



Policy Manual

300

TITLE

§300 USE OF FORCE

DISTRIBUTION All Members	RELATED ORDERS OR DIRECTIVES	RESCINDS All Previous Directives
NYLEAP STANDARD(S) 20.1, 21.1(a), 21.1(c), 21.2, 21.2(c), 33.1	TOTAL PAGES 10	REVISION

300.01. PURPOSE AND SCOPE¹

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 use of force. The policy is designed to provide guidance to individual agencies as they develop their own use of force policies in accordance with Executive Law §840(4)(d)(3).

This policy is not intended to endorse or prohibit any particular tactic, technique, or method of employing force. Separate policy guidance and training should be provided for each of the available force instrumentalities made available to officers.

300.01 (1) DEFINITIONS

Definitions related to this policy include:

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.¹

¹ Graham, 490 U.S. 396 (1989)

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.²

Physical Injury – Impairment of physical condition or substantial pain.³

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.⁴

300.02. POLICY

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness.⁵ The amount of force that is used by the officers shall be the amount of force that is objectively reasonable under the circumstances for the officer 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*, is used in this policy and is intended to provide officers with guidelines for the use of force, including deadly physical force.

As the Supreme Court has recognized, this reasonableness inquiry embodies “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.”⁶

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.

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

3 NY Penal Law § 10 (9) (McKinney 2013)

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

5 Force which is objectively reasonable is insulated from criminal liability through Article 35 of the NYS Penal Law and civil liability by the 4th Amendment standard of objective reasonableness.

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

300.02 (1) DUTY TO INTERCEDE

- (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 paragraph (a) of this section should promptly report these observations to a supervisor.

300.03. USE OF FORCE¹

- (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.⁷
- (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.⁸

300.03 (1) USE OF FORCE TO EFFECT AN ARREST

- (a) It is not a use of force when someone allows him/herself to be searched, escorted, handcuffed or restrained.

300.03 (2) FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.⁹

Factors that may be used in determining the reasonableness of force include, but are not limited to:¹⁰

- (a) The severity of the crime or circumstance;¹¹

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

⁸ Graham, 490 U.S. at 396 (1989)

⁹ NY Penal Law and § 35.30(1) (McKinney 2013)

¹⁰ Graham, 490 U.S. at 396 (1989)

¹¹ Ibid

- (b) The level and immediacy of threat or resistance posed by the suspect;¹²
- (c) The potential for injury to citizens, officers, and suspects;¹³
- (d) The risk or attempt of the suspect to escape;¹⁴
- (e) The knowledge, training, and experience of the officer;¹⁵
- (f) Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;¹⁶
- (g) Other environmental conditions or exigent circumstances.¹⁷

300.04. USE OF DEADLY PHYSICAL FORCE

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.¹⁸

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:

- (a) The individual has a weapon or is attempting to access one and it is reasonable to believe the individual intends to use it against the officer or another person.
- (b) The individual is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the individual intends to do so.

300.04 (1) USE OF DEADLY PHYSICAL FORCE TO STOP A FLEEING SUSPECT

Deadly physical force may be used to stop a fleeing suspect where:

¹² Ibid

¹³ Scott v. Harris, 550 U.S. 372 (2007)

¹⁴ Graham, 490 U.S. at 396 (1989)

¹⁵ 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)

¹⁶ Sharrar v. Felsing, 128 F. 3d 810 (3rd Cir. 1997) (numbers of officers or subjects)

¹⁷ Courts have repeatedly declined to provide an exhaustive listing of factors. Chew v. Gates, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)

¹⁸ NY Penal Law and § 35.30(1)(c)(McKinney 2013)

- (a) 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,
- (b) 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.¹⁹

300.04 (2) CHOKEHOLDS AND OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION

- (a) 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.²⁰

300.04 (3) SHOOTING AT OR FROM MOVING VEHICLES

- (a) Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.
- (b) Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

300.05. PROHIBITED USES OF FORCE

Force shall not be used by an officer for the following reasons:

- (a) To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;
- (b) To coerce a confession from a subject in custody;
- (c) 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;

¹⁹ 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.

