

	Subject/Title	Effective Date
	Use of Force	08/23/2020
	Rescinds/Replaces	Reference No.
	All previous policies/directives on this subject	2020-02
	Issued By	Total Pages
	Shawn M. Occhipinti Administrative Officer	10

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 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.

II. POLICY

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness.¹ 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.”²

¹ 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.

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

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.

Sworn Officers shall use only that level of physical force necessary in the performance of their duties within the limits established by the United States Court in *Graham v. Connor*, Article 35 of the New York State Penal Law and consistent with the training and policies of the Kirkland Police Department. Officers Shall employ only the degree of force that is necessary to achieve their lawful objectives. It is the responsibility of each Officer to be aware of the requirements of *Graham v. Connor* and Article 35 to guide their actions based upon that law and department policy and training. Officers shall not unnecessarily or unreasonably endanger themselves or others in applying these guidelines to actual situations.

Only issued or approved equipment will be carried on duty and used when encountering resistance, except in emergency situations when an officer may use any justifiable resource at their disposal.

The use of any active countermeasure, including but not limited to, pressure point control, baton, or pepper spray is considered a use of physical force and will require the appropriate reports to be completed.

III. DEFINITIONS

- A. **Force** – Any physical strike, or contact with an instrument, of a person; any intentional physical 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: aiming of a firearm, discharge of a firearm, use of chemical agents, use of impact weapons, use of an electronic control weapon (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 minimal or no resistance. Use of force is lawful if it is objectively reasonable under the circumstances to affect an arrest, or protect the officer or another person.
- B. **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.³
- C. **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

³ *Graham*, 490 U.S. 396 (1989)

⁴ NY Penal Law § 10 (11) (McKinney 2013)

- D. **Physical Injury** – Impairment of physical condition or substantial pain.⁵
- E. **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.⁶

IV. USE OF FORCE

- A. In general terms, force is authorized to be used when reasonably believed to be necessary to affect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of one's self or another.⁷
- B. The primary goal in law enforcement/subject confrontation is control of the subject. In each situation, the officer must make a conscious decision, based upon training and experience, whether or not to escalate or de-escalate the level of control.
- C. 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
- D. An officer's decision regarding the level of his/her response to resistance or aggression must be based on the capacity for control vs. the potential for death or serious physical injury. Force must not start before resistance starts and must stop when resistance stops while maintaining control of the situation/subject.
- E. As a person increases his/her resistance level from verbal to physical, an officer may have to increase the level of his/her response until the resistance ceases and the officer is able to gain control of the person. As soon as the point of the person's compliance is reached, the officer must de-escalate his/her response level to the minimum force necessary to control the person and accomplish the law enforcement objective.

V. DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

- A. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.
- B. Factors that may be used in determining the reasonableness of force include, but are not limited to:

⁵ NY Penal Law § 10 (9) (McKinney 2013)

⁶ NY Penal Law § 10 (10) (McKinney 2013)

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

⁸ Graham, 490 U.S. at 396 (1989)

1. The severity of the crime or circumstance;⁹
2. The level and immediacy of threat or resistance posed by the suspect;¹⁰
3. The potential for injury to citizens, officers, and suspects;¹¹
4. The risk or attempt of the suspect to escape;¹²
5. The knowledge, training, and experience of the officer;¹³
6. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;¹⁴
7. Other environmental conditions or exigent circumstances.¹⁵

VI. DUTY TO INTERVENE

- 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 subdivision A of this section should promptly report these observations to a supervisor.

⁹ Ibid.

¹⁰ Ibid.

¹¹ *Scott v. Harris*, 550 U.S. 372 (2007)

¹² *Graham*, 490 U.S. at 396 (1989)

¹³ 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)

¹⁴ *Sharrar v. Felsing*, 128 F.3d 810 (3rd Cir. 1997) (numbers of officers or subjects)

¹⁵ Courts have repeatedly declined to provide an exhaustive listing of factors. *Chew v. Gates*, 27 F.3d 1432, 1475 n.5 9th Cir. (1994)

