

NEW YORK STATE UNIVERSITY POLICE DEPARTMENT at GENESSEO

	GENERAL ORDER: 335	SUBJECT: Use of Force	
	EFFECTIVE DATE: March 14, 2022	REVIEW DATE:	RESCINDS: Re-Issue
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I. PURPOSE

To establish policy and procedures for the use, investigation and reporting of the use of physical force by members of the University Police Department.

II. POLICY

It is the policy of the University Police Department that any use of force by a sworn member of this department shall be objectively reasonable under the Fourth Amendment to the United States Constitution, justified under Article 35 of the New York State Penal Law, and consistent with use of force training provided by the basic academy and the in-service training provided by this department.

The authority to use force carries with it the need for accountability in order to safeguard the rights of the public, the integrity of the University Police Department and the reputation of SUNY Geneseo. It is this department's policy that members shall report all use of force incidents as defined herein in a timely, complete, and accurate manner. Any officer, who uses force, is a witness to a use of force incident or who authorizes conduct leading to the use of force incident, shall not be allowed to conduct the review/investigation.

The department and its members shall comply with the requirements of all New York State statutes and regulations. The department and its members shall give their full cooperation to all state or federal agencies investigating a use of force incident. In accordance with New York State Executive Law 840(4)(d)(3) and DCJS Accreditation Standard 20.1, this policy has been reviewed and is consistent with the Municipal Police Training Council's Use of Force Model Policy and shall be posted conspicuously on the department's website.

III. DEFINITIONS

- A. **Brandish**: To point a chemical agent, electronic control weapon (ECW), firearm or impact weapon at a person or persons.
- 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.
- C. **Hard Hand Control**: Impact oriented techniques that include knee strikes, elbow strikes, punches and kicks. Control strikes are used to subdue a subject and include strikes to pressure points such as: the common peroneal nerve (side of the leg), radial nerve (top of the forearm) or brachial plexus origin (side of neck).
- D. **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.
- E. **Officer-Involved Shooting (OIS)**: The accidental or intentional discharge of a firearm at a person by a police officer, whether on or off-duty.

- F. **Physical Force**: Any physical strike, or contact with an instrument, of a person; any intentional attempted physical strike or instrumental contact that does not take effect; or any significant physical contact that restricts the movement of a person. The term includes brandishing a weapon, discharge of a firearm, use of chemical agents, use of impact weapons, use of an ECW, taking a subject to the ground and any physical contact that includes control techniques. The term does not include escorting or handcuffing a person with no resistance.
- G. **Physical Injury**: Impairment of physical condition or substantial pain.
- H. **Soft Hand Control**: The use of physical strength and skill in defensive tactics to control arrestees that are reluctant to be taken into custody and offer some degree of physical resistance. Such techniques are not impact oriented and include pain compliance pressure points, takedowns, joint locks and simply grabbing a subject. Touching or escort holds may be appropriate for use against levels of passive physical resistance.
- I. **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.
- J. **Supervisor**: A supervisor includes a Lieutenant and above who is assigned responsibility for supervising officers.
- K. **Weapon**: Any instrument, article or substance, including a vehicle, which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious bodily injury. The term includes, but is not limited to chemical agents, edged weapons, ECWs, firearms and impact weapons.

IV. USE OF FORCE

- A. Under the Fourth Amendment to the United States Constitution, a police officer may only use such force as is "objectively reasonable" under the circumstances.
- B. Pursuant to PL § 35.30(1), members may use physical force:
 - 1. to effect an arrest;
 - 2. to prevent an escape from custody;
 - 3. in self-defense; and
 - 4. to defend a third person from the use or imminent use of physical force.

C. Force Levels

- 1. Level 1 – Level 1 use of force includes:
 - a. the brandishing of any chemical agent, impact weapon, (ECW), edged weapon or firearm;
 - b. the use of soft-hand or escort techniques;
 - c. the on-duty discharge of a firearm to dispatch an injured animal.
- 2. Level 2 – Level 2 use of force includes:
 - a. the use of hard-hand techniques;
 - b. the use of takedown techniques;
 - c. the use or attempted use of any chemical agent or electronic control weapon;

- d. the deployment of a canine;
- e. the on-duty discharge of a firearm at an animal, other than to dispatch an injured animal;
- f. any use of force which results in a physical injury to a suspect or third person.

