

CHAPTER: Use of Force Weapons			
SUBJECT: USE OF FORCE & CHART			
ISSUE DATE: 2/10/2015	EFFECTIVE DATE: 2/19/2015	REVISION NO.: 20-01	STATE ACCREDITATION NO.: 20.1

PURPOSE

To establish the guidelines for the use of force by Sworn Members of the Eastchester Police Department.

POLICY

It shall be the policy of the Eastchester Police Department that Sworn Members shall utilize only the level of force required to accomplish the performance of their official duties in accordance with Article 35 of the New York State Penal Law, Department Policy and the current training standards of this Department. It is the responsibility of each Sworn Member to be aware of the requirements of Article 35 and to guide his/her actions based upon the Penal Law and these rules, regulations and procedures.

PROCEDURE**EQUIPMENT TO BE USED**

1. Sworn Members shall only carry such equipment that is issued or approved by the Department and, then only when trained in the use of such equipment, except in an emergency when the officer may use other resources at his/her disposal.

GUIDELINES FOR USE OF FORCE

2. Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.
3. Generally, Sworn Members may use such Physical Force which is the minimum amount of physical force necessary to overcome resistance in the performance of their duties given the totality of the circumstances known to them.
4. Sworn Members may use force in the performance of their duty in the following circumstances:
 - a. To prevent the commission of a breach of the peace or other unlawful act.
 - b. To effect the lawful arrest of person(s) resisting arrest or attempting to escape from custody;
 - c. In self-defense or in the defense of another person;

SUBJECT: USE OF FORCE		SECTION: 106-1	
ISSUE DATE: 2/10/2015	EFFECTIVE DATE: 2/19/2015	REVISION NO.:	PAGE: 2 OF 6

- d. To prevent a person from injuring themselves
5. Whenever feasible and consistent with personal safety, Sworn Members should give subjects the opportunity to comply with instructions prior to employing a higher degree of Physical Force.

NOTE: Sworn Members using Physical Force should continually assess the circumstances and, as appropriate, reevaluate the use of Physical Force given the totality of the circumstances as known to them.

6. Unnecessary Force Defined

Unnecessary force occurs when unjustifiable physical abuse of a person has occurred or when it is apparent that the type or degree of force employed was neither necessary nor appropriate, or when any degree of force is utilized as summary punishment or vengeance.


ESCALATION OF FORCE

7. When the use of force is necessary and appropriate, Sworn Members 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.
8. If possible, the Sworn Member should give the subject the opportunity to comply at each stage.
9. Once compliance is achieved, the escalation ceases.
10. A stage in the progression may be skipped due to the circumstances and progression is not always upward.
11. The Sworn Member must continually assess the circumstances and, as appropriate, escalate or de-escalate the use of force.
12. **Less-Lethal Weapons:**
 - a. The Conductive Energy Device, O.C. Ballistic Stream Defense Spray, Kinetic Energy Projectiles, Police Baton, Collapsible Baton, or Night Stick may be used in accordance with department procedures **ONLY TO THE DEGREE NEEDED TO GAIN CONTROL OF THE RESISTING SUBJECT.**
 - b. Whenever chemical agents are used (except for training purposes), they should be used in accordance with department procedures **ONLY TO THE DEGREE NEEDED TO GAIN CONTROL OF THE RESISTING SUBJECT.**
13. Typically, levels of force which are available to officers are as follows:
 - a. Verbal Direction

SUBJECT: USE OF FORCE			SECTION: 106-1
ISSUE DATE: 2/10/2015	EFFECTIVE DATE: 2/19/2015	REVISION NO.:	PAGE: 3 OF 6

- b. Light Physical Contact
- c. Chemical Agent
- d. Elevated Physical Contact
- e. Impact Weapon
- f. Less Lethal Kinetic Impact Weapons
- g. Firearm

ESCALATION OF FORCE CONTINUUM

DEGREE	LEVEL OF FORCE		DESCRIPTION OF FORCE	
LOWEST 	VERBAL DIRECTION		This is the least intrusive level of force and may vary from a simple request to an emphatic command.	
	LIGHT PHYSICAL CONTACT		At times, an officer may need to make light contact with a subject in order to diffuse a situation or to guide the subject away from an area or into a vehicle.	
	CHEMICAL AGENT (O.C.)	CONDUCTIVE ENERGY DEVICE (C.E.D.)	Oleoresin Capsicum Spray are normally used when lesser levels of force are ineffective or inappropriate.	Conductive Energy Devices are normally used when lesser levels of force are ineffective or inappropriate.
	ELEVATED PHYSICAL CONTACT		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.	
	IMPACT WEAPON		The actions of an opponent compel a Member to use a more intensive level of force, namely the police baton/collapsible asp baton. This instrument, when properly used, provides a control mechanism and can protect the Member with defensive techniques.	
	LESS LETHAL KINETIC IMPACT WEAPONS		The use of this type of weapon may be considered whenever their use could reduce the risk of serious physical injury or death. The use of less lethal kinetic impact weapons is restricted to trained personnel.	

