use%20of%20Force%20In-Service%20Training%20-%20Storyline%20output/story.html>

SECTION 1. USE OF PHYSICAL FORCE – **Reporting & Review**

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. 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.

C. 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. Respond to the scene and conduct a preliminary investigation.
2. Ensure the member receives medical treatment if necessary and the Injured Employee Report is completed.
3. Ensure the subject receives medical treatment if necessary.
4. Interview the officer involved as described in section 3 if Public Safety Statement is appropriate for said use of force.
5. Notify the Detective as appropriate.
6. Notify the Executive Officer.
7. Interview the physician or qualified health care provider concerning the subject's injuries sustained and their consistency with uses of force reported.
8. Ensure that all evidence is collected and preserved.
9. Identify and interview witnesses.
10. Summarize his or her investigation and findings in a completed supervisor's investigation report.

D. Use of Force Reporting - WHEN IS A USE OF FORCE REPORT REQUIRED??? 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 use of force Report, (QVPD-71) & Supplementary Report (QVPD-10b), 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.

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 a 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 Executive officer will ensure that a designated member of the Service completes all required reports.

E. Submission of the Use of Force Report - The supervising sergeant of the officer shall review the Report from said officers and is responsible for submission to the Executive Officer, as soon as possible or practical.

1. The Executive Officer shall review and forward to the Chief of Police.
2. The Chief of Police shall review the Use of Force Report and the findings of the investigating supervisor. The Chief of Police shall approve said report if no deficiencies are identified.
3. The Chief of Police or his designee, shall report all uses of force to DCJS.

F. 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 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.

3. The photographs of the person subjected to force will be documented on a photo log, and a Supplementary Report by the officer taking the photographs. The officer will also make the proper notations on the Prisoner Activity Log.

G. Use of Force Investigations Conducted by the Suffolk County Police Homicide Squad - In cases when an investigation is being conducted by the Homicide Section concerning the use of force by a member of the Service, the Use of Force Report shall not be completed by the member of the service. Instead, the Commanding Officer of the Homicide Section, or the Commanding Officer's designee, shall prepare and submit an Internal Correspondence to the Chief of the Quogue Police Department. The correspondence shall include the following information:

1. The name, rank, and command of the officer.
2. The date and time of occurrence.
3. Type of force used.
4. Pedigree of the Use of Force subject.
 - a. Date of birth.
 - b. Personal Identification Number (PIN).
 - c. Gender and race.
 - d. Address, home and cell phone numbers.
5. Indicate if the subject was engaged in unlawful activity and if so, what type.
6. Describe the subject's injury
 - a. Physical injury.
 - b. Serious physical injury.
 - c. Death - Has the Medical Examiner determined the manner and cause of death?

Use of Force Data Collection:

For reporting purposes, Executive Law 837-t requires each police department, county sheriff, and the state police to report any occurrence in which a police officer or peace officer employs use of force as listed below:

- When an officer engages in conduct which results in the death or serious bodily injury of another person. Serious bodily injury is defined as bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- When one of the following is initiated by an officer:
 - Brandishes, uses or discharges a firearm at or in the direction of another person;
 - Uses a chokehold or similar restraint that applies pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air;
 - Displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas;
 - Brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy;
 - Brandishes, uses or deploys an electronic control weapon, including, but not limited to, an electronic stun gun, flash bomb, or long range acoustic device.

Reports are submitted by the Chief of Police, to DCJS using the [link below.](https://www.surveygizmo.com/s3/5075589/NYS-Use-of-Force-Reporting)

<https://www.surveygizmo.com/s3/5075589/NYS-Use-of-Force-Reporting>

EXC §840(4)(d)(2)(vi) EXC §840(4)(d)(2)(vii) EXC 837-t

USE OF FORCE REPORT QVPD-71

When a member of the Service is completing the Use of Force Report, all sections are to be completed. In accordance with New York State Executive Law 837-t specific Mandatory data points must be included within the boxes or narrative of the report:

1. Age, Ethnicity, Race and Gender of the Reporting Officer
2. Age, Ethnicity, Race and Gender of the Involved Subject

NOTE: Ethnicity shall be reported as Hispanic or Non-Hispanic. Race shall be reported as American Indian/Alaskan Native, Asian, Black, Native Hawaiian/Pacific Islander, Unknown/Not reported or refused or White.

