

Use of Force

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this office is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Executive Law § 840).

300.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury. This includes force that, under the circumstances, is readily capable of causing death or serious physical injury (Executive Law § 840).

Force - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Deputies are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Deputies must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Oneida County Sheriff's Office recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting deputies with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

300.2.1 DUTY TO INTERVENE

Any member present and observing another member 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.. A deputy who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

300.3 USE OF FORCE

Deputies shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the deputy at the time of the event to accomplish a legitimate law enforcement purpose.

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The reasonableness of force will be judged from the perspective of a reasonable deputy on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that deputies are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation a deputy might encounter, deputies are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which deputies reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by this office. Deputies may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires a deputy to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

A police officer or a peace officer may use reasonable physical force to effect an arrest, prevent escape of a person from custody, or in defense of self or others from imminent physical force (Penal Law § 35.30).

Force shall not be used by an deputy to (Executive Law § 840):

- (a) Extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present.
- (b) Coerce a confession from a subject in custody.
- (c) Obtain blood, saliva, urine, or other bodily fluid or cells from an individual for scientific testing in lieu of a court order where required.

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether a deputy has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include but are not limited to:

- (a) Immediacy and severity of the threat to deputies or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the deputy at the time.
- (c) Deputy/subject factors (i.e., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of deputies available vs. subjects).
- (d) The effects of drugs or alcohol.

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- (e) Individual's mental state or capacity.
- (f) Proximity of weapons or dangerous improvised devices.
- (g) The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
- (h) The availability of other options and their possible effectiveness.
- (i) Seriousness of the suspected offense or reason for contact with the individual.
- (j) Training and experience of the deputy.
- (k) Potential for injury to deputies, suspects and others.
- (l) Whether the individual appears to be resisting, attempting to evade arrest by flight or is attacking the deputy.
- (m) The risk and reasonably foreseeable consequences of escape.
- (n) The apparent need for immediate control of the individual or a prompt resolution of the situation.
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the deputy or others.
- (p) Prior contacts with the individual or awareness of any propensity for violence.
- (q) Any other exigent circumstances.

300.3.3 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Deputies may only apply those pain compliance techniques for which they have successfully completed office-approved training. Deputies utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the individual can comply with the direction or orders of the deputy.
- (c) Whether the individual has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the deputy determines that compliance has been achieved.

300.3.4 PROHIBITED USES OF FORCE

Force shall not be used by any member 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;

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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;

300.4 USE OF DEADLY PHYSICAL FORCE

Use of deadly force is justified in the following circumstances:

A deputy may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.

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

- (a) The member 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 member 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 (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)

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 a deputy 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 deputy 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.

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. Deputies should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. A deputy should only discharge a firearm at a moving vehicle or its occupants when the deputy 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 deputy or others.

Deputies should not shoot at any part of a vehicle in an attempt to disable the vehicle.

300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this office shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The deputy 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

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purposes, the Office may require the completion of additional report forms, as specified in office policy, procedure, or law (Executive Law § 840).

300.5.1 NOTIFICATIONS TO SUPERVISORS

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

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

300.6 MEDICAL CONSIDERATIONS

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.

Based upon the deputy'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 deputy 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.

The on-scene supervisor, or if not available, the primary handling deputy 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 deputy reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

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 deputies to be brought under control, may be at an increased risk of sudden death. Calls involving

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these persons should be considered medical emergencies. Deputies 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).

300.7 SUPERVISOR RESPONSIBILITIES

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 (Executive Law § 840):

- (a) Obtain the basic facts from the involved deputies. 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, including any deputies present at the incident.
- (f) Review and approve all related reports.
 1. Supervisors should require that deputies who engaged in the use of force submit the appropriate report.
- (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.
 1. Disciplinary actions will be consistent with any applicable disciplinary guidelines and collective bargaining agreements.

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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.

300.7.1 SHIFT SUPERVISOR RESPONSIBILITIES

The Shift 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.

The Shift Supervisor should ensure that the Records Manager is provided with enough information to meet the use of force reporting requirements for the DCJS (Executive Law § 837-t; 9 NYCRR 6058.3).

