



Dutchess County Sheriff's Office

ORDER: 3.23
ISSUED: 6/01/96
Updated: 2/26/2021

USE OF FORCE

I. PURPOSE:

This order establishes the limitations for use of force by members of the Dutchess County Sheriff's Office. These rules have been developed to assist members in the performance of their duty and compel the exercise of good judgment before electing to use physical force. They are thus intended to reduce the likelihood of inappropriate use of force incidents and consequently protect life and property.

II. POLICY

The Use of Force Policy for the Dutchess County Sheriff's Office is to provide an outline and guidance for reasonable use of force for sworn members both on and off duty. This Use of Force Policy is to ensure the fair balance of member safety and the public we serve, and to be consistent with New York State law.

III. DEFINITIONS

- A. Deadly Physical Force
Physical force that, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.
- B. Force
The use of physical techniques and/or tactics, to include the use of less lethal weapons, used when a member physically directs the movement of a person, restrains a person, controls a person against their will, or takes a person into police custody.
- C. Serious Physical Injury
Physical injury that causes 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.
- D. Physical Injury
Impairment of physical condition or substantial pain.
- E. Objectively Reasonable
An objective standard used to judge a member's actions. Under this standard, a particular application of force must be judged through the perspective of a reasonable member 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 member at the time that the force was used.
- F. Chokehold - Definition
Any intentional application of sustained pressure to the throat, windpipe,

or neck of a person in a manner that may hinder breathing, reduce the intake of air, or obstruct blood flow.

- G. Display A Chemical Agent
To point a chemical agent at a person or persons.
- H. Use/Deploy Chemical Agent
The operation of the chemical agent against a person or persons.
- I. Brandishing A Firearm
To point a firearm at a person or persons.
- J. Uses/Discharges A Firearm
To discharge a firearm at or in the direction of a person or persons.
- K. Brandishes an Electronic Control Weapon
To point an electronic control weapon at a person or persons.
- L. Uses/deploys an Electronic Control Weapon
The operation of an electronic control weapon against a person or persons.
- M. Brandishes and Impact Weapon
To point an impact weapon at a person or persons or otherwise act in a manner that would make a person or persons believe it was about to be used on them.
- N. Uses/Deploys an Impact Weapon
The operation of an impact weapon against a person or persons.
- O. Spit Hood Device
Temporary protective devices issued and authorized by the Sheriff's Office that are designed to prevent the wearer from biting and/or transmitting fluids (saliva and mucous).

IV. GUIDELINES

- A. No policy can reasonably predict all possible situations where force has the potential of being used, therefore members are entrusted to use reasonableness when making decisions that at times can be split second decisions.
- B. Members shall only use the amount of force that is reasonably necessary given the specific set of circumstances at the time, to only accomplish a lawful law enforcement function or purpose.
- C. All use of force must be consistent with State and Federal Law, more specifically consistent with the Supreme Court Decisions in *Graham v. Connor* and *Tenn. v. Garner*.
- D. This policy recognizes that not all situations or circumstances will allow a member to only use the tools, weapons or training received when using force. Any force used outside of these parameters will be based on reasonableness given the specific situation or incident.

- E. All factors used to determine a particular use of force are to be clearly articulated when documenting the incident.
- F. Any action taken by a member with regard to moving, restraining, controlling, or taking a person into custody where there is any possibility of the person sustaining a physical injury, shall be considered force as defined in this policy.