3. Whether the Officer or Subject sustained serious physical injury or death. (see exceptions in Section 1 D.)
4. **FORCE USED BY OFFICER:**
 - a. Firearm- Brandished, Discharged, or Used
 - b. Impact Weapon- Brandished, Deployed or Used
 - c. Conducted Energy Device (Taser)- Brandished, Deployed or Used
 - d. Flash Bomb- Brandished, Deployed or Used (ES Operators)
 - e. Chemical Agent - Displayed, Deployed or Used
 - f. Chokehold or Similar Restraint - Used
 - h. Conduct that Resulted in Death or Serious Physical Injury- Used

NOTE: "Brandished and Displayed" shall refer to the act of pointing a weapon at a subject. "Discharged and Deployed" shall refer to the act of firing a weapon at a subject. "Used" shall refer to the act of employing a device or technique whereby a subject is struck/restrained/held.

If additional space is needed for any section of the Use of Force Report, members are to use a Continuation Report QVPD-10a , that will be attached to the Use of Force Report.

Narrative: Members must provide details of the incident in the narrative section of Supplementary Report (QVPD 10-b). The use of broad terms, such as "combative" and "resisting", to describe a subjects actions should be avoided. Instead members should provide details that describe "how" a subject resisted or was combative, "pulled away", "Swung his arms", "kicked at Officer", stated "I'm not going with you", as examples.

SECTION 2. USE OF FIREARMS AND DEADLY PYSICAL FORCE

I. PURPOSE

This order establishes the limits within which the use of deadly force, particularly the use of firearms, by members of the Quogue Police Department is permitted, and outlines certain situations in which the use of firearms, or other means of deadly force, is not

permitted. These rules have been developed, not to restrict officers from properly performing their duty, but rather to make it incumbent upon them to use good judgment before using deadly force. They thus are intended to reduce inappropriate uses of deadly force including shooting incidents, and consequently protect life and property.

II. POLICY

The value of human life in our society is immeasurable. Police officers have been delegated the substantial responsibility to protect life and property and to apprehend criminal offenders. Thus, there is probably no more serious act that a law enforcement officer can engage in than the use of deadly force. The occasions for such use are, literally, life and death situations which are invariably confused and complex, affording precious little time for mediation or reflection. It is imperative then, that the officer, through training and absorption of these rules, be able to respond quickly, confident that he or she is acting within the limits of Departmental rules. This enables the officer to act, without hesitation, to protect himself or another, and it also serves to protect the public from unlawful and unreasonable use of force.

III. DEFINITIONS

A. Deadly Force - for the purposes of this order "deadly force" is defined as physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

B. 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.

C. Reasonable Cause to Believe - Reasonable cause to believe that a person has committed an offense exists when evidence or information which appears reliable, discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonable likely that such offense was committed and that such person committed it. Except as otherwise provided in Article 70 of the Criminal Procedure Law, such apparently reliable evidence may include or consist of hearsay.

IV. REFERENCES

New York State Penal Law, Article 10, Section 10.00,
Article 35, Sections 35.10 to 35.30
New York State Criminal Procedure Law, Article 690,
Section 690.50

V. RULES AND REGULATIONS

A. Use of Firearms - An officer may discharge a firearm only in the following situations:

1. Confrontational Situations

a. When reasonable and necessary to defend an officer or another from what the officer reasonably believes to be the use, or imminent use, of deadly force.

2. Apprehension in Pursuit Situations

a. To effect the arrest or prevent the escape of a person when:

(1) there is no other reasonable means to effect the arrest, and

(2) the discharge creates no foreseeable risk to innocent bystanders, and

(3) if practicable and consistent with personal safety, the officer has identified himself or herself by voice and warned the fleeing subject to "STOP", without success, before firing, and the officer has reasonable cause to believe that:

(a) the subject has committed or attempted to commit a felony involving the use, or attempted use or threatened imminent use of physical force against a person, and

(b) the subject poses a significant threat of death or serious physical injury to the officer or another if not immediately apprehended.

3. Vicious/Injured Animal

a. To put to death an animal which presents an immediate serious physical threat to the officer or a third party, or an animal that is so seriously injured that humaneness demands the immediate cessation of its further suffering. All reasonable alternatives to the use of the firearm must be exhausted before shooting the animal, and all applicable Department procedures must be followed.

4. Firearms Practice

a. Firearms practice, for target practice at an approved range, or by members of the Firearms Training Section to test weapons as required.

