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USE OF FORCE POLICY

EFFECTIVE DATE: 09/23/2020

- New Policy
- Interim Policy
- Modification of Existing Policy of
07/22/19

PURPOSE

To articulate departmental policies and procedures regarding the reasonable and legitimate use of force in specific circumstances by sworn members of the Dutchess County Office of Probation while acting in their role as peace officers. Federal constitutional, state statutory and departmental standards dictate when and how much force can be used.

POLICY

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

This policy is written in recognition of the value of all human life without prejudice to anyone. Vesting officers with the authority to use reasonable force to protect themselves, others and the public welfare requires a careful balancing of all interests.

DEFINITIONS

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.

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.

Physical Injury – Impairment of physical condition or substantial pain.

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.

USE OF PHYSICAL FORCE

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.

Under the 4th Amendment, a law enforcement 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.

The use of physical force is authorized to gain control of an individual in defense of oneself or a third party or to take a subject into custody for an authorized arrest or to prevent an escape. Note that use of physical force is not a 50/50 proposition; an officer may need to use a higher level of force than they are faced with from a subject in order to gain compliance/control.

Hands-on use of force including pain compliance techniques such as pressure points may be used to gain compliance of a resistive subject during a lawful arrest or as a defensive measure to defend one’s self or another from being physically attacked. These techniques may be used when lesser options such as a verbal command have proven ineffective or the officer has not had the opportunity to employ lesser options.

Oleoresin Capsicum (OC) is an additional use of force option not intended to replace any existing defense and control techniques. OC spray may be used to gain control of a resistant subject when lesser options have proven to be ineffective, i.e. verbal commands and passive control techniques or it is the opinion of the officer that lesser options would not be effective.

The use of an impact weapon is regarded as an escalation in the use of force. Because their use can cause physical injury, one may resort to the use of the impact weapon only in instances where lesser levels of force have proven ineffective or it is obvious that lower levels of force are inappropriate.

The use of impact weapons and Oleoresin Capsicum (OC) is governed by the department's Defensive Weapons Policy.

USE OF DEADLY PHYSICAL FORCE

The use of deadly physical force is to be contemplated only when defending oneself or another person from what is believed to be the imminent use of deadly physical force or serious physical injury.

The possession and use of firearms by probation personnel is also governed by the department's Defensive Weapons 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/or 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.

Officers must be able to articulate their rationale for any use of force and justify their actions in consideration of the following factors.

- 1) Reasonableness (see objective reasonableness above)
- 2) Necessity
- 3) Authorization
- 4) Not reckless

PROHIBITED USES OF FORCE

Force shall not be used by an officer in the following circumstances:

- 1) In retaliation for non-physical abuse toward an officer;
- 2) As a threat to obtain information from any person;
- 3) 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;
- 4) To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;
- 5) To coerce a confession from a subject in custody;

- 6) To obtain blood, saliva, urine or other bodily fluid or cells from an individual for the purpose of scientific testing in lieu of a court order where required;
- 7) Chokeholds and Obstruction of Breathing or Blood Circulation—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. Any type of chokeholds shall not be employed by officers for any reason unless deadly physical force is authorized.

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 try to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.

An officer who observes another probation officer use force that exceeds the degree of force as described in this policy shall promptly report these observations to a supervisor.

REPORTING & REVIEWING THE USE OF FORCE

Any injuries resulting from a use of force incident shall result in appropriate and timely medical attention being provided to the injured party.

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. Supervisors will promptly notify a member of Administration and forward all use of force reports.

1. Use of force that results in a physical injury;
2. Use of force incidents that a reasonable person would believe is likely to cause an injury;
3. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort such as from compliant handcuffing;
4. Use of a hold or any other restraint that applies pressure to the throat or windpipe that may hinder breathing or blood circulation;
5. Use or deployment of pepper spray (OC) or any other chemical agent;
6. Use or discharge of a firearm at another person;
7. Use of an impact weapon;
8. Incidents where a conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed.

PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS

Where practicable, a supervisor and/or member of Administration may respond to the scene to begin the preliminary force investigation if deemed necessary.

A supervisor who is made aware of a use of force incident shall ensure the completion of a use of force report by all officers engaging in the reportable use of force and, to the extent practical, make a record of all officers present.

Photographs shall be taken, when appropriate, which sufficiently document any injuries or lack thereof to officers or suspects.

The Director, Deputy Director or Principal Probation Officer will receive the supervisor's report and investigate the incident.

Failure to adhere to use of force guidelines may result in coaching, remedial training, counseling or disciplinary actions consistent with agency protocols and the applicable collective bargaining agreement.

TRAINING

All officers armed with an authorized weapons system are required to receive annual training and demonstrate their understanding on the proper application of force in compliance with the department's Defensive Weapons Policy.

Training topics will cover applicable laws, department policy, use of force and de-escalation techniques. Training will also include duty to intervene.

This policy shall be readily available to the public on the Dutchess County Office of Probation and Community Corrections Webpage under the Publications and Reports Section at:
www.dutchessny.gov