V. DETERMINATION OF REASONABLENESS

- A. The factors to be considered when determining reasonableness with respect to use of force should include, but not be limited to, the following:
 - 1. A careful balance of the rights of the individual with the legitimate interest of the office (government)
 - 2. What were the force options and what was applied?
 - 3. Not subject to 20/20 hindsight analysis
 - 4. A review of the facts known to the members at the time the force was applied.
 - a. The severity of the offense
 - b. Whether the suspect poses an immediate threat to the safety of the members or others
 - c. Whether the suspect is actively resisting arrest or attempting to flee.
 - 5. Training and experience of the member
 - 6. The availability of other tools, techniques, and backup
 - 7. The potential for injury to citizens, members/officers, and suspects
 - 8. Duration of the action
 - 9. Member/Subject considerations
 - a. Size
 - b. Age
 - c. Physical condition
 - d. Specialized training
 - 10. Influence of drugs or alcohol
 - 11. Subject's known history of violence
 - 12. Subject's mental or psychiatric history, if known
 - 13. Potential pre-assault Indicators
 - a. Verbal aggression
 - b. Posture change – fighting posture
 - c. Individual ignores all commands
 - d. Aggression directed at the member or other person present
 - 14. Ability of the subject to physically comply
 - 15. Does the subject understand the commands being given to him/her?
 - 16. Excited Delirium Syndrome observed
 - 17. Language barrier
 - 18. Did the force used have the desired result?
 - 19. Is the member's conduct tactfully sound and pursuant to Office policy?
 - 20. What were the environmental factors?
 - 21. What weapons were available or in subject's possession at the time of the encounter?

22. Distance between member and subject.
23. Is the member or suspect injured, exhausted or able to continue?
24. Any known medical conditions

VI. DUTY TO INTERVENE

- A. 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 member has a realistic opportunity to do so. The intervening member will then notify a supervisor immediately.

VII. MEDICAL AND MENTAL HEALTH NEEDS

- A. Whenever force is used by a member the person must be assessed for any injuries as soon as reasonably practical and safe to do so.
- B. Members shall provide immediate medical attention when an injury is visible or if a person complains of an injury as a result of the force used, as soon as reasonably practical and safe to do so.
- C. Members shall render first aid, when practical and within the scope of their training, to anyone injured as a result of the force used pending an evaluation by trained medical professionals.
- D. All injuries, or lack thereof when alleged, shall be documented with photographs by a supervisor or CST who is not involved in the use of force.
- E. The immediate mental health needs of a person shall be based upon the reasonable cause to believe that a person, who appears to be mentally ill, is conducting themselves in a manner which is likely to result in a serious harm to themselves or others. The person will then be transported to an appropriate facility for a mental health evaluation.
- F. Members shall document any requests for necessary medical or mental health treatment, as well as efforts of the member to arrange for such treatment.

VIII. PROHIBITED USE OF FORCE AND EXCEPTIONS

- A. Force is not authorized:
 1. Against persons who are handcuffed or restrained unless it is used to prevent injury to themselves or others, to prevent escape, or to facilitate movement.
 2. To obtain blood, saliva, urine, or other bodily fluids/matter, from an individual for the purposes of scientific testing except under circumstances in which a valid court order has been issued.
 3. To extract an item from the mouth or body cavity of a subject without a warrant, except where life threatening circumstances are present, or a court order has been issued.
 4. To coerce a confession from a subject.

5. Choke holds are never authorized unless deadly physical force is necessary. See Deadly Physical Force below.

IX. AUTHORIZATION OF USE OF FORCE

- A. Members are authorized to use reasonable force to accomplish the lawful duties of their position including, but not limited to:

1. Effecting a lawful arrest.
2. Preventing an escape where the member reasonably believes the person committed the offense in question.
3. Effecting a detention based on reasonable suspicion that criminal activity has occurred or is actively on-going.
4. Taking people into custody or protective custody when they are a danger to themselves or others pursuant to the New York State Public Health Law, Civil Court order, or NYS Mental Hygiene Law.
5. Assisting a medical provider with providing necessary and legally authorized assistance to a person.
6. When the member believes the person is an immediate physical threat to that member, themselves, or others.
7. Overcoming resistance to a lawful police order.

- B. Less lethal weapons

Less lethal weapons are authorized for use as per Dutchess County Sheriff's Office policies 3.24, 3.24a, 3.24b, 3.24c and applicable laws.

- C. Spit Hoods

1. When authorized by a supervisor, spit hoods may be placed upon a person in custody when the member reasonably believes he will be spit on or bitten by the suspect.
2. Members utilizing spit hoods will ensure that the spit hood is fastened pursuant to manufactures instructions to allow for adequate ventilation so the suspect can breathe normally.
3. Members will ensure the safety of a suspect who is wearing a spit hood during movement due to the visibility restriction that will occur.
4. Spit hoods will not be used if the suspect is bleeding from the area around the mouth and nose, or if there are indications that a person

has a medical condition that restricts their ability to breathe. The spit hood shall be removed immediately should the subject indicate they are having trouble breathing, or if it's apparent they are having trouble breathing.