B. Specific Prohibitions

1. Moving Vehicles

a. Discharging a firearm at or from a moving vehicle is prohibited, except as the ultimate measure of self defense or defense of another when the officer reasonably believes the occupants are using deadly force against the officer, or another, by means other than the vehicle. (see VI. Deadly Force Emergency Measure)

2. Warning Shots

a. No "warning shots" shall be fired.

3. Firing Shots for Alarm

a. Firearms shall not be discharged to summon assistance, except where the officer's safety or that of another is endangered, and there is no reasonable alternative. Extreme care must be exercised in such situations to prevent injury to other persons.

4. Drawing or Displaying Firearms

a. An officer shall unholster or display a firearm only if authorized by these procedures, directed by competent authority, or there is reason to believe such may be necessary for the safety of the officer or others.

b. To reduce the potential for accidental discharge, an unholstered or displayed firearm will not be cocked, if applicable to the function of said weapon.

c. "Dry firing" or snapping the action of an unloaded firearm is prohibited in view or presence of the public, or in or on any Departmental premises, except by or under the direction of a firearms instructor or armorer, or when necessary to clean and lubricate a weapon.

5. Chokeholds and Carotid Holds

a. Chokeholds, carotid holds, and similar compressions of the neck represent potential use of deadly force and shall not be used unless an officer or another is in imminent danger of death or serious physical injury and all other measures to reasonably repel the attack have been exhausted.

VI. PROCEDURES

A. Deadly Force Emergency Measure

1. Since all possible combinations of circumstances cannot be envisioned, notwithstanding any provisions of these Rules and Procedures, a police officer may use deadly force as an emergency measure to avoid the imminent unlawful use of deadly force which is about to occur by reason of a situation occasioned or developed through no fault of the officer; and, which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability of avoiding such injury clearly outweighs the desirability of avoiding the conduct sought to be prevented by these Rules and Procedures.

B. Legal Disclaimer

1. This directive regarding the use of force and firearms is for Departmental administrative use only and, to the extent that it constrains conduct otherwise permissible under law, shall not apply in any criminal or civil proceeding. The Quogue Police Department rules regarding the use of deadly force should not be construed as creating a higher standard of safety or care, in an evidentiary sense, with respect to third party claims. Violations of these rules will only be used as the basis for Departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in recognized judicial settings.

C. Sanctions

1. In all cases where an officer's action is determined to be a violation of these rules but not a violation of law, this distinction shall be made clear in all public discussion of such incidents and any disciplinary action which may result. An officer found to have acted in violation of this order shall be subject to internal discipline ranging from reprimand up to and including dismissal, in addition to any criminal sanctions which may be imposed in the courts.

D. Reporting Procedures - Reporting requirements for the use of force, including the use of deadly physical force, are contained within section 1, of this General Order.

1. When a use of force case is being investigated by the Suffolk County Police Homicide Section, the Use of Force Report, (QVPD-71), shall not be completed.

E. Supervisors Responsibilities

1. Immediately respond to and secure the scene.
2. Insure that officers and citizens receive appropriate medical attention.
3. Notify the Executive Officer and Chief of Police

4. If the officer fires his firearm, the supervisor shall obtain a public safety statement. This information is obtained by a supervisor at an officer-involved incident using questions

intended to determine existing threats to public safety and identify transitory evidence that must be preserved. The scope of the statement is limited to the collection of such critical fleeting information in the immediate aftermath of these critical incidents. The supervisor shall direct the involved officer to answer limited questions of an exigent nature. These questions include but are not limited to:

- Did you fire your weapon?
- Is anyone injured? Where are they?
- Are there any outstanding suspects? If so, can you provide a description, direction, mode of flight? How long ago?
- What weapons are they armed with?
- Did the suspects(s) fire at you? Where was the suspect? Where were you?
- Where were you when you fired at the suspect? Where was suspect?
- Did you move during the encounter? From where to where?
- Are you aware of anyone else firing a weapon?
- Are you aware of weapons or evidence that needs to be secured? Where?
- Are you aware of any witnesses? Where are they?

Every Office-involved incident is unique, and there may be other appropriate and necessary Public Safety questions that you need to ask not listed above.

F. Reassignment of Member Pending Review

1. On the occasion when a member's use of force results in the death of another person, that member will be assigned to administrative duties. The length of time of said assignment shall be determined by the Chief of Police.

