



TOWN OF WALLKILL POLICE DEPARTMENT

ORDER # AGO 003-22	(Section) SUBJECT 20.1 USE OF FORCE: GENERAL	EFFECTIVE DATE 05/25/2022	
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20.1 USE OF FORCE: GENERAL

I. Purpose

Law enforcement officers around the country and here in New York State are authorized to use reasonable and legitimate force in specific circumstances. Federal constitutional and state statutory standards dictate when and how much force can be used. This policy is founded in these standards, but is not intended to be an exhaustive recitation of state and/or federal legal framework governing its use of force. This policy is designed to provide guidance to department Uniformed Members of Service (UMOS) in the use of force in accordance with New York State Executive Law §840(4)(d)(3).

II. Policy

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 UMOS shall be the amount of force that is objectively reasonable under the circumstances for the UMOS 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*¹, is used in this policy and is intended to provide officers with guidelines for the use of force, including deadly physical force.

This policy is written in recognition of the value of all human life and dignity without prejudice to anyone, vesting UMOS with the authority to use reasonable force in order to protect the public welfare.

The terms of this Policy govern the authorization, use, and reporting of force by UMOS of the Town of Wallkill Police Department (TWPDP), whether on-duty or off-duty (while in the performance of a police action).

This policy is written in conjunction with **Section 20.6 Use of Less than Lethal Substances – Devices**.

III. Definitions

A. Objectively Reasonable – An objective standard used to judge the actions of a UMOS. Under this standard, a particular application of force must be judged through

¹ *Graham v. Connor*, 490 U.S. 386 at 396 (1989).



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the perspective of a reasonable UMOS 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.²

- 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.³
- C. Physical Injury** – Impairment of physical condition or substantial pain.⁴
- 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.⁵

IV. 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.⁶
- B. Under the 4th Amendment of the United States Constitution, 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.⁷
- C. In any use of force encounter, the UMOS must terminate their use of force when it is objectively reasonable that a UMOS is fully in physical control of the subject. This will not prevent the UMOS from using additional force if the subject engages in behavior that requires a use of force action by the UMOS.
- D. Pre-existing medical conditions may exacerbate the effects of using force, and ongoing monitoring of an individual’s personal reaction to the application of force is necessary.
- E. Subsequent to the use of force, UMOS should evaluate the subject’s condition and render medical care consistent with training, or request medical care and transport to

² *Graham v. Connor*, 490 U.S. 386 at 396 (1989).

³ New York State Penal Law §10 (11).

⁴ New York State Penal Law §10 (9).

⁵ New York State Penal Law §10 (10).

⁶ New York State Penal Law §35.30 (1).

⁷ *Graham v. Connor*, 490 U.S. 386 at 396 (1989).



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a medical facility when readily apparent or the subject requests medical care.

F. Any injury sustained to the subject prior, during or subsequent to arrest must be reported according to **Section 64.3 Injured/Sick Prisoner** and **Form 64.3a Injured/Sick Prisoner Form** completed.

G. Force shall not be used for retaliatory or punitive reasons.

V. Determining the Objective Reasonableness of Force

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

B. In all cases, only the minimal amount of force necessary to accomplish the mission will be used.

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;
2. The level of immediacy of threat or resistance posed by the subject;
3. The potential for injury to citizens, UMOS, and subjects;⁸
4. The risk, or attempt of the subject to escape;⁹
5. The knowledge, training, and experience of the UMOS;
6. UMOS/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;¹⁰
7. Other environmental conditions or exigent circumstances.

VI. Duty to Intervene

⁸ *Scott v. Harris*, 550 U.S. 372 (2007).

⁹ *Graham v. Connor*, 490 U.S. 386 at 396 (1989).

¹⁰ *Sharrar v. Felsing*, 128 F. 3d 810 (3rd Cir. 1997).



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- A. Any UMOS that witnesses another UMOS using force that he/she reasonably believes to be clearly beyond that which is objectively reasonable under the circumstances shall have the duty and obligation to intercede to prevent the further use of unreasonable force.
- B. A UMOS who observes another officer use force that exceeds the 'objectively reasonable' standard as described in this policy of this section should promptly report these observations to a Supervisor. The Supervisor shall immediately commence a preliminary investigation.

VII. Use of Deadly Physical Force

- A. Deadly physical force may be used by UMOS to protect themselves or another person from what the UMOS reasonably believes is an imminent threat of serious physical injury or death.¹¹
- B. When feasible, and consistent with UMOS safety, the UMOS should identify themselves as a law enforcement officer along with their intent to use deadly physical force (other than firing a warning shot), prior to the use of deadly physical force.
- C. Members of the Town of Wallkill Police Department shall NOT:
 - 1. Discharge a firearm, when, in the professional judgment of a reasonable member of the service, doing so will unnecessarily endanger innocent persons.
 - 2. Discharge a firearm in defense of property.
 - 3. Discharge a firearm to subdue a fleeing felon who presents no threat of imminent death or serious physical injury to the UMOS or another person present.
 - 4. Fire warning shots.
 - 5. Discharge a firearm to summon assistance, except in emergency situations when someone's personal safety is endangered and no other reasonable means to obtain assistance is available.
 - 6. Discharge a firearm at, or from a moving vehicle unless the driver or passenger poses an imminent risk of lethal force against a UMOS or another individual.