5. If the suspect vomits while wearing the spit hood a member shall promptly remove the spit hood to allow for obstructed breathing.
6. Spit hoods will not be used if a chemical agent has been used/deployed, unless the person has been fully decontaminated.
7. If a spit hood is utilized the suspect must remain under constant, in person, observation and will not be left alone under any circumstances.
8. The use of a spit hood must be reported in a D-36 form.

X. AUTHORIZATION OF DEADLY PHYSICAL FORCE

- A. Authority to use deadly physical force is only granted only when objectively reasonable and pursuant to Article 35 of the New York State Penal Law and Dutchess County Sheriff's Office Policies 3.25 and 3.26. Reasonableness is determined when:
 - 1 The member reasonably believes that the person has a weapon or is immediately attempting to access a weapon, and the member reasonably believes the person intends to use it against the member or another person, or
 - 2 The member reasonably believes the person's actions are capable of causing serious bodily harm or death to the member or another person, whether or not a weapon is present or involved, and it is reasonable to believe that the person will do so, or
 - 3 The member reasonably believes that this action is needed to prevent death or serious bodily harm to the member or another person.
 - 4 It is necessary to prevent escape of a fleeing subject when the member has reasonable cause to believe that the subject has committed, or intends to commit, a felony involving serious bodily harm or death and the member believes there is an immediate risk of serious bodily harm or death to the member or another person if the subject is not immediately apprehended.
- B If practical given the current circumstances, the member shall give a warning that deadly physical force will be used.

- C The use of any force or weapons may constitute deadly physical force depending on the manner in which the force or weapon was used.

XI. DEADLY PHYSICAL FORCE – NOT AUTHORIZED

- A To prevent any destruction of property unless authorized by Article 35 of the NYS Penal Law.
- B Shooting at moving vehicles unless the member reasonably believes that any occupant(s) of the vehicle are about to use deadly physical force against the member or another person and there are no avenues of avoidance, or believes the operator or any of its occupants intends to commit a felony that could cause serious bodily injury or death to the member or another person.

XII. REPORTING / REVIEWING / INVESTIGATING THE USE OF FORCE

- A. Supervisory notification must be made as soon as practical after force is used. Members must document the force used in a report.
- B. A supervisor shall investigate the incident and complete a D-36 form, when one or more of the following apply:
 - 1. Any injury observed by a member or reported injury by the subject. This includes pain or discomfort reported by the subject.
 - 2. Any force used that a reasonable person would believe has the potential to cause injury, serious physical injury, or death. For purposes of this section momentary discomfort shall not be considered injury or serious physical injury.
 - 3. Displaying or using a chemical agent.
 - 4. Brandishing or using a firearm.
 - 5. Brandishing or using an electronic control weapon (Taser).
 - 6. Brandishing or using an impact weapon.
 - 7. The use of a spit hood on a person.
 - 8.. The application of any restraint device other than handcuffs, shackles, belly chains, or other approved device(s).
 - 9. The shift/unit supervisors have the initial responsibility to investigate Use of Force incidents involving their members.
 - 10. Use of force incidents that cause serious physical injury or death

will be investigated by the Internal Affairs Division and/or the Detective Bureau as directed by the Chief Deputy.

11. Members from outside agencies who are present during a use of force incident involving DCSO members, shall be interviewed as part of the UOF investigation and reported on a D-36 form.
12. When an outside agency requests to interview any member of this agency regarding a use of force incident, the interview will be coordinated through the Internal Affairs Bureau.
13. A DCSO Use of Force Report (DCSO FORM D-36) shall be completed by the shift/unit supervisor, or IAB Investigator depending on the circumstances, and submitted to the Internal Affairs Bureau for initial review before proceeding up the Chain of Command.

XIII. TRAINING

- A. All members shall receive training and demonstrate their understanding on the proper application of force.
- B. Training topics will include use of force, conflict prevention, conflict resolution and negotiation, and de-escalation techniques and stages.

XIV. PUBLIC RELEASE OF THIS POLICY

- A. A copy of this policy will be publicly posted on the Dutchess County Sheriff's Office website and is authorized for release to the public upon request.