SECTION 3. USE OF PHYSICAL FORCE- LESS LETHAL WEAPONS AND EQUIPMENT

I. PURPOSE

To establish guidelines for the use of physical force involving less lethal weapons and equipment.

II. POLICY

Members of the Service shall use less lethal weapons and equipment only to affect lawful objectives. Members shall use the least 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. As in any use of force incident, verbal direction and the opportunity to comply should be given to the subject to minimize the need for the continuation or escalation of force.

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

E. Physical Injury - Is the impairment of physical condition or substantial pain.

F. 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.

IV. REFERENCES - Article 35 of the New York State Penal Law.

V. RULES AND REGULATIONS

A. Less lethal weapons and equipment, 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.

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 less lethal weapons and 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 come along holds and less lethal weapons and equipment when the officer is any way endangered, the subject of an attack or is confronted by someone actively resisting arrest as opposed to passive non-cooperation.

VI. PROCEDURE

A. Less Lethal Weapons and Equipment - shall be used only as prescribed in Departmental training. These items, or other authorized equipment, shall never be converted or used in such a way as to represent the use of deadly force unless the officer reasonably believes such is necessary to repel imminent use of deadly force against the officer or another. Members of the Service are required to obtain Department authorized training in the proper use of less lethal weapons and equipment. All members of the Service using these less lethal weapons and equipment must successfully complete a Department approved initial training course prior to issuance, and receive annual training thereafter which is accomplished by the required annual viewing by members of the Service of the Decentralized Individualized In-Service Training (DIIT) video entitled "Deadly Physical Force/Physical Force-Less Lethal".

1. Pepper Mace/O.C.

(Pepper Mace/O.C. is prohibited from use in the jail cells)

a. The use of Pepper Mace/O.C. is controlled by the sections of the Penal Law that control the use of other issued weapons and the use of physical force. Pepper Mace/O.C. is not used on a subject unless the member of the Service reasonably believes that the use of Pepper Mace/O.C. is necessary to effect an arrest, or for self-defense, or the defense of a third party against unlawful physical force.

b. When Pepper Mace/O.C. is used, the member of the Service involved will transport the subject, or cause the subject to be transported to the nearest medical facility for examination and treatment as soon as possible. The medical facility will decontaminate the subject according to proper medical treatment prior to processing by the arresting officer.

c. When a Pepper Mace/O.C. weapon is discharged against another to affect an arrest, for self-defense, or in the defense of a third party against unlawful physical force, a supervisor must be notified and will respond to the scene as soon as possible. The supervisor will investigate the circumstances and take any other measures deemed appropriate at the time. The supervisor will ensure a Use of Force Report (QVPD-71) is completed by the member using Pepper Mace/O.C. The reviewing supervisor shall distribute copies of the report as indicated in section 1 of this General Order.

d. When Pepper Mace/O.C. which was issued to a member of the Department is lost or stolen, the member will comply with that section of the Rules and Procedures regarding Department property lost/stolen.

2. Tasers - (Conducted Energy Devices [CED])

a. The use of the Taser is controlled by the same sections of the Penal Law that control the use of physical force. The Taser is not to be used on a person unless the member of the Service reasonably believes that the use of the Taser is necessary to affect an arrest, for self-defense, or the defense of a third party against unlawful physical force.

- b.** Unless a person presents an immediate threat of injury to himself/herself or to others, the Taser shall not be used if the person is:
- (1) obviously pregnant
 - (2) apparently under 16 years of age
 - (3) apparently over 65 years of age
 - (4) running away to escape
 - (5) in an elevated position above ground level from which the person might fall and injury is likely, unless safety precautions have been taken (example: airbag deployment).
 - (6) operating a vehicle or machinery
 - (7) in a flammable environment
 - (8) in water unless additional personnel are available for possible rescue
 - (9) obviously frail or infirmed
 - (10) handcuffed, unless they are exhibiting active aggression, and/or to prevent individuals from harming themselves or others.
- c.** The Taser is considered a use of force and it is not to be used merely to persuade an individual who is simply not complying with an officer's orders.
- d.** Under all circumstances if possible, when deploying the Taser members of the Service should attempt to avoid the sensitive areas of the body; the head, throat, frontal chest/breast area or known pre-existing condition areas. Taser use causes Neuromuscular Incapacitation (NMI) and beyond its intended purpose may exacerbate medical conditions in persons taking certain medications and/or drugs or who have other cardiac conditions and/or implanted electronic medical devices such as pacemakers and defibrillators.
- e.** After a Taser has been deployed on a person, the member of the Service involved shall transport, or cause the subject to be transported, to the nearest medical facility for a clinical evaluation and removal of the Taser darts.
- f.** When a Taser device is used against a subject, whether a shock is administered or not, a supervisor must be notified and shall respond to the scene as soon as possible. The supervisor shall investigate

the circumstances and take any other measures deemed appropriate at the time. The supervisor shall ensure a Use of Force Report (QVPD-71) is completed by the member using a Taser, and the Taser used is put out of service until a department Taser Instructor can download the data from the device.