¹¹ New York State Penal Law §35.30(1)(c)



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7. Discharge a firearm at a dog or other animal, except:
 - a. to protect a member of the service or another person present from imminent physical injury and there is no reasonable opportunity to retreat or other reasonable means to eliminate the threat, or
 - b. to terminate the life of a severely injured wild animal, when the surrounding areas dictate that it is safe to do so.

VIII. Use of Non-Lethal Physical Force (Cross-Listed with Section 20.6 III)

- A. Non-deadly force may be used by UMOS only when that force is reasonably necessary, and:
 1. To defend self or another person from the use of physical force against the UMOS or another person,
 2. While conducting an investigative stop as authorized under New York State Law,
 3. To apprehend, arrest, prevent or terminate escape.
- B. There are a number of factors (situations) UMOS have to consider when evaluating the use of force:
 1. The severity of the crime committed;
 2. The nature and extent of the threat posed by the subject;
 3. The degree to which the subject resists arrest or detention; and
 4. Any attempt by the subject to evade arrest by flight.
- C. Due to the potential dangers associated with an accidental discharge, using a firearm as a striking instrument shall be avoided except as a last resort.
- D. Handcuffed prisoners resisting arrest or assaulting UMOS present unique use of force decisions for law enforcement officers. UMOS may use only that amount of force reasonably necessary to ensure safe custody or overcome resistance to a lawful arrest.



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- E. The “totality of the circumstances” will influence the kind and extent of force used by a UMOS whenever force is deemed appropriate.
- F. UMOS may use the force reasonably necessary, such as moderate pressure to stop, turn or guide a subject, to conduct an investigative stop without converting the stop into an arrest. Increased levels of force may be used if it is reasonable under the circumstances confronting the UMOS.

IX. Prohibited Uses of Force

- A. Unauthorized weapons/instruments. The carrying or use of any instrument as an offensive or defensive weapon, not specifically authorized or issued as a weapon by the TWPD is prohibited, except when possessed pursuant to official duties. Examples of unauthorized weapons include but are not limited to:
 - 1. Blackjacks, slappers, weighted gloves, stun guns, brass knuckles.
 - 2. Flashlights are not authorized as an offensive weapon to quell resistance except in extreme cases when no other issued instruments are available.
- B. 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.
- C. Force shall not be used by UMOS for the following reasons:
 - 1. To coerce a confession from anyone;
 - 2. To obtain blood, saliva, urine, or other bodily fluid or cells, from an individual for the purposes of scientific testing;
 - 3. Against persons who are handcuffed or restrained unless it is necessary and reasonable to prevent injury, escape, or otherwise overcome active or passive resistance posed by the subject.
 - 4. To prevent a person from ingesting narcotics in an attempt to conceal evidence. In such case, EMS shall be immediately contacted.



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X. Reporting the Use of Force

- A. UMOS who have 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. This includes appropriate and timely medical attention being provided to a party injured as a result of a use of force incident.
 2. The immediate mental health needs of a person shall be based on 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.
- B. For reporting purposes, Executive Law 837-t requires police officers to report any occurrence in which a police officer employs use of force as listed below:
1. 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.
 2. When one of the following is initiated by an officer:
 - a. Brandishes, uses or discharges a firearm at or in the direction of another person;
 - b. Displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas;
 - c. Brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy;
 - d. Brandishes, uses or deploys an electronic control weapon, including, but not limited to, a taser;
 - e. Incidents that result in a complaint of pain from the subject (except minor discomfort complaints from compliant handcuffing) or physical injury to the subject.



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C. Use of Force Resulting in Death

1. The Office of the New York State Attorney General (OAG) has established the Office of Special Investigations (OSI) which, under New York State Executive Law Section 70-b requires the OSI to *“investigate and, if warranted, prosecute any alleged criminal offense or offenses committed by a person, whether or not formally on duty, who is a police officer...or a peace officer...concerning any incident in which the death of a person, whether in custody or not, is caused by an act or omission of such police officer or peace officer or in which the Attorney General determines there is a question as to whether the death was in fact caused by an act or omission of such police officer or peace officer.”*
2. **The OSI will investigate every incident in which a UMOS caused or may have reasonably caused the death of a person, whether the person is armed or unarmed, and whether the UMOS is on duty or not.**
3. After medical assistance is rendered and all threats to public safety have been terminated, the following must be adhered to in order to preserve the OSI investigation:
 - a. Preserve and/or secure any evidence (vehicles are not to be moved unless necessary);
 - b. Identify, and if at all possible, hold witnesses for OAG personnel;
 - c. The Supervisor on duty is to call the OSI Hotline (855-674-6924) and provide their name, rank, agency information, date/time of incident, type and location of incident and brief details of incident;
4. The following on-scene guidelines provided by the OAG must be followed:
 - a. Ensure a Supervisor is on scene or in route to take command of the scene;
 - b. Establish an appropriate crime scene (an expanded crime scene can always be scaled down if necessary);
 - c. Document everything – observations by responding UMOS, original 911 calls, anyone who entered crime scene, who responded (EMS and/or fire personnel);