3. Level 3 – Level 3 use of force includes:

- a. any officer-involved shooting;
- b. any use of force that is likely to result in serious physical injury or death;
- c. any use of force that causes serious physical injury or death.

V. 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.
- C. Where feasible, some warning should be given prior to the use of deadly physical force.

VI. PROHIBITED USE OF FORCE

- A. Members are prohibited from using physical force:
 - 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.
- B. Members are prohibited from:
 - 1. carrying or using any non-issued or unapproved equipment to apply physical force, except in emergency situations when a police officer must use any resources at their disposal;
 - 2. firing warning shots;
 - 3. shooting from a moving vehicle;
 - 4. shooting at a moving vehicle;
 - 5. using deadly force against a person who does not pose a risk of serious physical injury or death to anyone but themselves;

6. applying a chokehold (i.e. applying 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). Under PL § 121.13-a, a person is guilty of aggravated strangulation when, being a police officer as defined in CPL § 1.20(34) or a peace officer as defined in CPL § 2.10, he or she commits the crime of criminal obstruction of breathing or blood circulation, as defined in PL § 121.11, or uses a chokehold or similar restraint, as described in New York State Executive Law § 837-t(1)(b), and thereby causes serious physical injury or death to another person.

VII. DUTIES

A. Duty to Intervene

1. 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.
2. Any officer who observes another officer use force that exceeds the degree of force as described in subdivision 1 of this section should promptly report these observations to a supervisor.

B. Duty to Provide Medical Attention

1. Pursuant to New York State Civil Rights Law Article 3 § 28, when a person is under arrest or otherwise in the custody of a member of this department, such member shall have a duty to provide attention to the medical and mental health needs of such person and obtain assistance and treatment of such needs for such person, which are reasonable and provided in good faith under the circumstances.
2. After any use of force, medical assistance shall be obtained for any person who exhibits signs of physical distress, mental health distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

VIII. REPORTING USE OF FORCE INCIDENTS

A. Notifications

1. On-Duty Use of Force Incidents

Any member involved in a use of force incident shall notify the on-duty supervisor. If there is no on-duty supervisor, the member shall notify the Assistant Chief.

2. Off-Duty Use of Force Incidents

Any member involved in off-duty use of force incidents pursuant to their status as a police officer shall immediately notify the law enforcement agency with primary jurisdiction where the incident occurred. The member shall then contact the University Police Department and notify the on-duty supervisor as soon as possible. If there is no on-duty supervisor, the member shall notify the Assistant Chief.

3. Report of Discharge of a Weapon

Pursuant to New York State Executive Law § 837-v(1), any member who discharges his or her weapon while on duty or off duty under circumstances wherein a person could be struck by a bullet from the weapon, including situations wherein such officer discharges his or her weapon in the direction of a person, shall verbally report the incident to his or her

superiors within six hours of the occurrence of the incident and shall prepare and file a written report of the incident within forty-eight (48) hours of the occurrence of the incident.

B. Reporting Use of Force Incidents

1. Any officer, who uses force, is a witness to a use of force incident or who authorizes conduct leading to the use of force incident, shall complete a Use of Force Report form (Attachment – Use of Force Report).
2. The completed Use of Force Report form shall be submitted to the shift supervisor prior to the officer completing his/her tour of duty or in accordance with General Order 341 for a critical incident. When completing the report, officers are also required to provide a written narrative statement of the event. The following additional procedures shall apply:
 - a. Each officer who uses force shall submit a separate written Use of Force Report. The officer must articulate, in specific detail, the facts and circumstances surrounding the force used.
 - b. Any officer who witnesses a reportable use of force shall advise a shift supervisor, or appropriate commanding officer, and shall submit required reports.
 - c. If an officer uses force on more than one subject during the same event, the officer shall complete one Use of Force Report form.
 - d. If an officer is unable to complete the report due to injury, the officer's immediate supervisor will complete it to the extent possible.
 - e. A reportable use of force shall be reviewed and investigated by a supervisor of a higher rank than the officer using force (the reporting officer).