VII. 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.¹⁶
- 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.
 - 3. Where feasible, some warning should be given prior to the use of deadly physical force.¹⁷
- C. A Police Officer may also discharge a weapon under the following:
 - 1. During range practice or competitive sporting events.
 - 2. To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured. Due care is to be taken when firing at the animal to ensure a safe background. If the animal in distress is a domesticated pet (i.e., dog or cat) or Farm Animal/Livestock (i.e., Cow, horse, pig, goat , etc.) every effort should be made to either locate the owner. If it is not possible to locate the owner, contact the Animal Control Officer or the Town contracted Veterinarian.
- D. Police Officers shall adhere to the following restrictions when their weapon is exhibited:
 - 1. Except for maintenance and during training, police officers shall not draw or exhibit their firearm unless circumstances create reasonable cause to believe that it may be necessary to use the weapon in conformance with this policy.
 - 2. Warning shots are prohibited.
 - 3. Police Officers shall not fire their weapons at or from a moving vehicle, unless there is no other action that can be taken. All Officers will have to demonstrate the need for this action over and above the justification for the use of deadly physical force.
 - 4. Firearms shall not be discharged when it appears likely that an innocent person may be injured, unless failure to use deadly physical force would expose the public to a greater risk of death or injury if such force was not used.

¹⁶ NY Penal Law and § 35.30(1)(c)(McKinney 2013)

¹⁷ 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.

VIII. PROHIBITED USES OF FORCE

A. Force shall not be used by an officer 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;
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. Chokeholds

1. Chokeholds are prohibited unless deadly force is authorized. A chokehold restraint is defined as 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, or restraining the flow of blood to the brain by compressing the neck where the carotid arteries are located.

IX. DE-ESCALATION

- A. De-escalation is communicating, verbally or non-verbally, or through physical contact or action in response to a potential threat in an attempt to stabilize the situation or reduce the immediacy of threat so that more time, options, and resources can be called upon to resolve the situation.
- B. De-escalation may include the use of such techniques as command presence, advisements, verbal commands or warnings, verbal persuasion, tactical repositioning, or any tactic or force option that in the officer's reasoned judgement is likely to result in a lower level of force being used to accomplish the objectives at hand.
- C. When reasonable and safe under the totality of circumstances, officers should attempt to de-escalate potential threats. Officers should use de-escalation techniques consistent with his/her training whenever feasible and appropriate.
- D. While de-escalating techniques are often effective, just like all tools at an officer's disposal, de-escalation techniques are not always applicable. It is generally preferential for officers to attempt to de-escalate most situations when and where warranted, but sometimes a suspect's actions do not allow for the employments of such tactics.
- E. Officers are not expected to compromise personal safety in order to de-escalate a situation if it is likely to result in harm to the officers or others.
- F. Some examples of de-escalation techniques include:

1. Containing the threat.
2. Slowing down an encounter by “backing off” from immediate intervention or action thereby giving the officer(s) time to call additional officers, utilize other tactics, or request specialty assistance, such as Crisis Negotiators.
3. Communicating from a safe position to gain the subject’s compliance through the use of verbal persuasion, advisements, and/or warnings. Generally, communication techniques should engage active listening to calm agitated individuals and promote rational decision-making.
4. Decreasing the exposure to the potential threat by using distance or physical barriers between an uncooperative subject and an officer.
5. Use discretion to the officer’s advantage.

X. REPORTING AND REVIEWING THE USE OF FORCE

- A. Any injuries resulting from a use of force incident shall result in the appropriate and timely medical attention being provided to the injured party.
- B. Officers involved in use of force incidents shall notify the OIC as soon as practical and shall complete a use of force report which is to be articulated in the SJS reporting system and Kirkland Police Department Use of Force Report (Rev. 8/2020).
- C. A use of force report must be completed:
 1. Anytime a subject is actively resisting, and physical contact is used to gain compliance or to prevent harm to themselves or another.
 2. Anytime an Officer uses their issued/authorized OC Spray, Taser or Baton.
 3. Anytime an officer uses any non-issued weapon or item.
 4. Anytime an officer points their Taser at a subject, drive stuns or probe deploys a subject, or spark tests at a subject.
 5. Anytime an officer points their handgun at a subject.
 6. Any use of force that results in a physical injury.
 7. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
 8. Incidents where a firearm was discharged at a subject.

XI. OFFICER RESPONSIBILITIES

- A. Whenever physical force is used, the officer(s) shall:
1. Immediately evaluate the need for medical attention or treatment.
 2. If necessary, request an ambulance for evaluation/treatment through OC911. (Dependent on the circumstances this may be done at the scene or headquarters.)
 3. Attempt to locate and identify any witnesses.
 4. Notify the OIC of the incident when practical.
 5. Complete all necessary reports (i.e., Town of Kirkland Police Department Use of Force Report (Rev. 8/2020), SJS Report, Standardized Incident Report, etc.)

