

DEPARTMENT MANUAL**SECTION 103-1**

Issue Date: 4/16/2021	Effective Date: 5/15/2021	Revisions:	Chapter: Use of Force
References: NEW YORK STATE ACCREDITATION STANDARDS Standard 20.1 Necessary Force Standard 21.2 Review of Force Causing Injuries Standard 32.4 Use of Less Lethal Substances/Devices			
Special Instructions: This Policy supersedes all previous Policies and Procedures			
Distribution: All Members of the Department			Page: 1
Issuing Authority: Chief John Barbelet			

Purpose

The purpose of this order is to establish Standard Operating Procedures and reporting requirements for use of non-deadly force by police officers. This procedure is intended to apply the use of force for purposes of overcoming resistance to arrest or for defense against physical assault.

Policy

It shall be the policy of the Tarrytown Police Department that members shall utilize only the necessary amount of force to accomplish the performance of their official duties in accordance with current department policy and procedure and within the limits outlined in Article 35 of the New York State Penal Law.

A police officer, in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape from custody of a person whom he/she reasonably believes to have committed an offense, may use less than lethal force to the extent he/she reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody, or to defend himself, or a third person from what he/she reasonably believes to be the use or imminent use of physical force.

Prior to engaging in less than lethal force with a person, the officer should, in the initial stages of the confrontation, attempt to resolve the matter by use of verbal persuasion. If the situation escalates further, officers should limit their response to what is necessary to accomplish their lawful objectives. This would include verbalizing at a safe distance until reinforcements or specialists could arrive on the scene, if at all possible. In any event, officers should use discretion when using less than lethal force and adhere to the progression of force table contained in this General Order when circumstances necessitate the use of force.

Definitions

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



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2. **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 (see *Graham v Connor*).
3. **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.
4. **Physical Injury-** Impairment of physical condition or substantial pain.
5. **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.

Progression of Force/Force Continuum

When the use of force is necessary and appropriate, officers shall, to the extent possible, utilize an escalating scale of options and will not use a more forceful measure unless it is determined that a lower level of force is inadequate. A stage in the progression may be skipped due to the circumstances and the progression is not always upward. The officer must continually assess the circumstances and, as appropriate, escalate or de-escalate the use of force. Typically, levels of force which are available to officers are as follows:

1. **Verbal Direction:** This is the least intrusive level of force and may vary from a simple request to an emphatic command.
2. **Physical Direction:** Frequently, subjects are reluctant to be taken into custody and offer some degree of physical resistance. Normally, all that is required to overcome this resistance is physical strength and some skill in defensive tactics.
3. **Inflammatory Agent:** Oleoresin Capsicum (O.C.) aerosol spray. Normally used when lesser levels of force are ineffective or inappropriate.
4. **Taser:** To be used when lesser means of restraint have failed or are not appropriate.
5. **Impact Weapon:** The actions of an opponent may compel an officer to use a more intensive level of force, specifically the Asp-Tactical Baton.
6. **Firearm:** The highest level of force available to an officer. Firing a weapon at another person is restricted to those situations in which deadly physical force is justified.

Authorized Duty Knife



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Department policy allows members to carry a folding type utility knife on their duty belt. Although a knife by definition is a weapon, the purpose of the knife on the duty belt is to be used as a tool. The knife is not be regarded as an offensive or defensive weapon except under an extreme police emergency and as a last resort under circumstances in which deadly physical force would be authorized as outlined in the Deadly Physical Force Policy.

Determining the Objective 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. 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

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.

An officer who observes another officer use force that exceeds the degree of force that is reasonable and necessary, shall promptly report these observations to the tour supervisor. Additionally, Officers shall review the Duty to Intervene General Order, Section 103-12 to insure compliance with an Officer's entire duty to intervene.

Prohibited Uses of Force

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

1. To extract an item from the anus or vagina of a suspect without a warrant, except where exigent circumstances are present. Officers shall not extract an item from the anus or vagina even with a warrant. The subject shall be



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transported to a medical facility with a copy of the warrant where a physician shall extract the item;

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.
5. No Officer shall use a choke hold to subdue any person. A choke hold shall include, but shall not be limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce the intake of air.

Note: Whenever it becomes necessary to take a violent or resisting subject into custody, Officers shall utilize suitable tactics in a coordinated effort to overcome resistance. The Tour Supervisor shall direct and control all activity at the scene. Whenever possible, Officers shall make every effort to avoid tactics such as sitting or standing on a subject's chest or back, which may result in chest compression, thereby reducing the subject's ability to breathe.

Procedure

1. Any officer using Physical Force or Defensive Force pursuant to his/her duties as a police officer (whether on or off duty) shall report or cause to be reported, all facts relative to the incident on a Department Use of Force Report Form.
2. Sworn members shall report or cause to be reported all facts relative to the incident on a Department Use of Force Form and any required case and supplemental reports whenever an action is taken that results in, or is alleged to result in injury or death of another person.
3. Any incidents involving the Use of Force shall be documented in the Department Record Management System (i.e. Blotter Entry, Aided/Case/Arrest Reports, if applicable).
4. Only issued or approved equipment shall be carried on duty and used when applying any level of non-deadly force, except in emergency situations when an officer must use any resources at his/her disposal. The use of the Asp Expandable Baton, Taser, and O.C. Spray are considered a use of force and as such, must be reported on a Department Use of Force



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Form when utilized. The Taser X-26P, Asp Expandable Baton and O.C. Spray are the only approved non-lethal weapons issued by the department.