C. Reporting duties of law enforcement departments with respect to arrest-related deaths.

1. Pursuant to New York State Executive Law § 837-v(1), the Chief of Police shall promptly report any arrest-related death to DCJS. Such report shall include the following information:
 - a. the number of arrest-related deaths;
 - b. the race, ethnicity, age and sex of the individual;
 - c. the zip code or location where the death occurred; and
 - d. a brief description of the circumstances surrounding the arrest-related death.

D. New York State Office of the Attorney General Office of Special Investigation

1. New York State Executive Law § 70-b established the Office of Special Investigation (OSI) within the Office of the New York State Attorney General (OAG).
2. The legislation requires 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."
3. All members of this department will comply with the Office of Special Investigations Law Enforcement Guidelines.

E. New York State Office of the Attorney Law Enforcement Misconduct Investigative Office

1. New York State Executive Law § 75 established the Law Enforcement Misconduct Investigative Office within the Office of the New York State Attorney General. The head of the office shall be a deputy attorney general who shall be appointed by the attorney general.
2. The deputy attorney general shall receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of:
 - a. corruption;
 - b. fraud;
 - c. use of excessive force;
 - d. criminal activity;
 - e. conflicts of interest; or
 - f. abuse of any covered agency.
3. Every officer or employee in a covered agency shall report promptly to the law enforcement misconduct investigative office any information concerning corruption, fraud, use of excessive force, criminal activity, conflicts of interest or abuse by another officer or employee relating to his or her office or employment, or by a person having business dealings with a covered agency relating to those dealings.

F. Use of Force Reporting to the Division of Criminal Justice Services (DCJS)

1. Pursuant to New York State Executive Law § 837-t(1), the Chief of Police shall report to DCJS, in a form and manner as defined in regulations by DCJS, any instance or occurrence in which a police officer, as defined in CPL § 1.20(34), or a peace officer, as defined in CPL § 2.10, employs the use of force as follows:
 - a. brandishes, uses or discharges a firearm at or in the direction of another person;
 - b. 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;
 - c. displays, uses or deploys a chemical agent including, but not limited to, oleoresin capsicum, pepper spray or tear gas;
 - d. brandishes, uses or deploys an impact weapon including, but not limited to, a baton or billy;
 - e. brandishes, uses or deploys an ECW including, but not limited to, an electronic stun gun, flash bomb or long-range acoustic device; or
 - f. engages in conduct which results in the death or serious physical injury of another person.

IX. INVESTIGATING USE OF FORCE INCIDENTS

A. Supervisory Responsibilities

1. General
 - a. The supervisor, after being notified of a Level 2 or 3 use of force, shall immediately respond to the scene and conduct a preliminary investigation into the use of force.

- b. The supervisor, after being notified of an officer-involved shooting, shall follow the procedures set forth in G.O. 341 (Investigations of Police Involved Shootings, Serious Injury or Death Incidents).
- c. While at the scene of a Level 2 or 3 use of force, the supervisor shall visibly inspect the subject(s) for injury, interview the subject for complaints of pain and ensure that the subject receives needed medical attention.
- d. While at the scene of a Level 2 or 3 use of force, the supervisor will photograph or videotape all claimed or visible injuries and all areas where the officer reports striking the subject. Photographs of the subject shall be taken even when there are no signs of injury.
- e. The supervisor shall, within a reasonable amount of time after being notified of a reportable use of force, obtain a case number from Dispatch.

2. Level 1 Use of Force

- a. When notified of a Level 1 use of force, the shift supervisor shall do the following:
 - i. document and review the officers Use of Force Report form;
 - ii. obtain, review and sign the completed Use of Force Report form from each officer prior to the end of the tour of duty;
 - iii. evaluate the basis for the use of force and determine whether the officer's actions were within Department policies;
 - iv. forward a copy of the signed completed Use of Force Report form to the Chief of Police prior to the end of the tour of duty.
- b. The Assistant Chief shall review the Use of Force Report and the supervisor's findings and:
 - i. if necessary, return the report to the shift supervisor to correct any identified deficiencies; or
 - ii. approve the report and forward to the Chief of Police for filing within fifteen (15) calendar days.
- c. The Chief of Police may, in his or her discretion, return the Level 1 use of force investigation to the supervisor for further review and investigation.