300.7.2 SUPERVISOR'S MANDATORY REPORTING SPECIFICATIONS:

Any members involved in the following uses of force, will notify their supervisor immediately. The supervisor will respond to the scene and conduct their investigation as specified above. The supervisor will then notify the operations lieutenant, operations captain and administrative captain of the incident. The reports regarding the investigation will be forwarded to the accreditation manager who shall ensure that reports are submitted to the DCJS when a deputy (Executive Law § 837-t; 9 NYCRR 6058.3):

1. **Displays a chemical agent** – To point a chemical agent at a subject.
2. **Uses/Deploys a chemical agent** – The operation of the chemical agent against a person in a manner capable of causing physical injury.
3. **Brandishes/Uses/Discharges a firearm** – The operation of a firearm against a person in a manner capable of causing physical injury.
4. **Brandishes/Uses/Deploys an impact weapon or electronic control weapon** – The operation of an impact weapon or electronic control weapon against a person in a manner capable of causing physical injury.
5. **Uses a chokehold or other 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.
6. **Engages in Conduct that Resulted in Death**
7. **Serious bodily injury is involved**- Bodily injury that creates or causes a substantial risk of death; or; unconsciousness; or serious and protracted disfigurement; or protracted loss or impairment of the function of any bodily member, organ or mental faculty.

[See attachment: Defining Use of Force Reporting Incidents 12-31-2019.pdf](#)

300.8 TRAINING

Deputies will receive annual training on this policy and demonstrate their knowledge and understanding. Training topics should include applications of use of force and conflict strategies as required by the State Use of Force Model Policy (Executive Law § 840).

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300.9 PUBLICATION OF POLICY

This policy shall be readily available to the public upon request and shall be posted on the office website (Executive Law § 840).

Attachments

Defining Use of Force Reporting Incidents 12-31-2019.pdf



Division of Criminal Justice Services

MEMORANDUM

TO: New York State Law Enforcement Agencies

FROM: Mary Schmitt, New York State Crime Reporting Program

DATE: December 31, 2019

SUBJECT: Defining Use of Force Reporting Incidents

REPORTING ALERT: DEFINING USE OF FORCE REPORTING INCIDENTS

The Division of Criminal Justice Services (DCJS) convened a panel of key stakeholders to define the terms of reportable Use of Force incidents in order to assist agencies with reporting by providing clarity of the terms used in the statute. On December 4, 2019, the NYS Municipal Police Training Council (MPTC) endorsed these definitions for the Use of Force reporting. DCJS has updated the online reporting tool to accommodate the definitions for Use of Force reporting and will begin using these categories on January 1, 2020.

Effective immediately, the categories of reportable Use of Force incidents are as follows:

- **Display a chemical agent** – To point a chemical agent at a subject.
- **Use/Deploy a chemical agent** – The operation of the chemical agent against a person in a manner capable of causing physical injury.
- **Brandishes/Uses/Discharges a firearm** – The operation of a firearm against a person in a manner capable of causing physical injury.
- **Brandishes/Uses/Deploys an impact weapon or electronic control weapon** – The operation of an impact weapon or electronic control weapon against a person in a manner capable of causing physical injury.
- **Uses a chokehold or other 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.
- **Conduct that Resulted in Death**

- **Serious bodily injury** - Bodily injury that creates or causes:
 - a substantial risk of death; or
 - unconsciousness; or
 - serious and protracted disfigurement; or
 - protracted loss or impairment of the function of any bodily member, organ or mental faculty.

Updated Reporting Tool

The online reporting tool, which includes the updated Use of Force categories and definitions, can be accessed by entering the following address in your web browser:

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

DCJS is currently developing a permanent data collection mechanism, which will be located on the IJ Portal and is anticipated to be completed in 2020. DCJS will inform all agencies when Use of Force incidents will be reported through the IJ Portal.

Please contact DCJS at useofforce@dcjs.ny.gov for more information and/or questions about the use of force reporting process. I hope that this information is helpful to you and your agency. Thank you.