²⁰ NY Penal Law § 121.13-a establishes the crime of Aggravated Strangulation.

300.06. REPORTING THE USE OF FORCE^{2 3}

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or law.

300.06 (1) NOTIFICATIONS TO SUPERVISOR²

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (b) The individual subjected to the force complained of injury or continuing pain.
- (c) The individual indicates an intent to pursue litigation.
- (d) Any application of a control device.
- (e) Any application of a restraint device other than handcuffs or shackles.
- (f) The individual subjected to the force was rendered unconscious.
- (g) An individual was struck or kicked.
- (h) An individual alleges any of the above has occurred.

300.06 (2) DEPARTMENTAL USE OF FORCE REPORT

Members involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete a departmental use of force report for the following situations:

- (a) Use of force that results in a physical injury.
- (b) Use of force incidents that a reasonable person would believe is likely to cause an injury.
- (c) Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
- (d) Incidents where a conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed.

(e) Incidents where a firearm was discharged at a subject.²¹

300.06 (3) STANDARDIZED USE OF FORCE FORM

(a) A standardized use of force form should be used to document any reportable use of force incident.²²

300.07. MEDICAL CONSIDERATIONS

A police or peace officer or other law enforcement entity who has 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.²³

Officers should document any requests for necessary medical or mental health treatment as well as efforts of police to arrange for such treatment.

- (a) This includes appropriate and timely medical attention being provided to a party injured as a result of a use of force incident.
- (b) The immediate mental health needs of a person shall be based upon 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 a serious harm to themselves or others.²⁴
- (c) Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical 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.
- (d) Based upon the officer's initial assessment of the nature and extent of the individual's injuries, medical assistance may consist of examination by an emergency medical services provider or medical personnel at a hospital or jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer

²¹ NY EXC § 837-v requires that any discharge of a weapon, while either on duty or off duty, in the direction of a person be verbally reported to the involved officer's supervisor within six hours and a written report prepared within forty-eight hours of occurrence.

²² Chiefs of police departments, County Sheriffs, and the Superintendent of State Police should consider utilizing these forms to ensure compliance with the administrative reporting requirement of EXC §837-t.

²³ NY Civil Rights Law § 28

²⁴ NY Mental Hygiene Law § 9.41

and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

- (e) The on-scene supervisor, or if not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).
- (f) Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called “excited delirium”), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away (see the Medical Aid and Response Policy).

300.08. SUPERVISOR RESPONSIBILITIES^{4 5 6 2 3}

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) When possible, separately obtain a recorded interview with the individual upon whom force was applied. If this interview is conducted without the individual having voluntarily waived his/her Miranda rights, the following shall apply:
 1. The content of the interview should not be summarized or included in any related criminal charges.
 2. The fact that a recorded interview was conducted should be documented in a property or other report.
 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.

(d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas.

1. These photographs should be retained until all potential for civil litigation has expired.

(e) Identify any witnesses not already included in related reports.

(f) Review and approve all related reports.

(g) Determine if there is any indication that the individual may pursue civil litigation.

1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.

(h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy noncompliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.08 (1) PATROL SUPERVISOR RESPONSIBILITY^{2 5 3 6 7}

The Patrol Supervisor shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to address any training issues.

300.09. TRAINING⁸

(a) All officers should 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.²⁵

²⁵ EXC § 840(4)(d)(2)(vii)

¹ NYSLEAP – 20.1

² NYSLEAP – 21.1(a)

³ NYSLEAP – 21.2

⁴ NYSLEAP – 40.2

⁵ NYSLEAP 21.1(c)

⁶ NYSLEAP 21.2(c)

⁷ NYSLEAP – 21.1(d)

⁸ NYSLEAP – 33.1