



Dutchess County Sheriff's Office

ORDER: 3.23
ISSUED: 6/01/96
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USE OF FORCE

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 the use of physical force. They are thus intended to reduce the likelihood of inappropriate use of force incidents and consequently protect life and property.

I. PURPOSE

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. 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.

II. 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 than 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 officer 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.

III. 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 Decision 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. The determination made by the member is to use force should include many factors, and all factors should be clearly articulated at a later time.
- F. Any action taken by a member with regard to 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.

IV. 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
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 members conduct tactfully sound and pursuant to Agency policy?
20. What were the environmental factors?
21. What weapons were available or in their 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

V. 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.

VI. MEDICAL TREATMENT

- 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.

VII. AUTHORIZATION OF USE OF FORCE AND LIMITATIONS

- 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 or cells, 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 court order has been issued.

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

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

IX. 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.

X. REPORTING / REVIEWING / INVESTIGATING THE USE OF FORCE

- A. Supervisory notification is to be made when force is used as soon as practical. 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. The pointing of, or operation of, chemical spray towards any person.

- 4 The pointing of, or operation of, a firearm towards any person.
- 5 All taser operation towards a person.
- 6 All impact weapon operation towards a person.
- 7 The application of any restraint device other than handcuffs, shackles, belly chains, or other approved device(s).
- 8 The shift/unit supervisors have the initial responsibility to investigate Use of Force incidents involving their members.
- 9 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.
- 10 Use of force incidents that involve outside agencies will be conducted by the Internal Affairs Bureau and/or the Detective Bureau as directed by the Chief Deputy. This is only when an outside agency uses force as defined in this policy while assisting a member or when a member uses force as defined in this policy to assist another agency.
- 11 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 Investigator.
- 12 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 Captain for initial review and then forwarded to Chief Deputy for final review.