3. Level 2 Use of Force

- a. When notified of a Level 2 use of force the supervisor will respond to the scene on a priority basis and shall do the following:
 - i. document, as necessary, the scene of the incident;
 - ii. interview any physician or qualified health care provider concerning the injuries sustained and their consistency with uses of force reported;
 - iii. collect, or cause to be collected, all evidence of use of force;
 - iv. identify and interview witnesses other than officers as appropriate;
 - v. obtain, review and sign the completed Use of Force Report form from each officer prior to the end of the tour of duty;

- vi. forward a copy of the signed completed Use of Force Report Form to the Chief of Police prior to the end of the tour of duty;
- vii. summarize his or her investigation and findings.

- b. The Chief of Police shall review a supervisor's Level 2 reports/reviews within thirty (30) calendar days.
- c. The Chief of Police shall review all Level 2 Use of Force Investigations and findings made by the supervisor.

4. Level 3 Use of Force

- a. In cases involving a Level 3 use of force, or a serious use of force as defined by this policy, the supervisor shall:
 - i. immediately respond to and secure the scene;
 - ii. ensure that officers and citizens receive appropriate medical attention;
 - iii. notify the dispatch that an officer has been involved in a confirmed Level 3 use of force;
 - iv. document, as necessary, the scene of the incident;
 - v. secure, or cause to be secured, all evidence of use of force for appropriate processing by the investigative units;
 - vi. identify witnesses, both officer and civilian, and ensure that they are segregated for interview by investigating units;
 - vii. as soon as possible, secure the weapon(s) used by the involved officer(s).
- b. Dispatch will immediately notify the Chief of Police. The Chief of Police will initiate an Internal Affairs investigation to determine whether the officer(s) followed Department policy.
- c. The supervisor, after being notified of a Level 3 officer involved shooting, shall follow the procedures set forth in G.O. 341 (Investigations of Police Involved Shootings, Serious Injury or Death Incidents).

B. Assistant Chief of Police

1. Ensure that the supervisor's respond to the scenes of reportable use of force as required.
2. Review Use of Force investigations submitted by the immediate supervisor and:
 - a. verify that all applicable Use of Force Report forms and accompanying paperwork were submitted within the specified timelines;
 - b. ensure that the Use of Force Report forms and accompanying paperwork were reviewed and signed by the immediate supervisor; and
 - c. verify that the use of force is reported accurately and completely, and that all information concerning the incident/arrest is consistent in all reports. Where there are discrepancies between the reports, or the Assistant Chief determines that further investigation is required, he/she shall return the investigation to the appropriate supervisor for corrections, clarification and additional investigative steps as needed.

3. Once the investigation is approved, determine the disposition for each allegation of use of force:
 - a. Justified, Within Department Policy

A use of force is determined to be justified, and during the course of the incident the subject officers did not violate a University Police Department policy.
 - b. Justified, Policy Violation

A use of force is determined to be justified, but during the course of the incident the subject officers violated a University Police Department policy.
 - c. Justified, Training Opportunity

A use of force is determined to be justified, no University Police Department policy violations occurred, but the investigation revealed tactical error(s) that could be addressed through non-disciplinary, tactical improvement training.
 - d. Not Justified, Not within Department Policy

A use of force is determined to be not justified, and during the course of the incident the subject officer violated University Police Department policy.
4. The Assistant Chief shall submit findings and conclusions to the Chief of Police within fifteen (15) working days after receipt of the investigative case file from the investigating supervisor.
5. The Assistant Chief shall hold supervisors accountable for the quality of their performance reviews and investigations.
6. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when a supervisor fails to conduct a timely and thorough investigation, neglects to recommend appropriate corrective action or neglects to implement appropriate corrective action.

X. DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

- A. Whether a member of this department used excessive force in the course of making an arrest, investigatory stop or other seizure of a person is analyzed under the objective reasonableness standard.
- B. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.
- C. The calculus of reasonableness must embody 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.
- D. The question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.
- E. 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 the 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. considerations such as the officer or suspect's age, size, relative strength, skill level, injury or exhaustion and the number of officers or suspects;
7. other environmental conditions or exigent circumstances.

XI. TRAINING

The Department shall coordinate and review all use of force policies and training to ensure quality, consistency, and compliance with applicable law and Department policy. Department shall provide the appropriate training that will enhance the abilities of supervisors to conduct effective, complete and thorough use of force investigations.

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Attachment – Use of Force Report