XII. OFFICER IN CHARGE/SUPERVISOR RESPONSIBILITIES

- A. Whenever physical force is used the Officer In Charge (OIC)/Supervisor must:
1. Evaluate and determine if the incident that was reported to him/her requires response to the scene or headquarters. (If the incident is determined to not require OIC response the OIC may task a non-involved officer to take photographs and or statements.)
 2. Ensure that the medical treatment has been given to staff or subjects that may require it.
 3. Ensure that any visible injuries are photographed. Photographs must also be taken when there is a complaint of an injury regardless if it is visible or not. (A photograph showing an absence of injury is as important as one that shows injury.)
 4. Ensure that any possible witnesses are deposed if necessary.
 5. Ensure that the necessary reports are prepared by all involved officers. In the event that an officer is unable to complete reports due to injuries, the OIC/Supervisor shall prepare or direct them to be prepared.
 6. If OIC/Supervisor deems the incident serious by severity of injuries to staff or subject(s), notoriety , etc., the Police Commissioner will be notified.
 7. If the incident directly involves the OIC the Police Commissioner will be notified for direction.

XIII. PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS

- A. The OIC/Supervisor should refer to section “DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE” to assist in determining whether the use of force was objectively reasonable and justified in accordance with Article 35.
- B. Whether any laws or department policies were violated.
- C. If the use of force report is accompanied by a civilian complaint, the OIC will handle the civilian complaint as well according to department policy.
- D. A review will be made of the relevant policy whether it was clearly understandable and effective to cover the situation. Departmental training will be reviewed as well to evaluate the need for revision.
- E. If the OIC determines that a use of force incident was not justified or handled inappropriately he will notify the Police Commissioner. The OIC and Police Commissioner will determine what action will be taken against the involved staff.¹⁸
- F. When a police officer’s use of force causes serious physical injury or death the OIC and Police Commissioner may place the officer on administrative leave after completing all internal investigative requirements, if such action is deemed necessary by the OIC and Police Commissioner, or the officer involved in causing said injury or death, The officer will not return to duty until it is determined that the police officer is ready and capable of returning to duty. The Department or another designated Police agency, in conjunction with the Oneida County District Attorneys Office, shall conduct a criminal investigation of the incident.

XIV. TRAINING AND QUALIFICATIONS

- A. The OIC and the Departmental Weapons Instructor will be responsible for the design and implementation of training programs relative to the use of physical force.
- B. The OIC and the Departmental Weapons Instructor will ensure that each employee receives in-service training annually on the departments Use of Force policies and procedures, demonstrate their understanding on the proper application of force, and proficiency with the weapon(s) each employee is assigned and/or authorized to use.
- C. 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.¹⁹

¹⁸ EXC §840(4)(d)(2)(vi)

¹⁹ EXC §840(4)(d)(2)(vii)

D. Deadly Weapons

1. While on duty, police officers shall carry only weapons and ammunition authorized by and registered with the department. A “back-up” weapon may be requested and authorized after consultation with the OIC and the Departmental Weapons Instructor. This weapon will have to be registered with the department through a C-form and all other on duty weapon requirements will apply regarding qualifications and type of ammunition that is authorized.
2. Authorized weapons are those with which the police officer has qualified and received departmental training on proper and safe usage, and that are registered and comply with departmental specifications.
3. The police department shall schedule training and qualification sessions to be held at minimum once a year, for duty, back-up weapons and specialized weapons, which will be graded by the firearm’s instructor per the standard in use at the time.
4. All firearm’s training and qualifications will only be conducted by trained and certified instructors.
5. Police officers who fail to pass with their duty weapon(s) in accordance with departmental testing procedures shall be immediately removed from road patrol/schedule.
6. A police officer shall not be permitted to carry an off-duty weapon which is registered through a C-form with the department, if they did not qualify in the most recent qualification period.
7. A police officer who has taken extended leave or suffered an illness or injury that could affect his or her use of firearms ability will be required to re-qualify before returning to enforcement duties. An officer returning from injury or illness will require a return to full duty medical note prior to re-qualifying.

E. Non-deadly force weapons and methods.

1. A police officer is not permitted to use a non-deadly weapon unless qualified in its proficient use as determined by training procedures.
2. Only the following departmental issued non-deadly weapons are authorized: police baton and Non-flammable Oleo Resin Capsicum spray and police taser.
3. Although a police officer has non-deadly weapons available to him or her, nothing in this section shall be construed as to require him or her to use non-deadly force prior to using deadly physical force.

- F. This policy is not intended to be a substitute for proper training in the use of force. Comprehensive training is the key to the real-world application of the concepts discussed within this policy.