g. When a Taser device is used in the Drive-Stun (dry-stun, dry tasing, contact tasing, drive tasing) mode, the member of the Service involved shall immediately transport, or cause the subject to be transported, to the nearest medical facility for a clinical evaluation.

h. Each discharge of a Taser on an individual is considered a separate use of force which must be justified and documented. If after the third 5-second discharge the subject is not yet controlled, the officer should consider other force options or techniques. If extenuating circumstances justify additional discharges of the Taser, those circumstances must be fully documented on a **Use of Force Report and Supplementary Report.**

NOTE: The entire use of multiple Taser discharges can be documented on a single Use of Force Report.

I. Use of a Taser Inside the Department Detention Facility

As the Department prisoner detention area operates inside a limited space and under the auspices of the "Department of Corrections" which does not recognize the use of a Taser fired projectile within its confines because of the potential hazardous condition created for the officer as well as the prisoner. As such, a Taser will not be deployed in a manner requiring the firing of a projectile unless circumstances have escalated to a level that the use of the Taser and its possible accompanying injuries has been exceeded by the harm it may cause if not deployed. Examples of this would be a prisoner using "Deadly Physical Force" upon another or causing serious physical injury to themselves by striking their head on the steel bars, cement dividing wall or other metal object. In all other situations where a prisoner has become so unruly as to create an immediate danger to the officer, another prisoner, or is refusing all lawful commands to either enter or be removed from a cell the Taser may be deployed as a contact stun device only. All standard procedures will be followed regarding the "Use of Force" as

well as evidence collection, photographs, and other Department procedures.

3. Baton - Impact Weapon

a. The use of the Baton is controlled by the same sections of the Penal Law that control the use of physical force. The Baton is not to be used on a subject unless the member of the Service reasonably believes that the use of the Baton is necessary to affect an arrest, for self-defense, or the defense of a third party against unlawful physical force.

b. If it is necessary to strike a subject with a Baton, 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.

c. When a subject is struck with a Baton, a supervisor must be notified and will respond to the scene as soon as possible. The supervisor will investigate the circumstances and take any other measures deemed appropriate at the time. The supervisor will ensure a Use of Force Report (QVPD-71) is completed by the member using the Baton. The officers Supervisor shall ensure the distribution of copies of the report as indicated in section 1 of this General Order.

d. Unless deadly physical force is justified, avoid strikes to the head and spine. Baton strikes should be directed at the subject's arms and legs which present the greatest threat to a member of the Service. Verbal direction and the opportunity to comply should be given to the subject to minimize the need for repeated strikes.

4. Spit Sock Hood - The hood controls spitting while allowing an officer to observe the subject's face. The medical filtration fabric helps limit exposure to a variety of viruses, bacteria and infectious diseases. Fitting loosely over the head of the subject, the Spit Sock Hood, used in place of other protection methods that may cause unintentional harm, is safer and reduces the risk of injury to the subject.

a. Whenever the Spit Sock Hood is used on a subject, officers are required to complete a Use of Force Report, (QVPD-71).

5. Handcuffs & Restraints - The purpose of handcuffs, flex-cuffs, or transport handcuffs is to restrain the movements of a subject in a manner that provides a safe means of transportation for officers. Restraints also prevent further physical resistance from a subject. The application of handcuffs and restraints with no report of injury does not create the need for the completion of a Use of Force Report.

The departmental policies for the use of restraints are as follows:

a. All subjects taken into custody should be handcuffed behind their back. This is to ensure the safety of the officer or other citizens. The exceptions to this rule are; when the subject has an injury that does not permit his/her arms to move behind the back or, when the subjects age, physical condition, or physical limitations may also indicate a change in this procedure. If handcuffs are applied with the subject's hands in front, a handcuff belt should also be applied.

b. When handcuffs are applied they should be double locked.

END

Christopher B. Isola
Chief of Police

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Use of Force
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