SUBJECT: USE OF FORCE			SECTION: 106-1
ISSUE DATE: 2/10/2015	EFFECTIVE DATE: 2/19/2015	REVISION NO.:	PAGE: 4 OF 6

HIGHEST	FIREARM	The highest level of force available to a Member. Firing a weapon at another person is restricted to those situations in which deadly physical force is justified.
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GUIDELINES FOR THE USE OF DEADLY PHYSICAL FORCE

14. Sworn Members should have a thorough knowledge of Article 35 of the New York State Penal Law and should periodically review this body of law. Sworn Members should bear in mind that Article 35 of the Penal Law only authorizes the use of physical force/deadly physical force; it does not command its use. Sworn Members should also be aware that ***DEPARTMENT POLICY IS MORE RESTRICTIVE THAN ARTICLE 35 IN THE USE OF PHYSICAL FORCE/DEADLY PHYSICAL FORCE.***
15. Deadly physical force shall *NOT* be used to affect the arrest of a fleeing felon unless the Sworn Member has probable cause to believe that:
 - a. Deadly physical force was used or threatened by the perpetrator, OR
 - b. The perpetrator caused serious physical injury, OR
 - c. The perpetrator is armed with a deadly weapon.

In addition, Department policy would prohibit the use of deadly physical force unless ALL of the following factors are present:

- d. The Sworn Member must have probable cause based upon knowledge of the crime involved and the surrounding circumstances, AND
 - e. The Sworn Member has probable cause to believe the fleeing felon poses an immediate threat of serious physical injury to the officer, or has probable cause to believe that failure to apprehend the fleeing felon poses a threat of serious injury to others, AND
 - f. Reasonable means to apprehend the perpetrator, other than use of firearm are NOT available.
16. Deadly physical force shall not be used to affect an arrest or prevent or terminate a felony unless the Sworn Member has probable cause to believe that the victim may be killed or seriously injured and there is no other reasonable means to affect the arrest or prevent or terminate the felony other than by deadly physical force.
 17. A Sworn Member may use deadly physical force upon another person when he/she reasonably believes that such other person is using or about to use deadly physical force against the officer or a third person.

SUBJECT: USE OF FORCE		SECTION: 106-1	
ISSUE DATE: 2/10/2015	EFFECTIVE DATE: 2/19/2015	REVISION NO.:	PAGE: 5 OF 6

18. A Sworn Member shall not use deadly physical force to subdue a fleeing felon who presents no threat of imminent death or serious physical injury to themselves or another person present.
19. Where feasible and consistent with personal safety, the Sworn Member should give some warning, such as "POLICE, DON'T MOVE" before using deadly physical force.
20. A Sworn Member shall not use deadly physical force in defense of property.

CHOKE HOLDS AND CAROTID HOLDS

21. Choke holds, carotid holds and similar compressions of the neck represent potential use of deadly force and shall never be used unless an officer or another person is in imminent danger of death or serious physical injury, and all other measures to reasonably repel the attack have been exhausted.

MEDICAL AID REPORTING

22. In the event a physical injury is inflicted upon a person by a Member(s) of the Department or a physical injury is alleged to have been inflicted upon a person by a Member(s) of the Department, the Member(s) involved shall immediately evaluate the need for medical assistance, and if necessary arrange such attention.
23. In the event a physical injury is inflicted upon a person by a Member(s) of the Department or a physical injury is alleged to have been inflicted upon a person by a Member(s) of the Department, the Member(s) involved shall immediately notify the Tour Commander.
24. Every Member present at the time of injury or alleged injury shall prepare a complete and comprehensive incident/complaint report or supplementary complaint report detailing the circumstances surrounding the use of physical force or deadly physical force and submit such report to the Tour Commander prior to the end of their tour of duty. Such report should contain the reasons for the use of force and the nature of any injuries sustained by any person.
25. Prepare an Aided Report as required by related Department procedure.

USE OF FORCE REPORTING/INVESTIGATION

26. Any Member involved in a use of force incident shall immediately report such use of force to the Tour Commander/Patrol Supervisor.
27. All use of force incidents shall be reported in an Incident/Complaint Report by the Member involved in the incident.
28. The Tour Commander/Patrol Supervisor shall investigate the circumstances surrounding the use of force and complete a Supervisory Report (EPD 100).

SUBJECT: USE OF FORCE		SECTION: 106-1	
ISSUE DATE: 2/10/2015	EFFECTIVE DATE: 2/19/2015	REVISION NO.:	PAGE: 6 OF 6

29. Any use of force incidents resulting in an injury shall be investigated in the manner described in the Use of Force Investigations section of this Manual (Department Manual Section 125-1).

REVIEW OF THE USE OF FORCE

30. The Patrol Division Commander shall review all reports of the use of force by Members of the Department to insure:
- a. The force used was lawful and in accordance with Department rules, regulations and procedures;
 - b. That the incident is properly documented;
 - c. That no training deficiencies exist.

EVALUATION

31. If the Patrol Division Commander determines that there was an improper use of force, the incident was not properly documented, or training deficiencies exist, he/she shall prepare an inter-departmental memorandum documenting his/her findings as well as corrective actions and forward same to the Chief of Police for final review.

NOTE: All Reporting and Investigation Procedures for the Use of Force and Discharge of Firearms can be found in Section 125-6 USE OF FORCE INVESTIGATIONS.