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- d. Determine if video is available;
- e. Take or provide photographs of involved UMOS at the scene;
- f. Obtain any possible information about the deceased;
- g. Ensure no evidence is released without the permission of OAG personnel;
- h. Ensure no evidence is tampered with, and if evidence has been moved or manipulated in any fashion, document by whom and why;
- i. If incident involved a firearm or taser, ensure the firearm and/or taser is secured;
- j. Notify OAG if any search warrants are needed;
- k. Obtain signed consent forms for any seized evidence, where applicable;
- l. Identify, and where possible, retrieve and safeguard potential electronic evidence (cell phones, EZ Pass, etc.);
- m. If there are any questions as to what steps should be taken, contact the responding OAG personnel.

D. Reporting Procedures for Non-Death Related Incidents

1. All incidents involving the use of force shall be reported to a Supervisor and documented in the Case Report;
2. Determine the physical condition of any injured person and render first aid when appropriate;
3. Request necessary emergency medical aid;
4. Notify Communications of the incident and location;
5. Notify an on-duty Supervisor;
6. **Each UMOS using force in any incident will complete a separate Use of Force Report Form (20.1a) and include a copy in the case report for any use**



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of force as detailed in Section X (B) or X (F) of this policy, or that results in subject injury or complaint of pain (other than minor discomfort from handcuffing).

7. Each UMOS using a taser shall complete form **20.1c Taser Use of Force Report** and submit the original to their Supervisor for review.
 8. The Supervisor will complete a **Supervisor Use of Force Review Form (20.1b)**, and review the **Taser Use of Force Report Form (20.1c)**, when applicable. Copies of both reports shall be placed in the case folder.
- E. Each Taser discharge, including accidental discharges, shall be investigated and documented in a Case Report. Each occurrence in which UMOS discharges (intentionally or accidentally) a Taser at a subject, a **Use of Force Form (20.1a)** shall be completed. A Supervisor shall be notified as soon as practical and follow procedures for reporting and investigating a use of force incident.
- F. Reporting Definitions
1. **Display a chemical agent:** To point a chemical agent at a person or persons.
 2. **Use/Deploy a chemical agent:** The operation of the chemical agent against a person or persons in a manner capable of causing physical injury as defined in Penal Law Article 10.
 3. **Brandishes a firearm:** To point a firearm at a person or persons.
 4. **Uses/Discharges a firearm:** To discharge a firearm at or in the direction of a person or persons.
 5. **Brandishes an electronic control weapon:** To point an electronic control weapon at a person or persons.
 6. **Uses/Deploys electronic control weapon:** The operation of an electronic control weapon against a person or persons in a manner capable of causing physical injury as defined in Penal Law Article 10.
 7. **Uses a chokehold or 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.



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G. When a **Use of Force Report Form (20.1a)** is completed:

1. The original must be submitted to a Supervisor, along with a **Taser Use of Force Form (20.1c)**, when applicable.
2. The Supervisor will place such original(s) along with the original **Supervisor Use of Force Review Form (20.1b)**, when applicable, into the **Department Use of Force Log (20.1d)**.
3. An entry must be made in the **Department Use of Force Log (20.1d)** by the Supervisor to indicate which forms were filed in reference to the incident and record the corresponding log number on the **Use of Force Report Form (20.1a)**.

H. The Records Division, or a designee assigned by the Chief of Police will review the **Use of Force Report Log (20.1d)** and forward the incident information to NYS DCJS in accordance with Executive Law 837-t on a monthly basis.

XI. Procedures For Investigating Use of Force Incidents

- A. Where practicable, a Supervisor should respond to the scene to begin the preliminary force investigation.
 1. A supervisor that is made aware of a force incident shall ensure the completion of a **Use of Force Report (20.1a)** by all UMOS engaging in a reportable use of force and, to the extent practical, make a record of all officers present.
- B. Photographs should be taken which sufficiently documents any injuries or lack thereof to UMOS or subjects, when practical.
- C. A Supervisor must forward a **Supervisor Use of Force Review Form (20.1b)** to the Chief of Police or designee, if:
 1. He/She believes the UMOS's force used was inconsistent with Department Policy,
 2. Any injury is incurred by an officer(s), subject(s) and/or bystander(s).
- D. The Chief of Police or designee will review the Supervisor's report and/or any



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- Forms and Reports:**
- 20.1a Use of Force Report Form
 - 20.1b Supervisor Use of Force Report Form
 - 20.1c Taser Use of Force Report Form
 - 20.1d Department Use of Force Log
 - 64.3a Injured/Sick Prisoner Form