5. Officers must be trained in the proper use of less lethal substances and other devices in which they did not receive training in the basic course for police officers. All officers using less lethal substances or other devices must successfully complete an initial training course prior to the issuance of these devices and substances, and annual training thereafter.
6. Use of restraining devices (i.e. handcuffing) is mandatory on all prisoners, unless in the officer's judgement unusual circumstances exist which make the use of restraining devices impossible or unnecessary (i.e. prisoner is elderly, handicapped, pregnant female etc.). The mere placing of handcuffs on a prisoner will not be construed to be a use of physical force. However, when the handcuffs become an appliance to exert force necessary to further subdue a prisoner or where the suspect physically resists the application of handcuffs, a use of physical force has occurred, and the necessary reports must be completed.
7. For more information regarding the handcuffing of a subject and the use of force, see the General Order regarding Handcuffing.
8. After any level of non-lethal force is used, an officer shall immediately evaluate the need for medical attention or treatment for that person upon whom the force was used and arrange for such treatment when:
 - A. The person has a visible injury, or;
 - B. The person complains of injury or discomfort, or requests medical attention.
9. Persons having visible injuries, complaining of injury or discomfort and refuses medical treatment must still be evaluated by Emergency Medical Services (EMS). TVAC and the Greenburgh Paramedic shall be dispatched to evaluate the subject.
10. If EMS has responded to the scene to evaluate a prisoner, an aided report for the defendant shall be completed in the Department Record Management System.
11. **Officers shall photograph any visible injury or complaint of injury reported by the defendant.** *A photograph showing no injury may be as important as one which shows injury.*
12. Any photographs taken to document any visible injury/non injury or complaint of pain shall be uploaded to the Department Record Management System.
13. The officer shall immediately notify the tour supervisor of the incident. In case of off duty incidents, the officer shall notify (in person or via phone) the on duty patrol supervisor as

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soon as practicable, and the local authority (if necessary), if the incident occurred in another jurisdiction.

14. The tour supervisor shall respond to the scene of all incidents involving a use of force incident within the police jurisdiction of this Department.
15. An officer shall attempt to locate and identify any witnesses, documenting their observances on a statement form.
16. The officer shall prepare and submit a use of force report as required by this General Order. If more than one officer is involved in a Use of Force Incident, each officer who uses force shall complete a Tarrytown Police Department Use of Force Report outlining their actions and observations of the incident. All copies of the report(s) shall be forwarded to the tour supervisor for review. Once reviewed and approved by the tour supervisor, the signed reports shall be submitted to the Field Services Division Lieutenant for his/her review and record keeping purposes.
17. The tour supervisor shall insure that medical treatment for the subject/defendant is provided per tenet # 9.
18. A supervisor that is made aware of a use of force incident shall ensure that the completion of the Department Use of Force Report is completed.
19. The tour supervisor shall initiate a preliminary investigation of the use of force. If the Use of Force is not aligned with department policy and procedure or Article 35 of the New York State Penal Law, the Field Services Division Lieutenant shall be notified as soon as practicable for further investigation of the incident.
20. The Field Services Division Lieutenant shall determine after a comprehensive internal review if the use of force was within the guidelines of department policy and procedure and Article 35 of the New York State Penal Law.
21. If the review determines that the officer's actions were not within the guidelines of department policy and procedure or Article 35 of the New York State Penal Law, the Field Services Division Lieutenant shall notify the Chief of Police and a disciplinary investigation may be initiated.

Reporting and Reviewing the Use of Force

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 whenever:

1. A Use of Force results in physical injury;

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2. A Use of Force Incident occurs that a reasonable person would believe is likely to cause injury;
3. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing;
4. An individual was struck or kicked;
5. Incidents where a conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed;
6. Incidents where Department Issued O.C. Spray was utilized on a defendant/subject;
7. The use of a Department Issued Asp Tactical Baton;
8. Incidents where a firearm was displayed or discharged at a subject.

The Supervisor on duty at the time of the use of force incident shall investigate the incident and report to the appropriate Division Lieutenant who shall then determine if the use of force was in conformance with existing laws, Department Policy and Procedure and the Departmental Rules and Regulations. All reports shall be forwarded to the Chief of Police without unreasonable delay.

Note: The Chief of Police or his/her designee shall insure that all New York State designated reportable incidents of use of force are properly reported to the Division of Criminal Justice Services (DCJS) through the E-Justice portal as per the New York State Municipal Police Training Council (MPTC) and Executive Law §837-t.

Training

- A. All officers should receive training and demonstrate their understanding on the proper application of force.
- B. Officers shall receive annual training on the Use of Force General Order and the proper application of force.
- C. Training topics will include use of force, conflict prevention, conflict resolution and negotiation, and de-escalation techniques and strategies.

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Authority

A handwritten signature in cursive script, appearing to read "J. Barbelet", written over a horizontal line.

John Barbelet

Chief of Police