

# TIOGA COUNTY SHERIFF'S OFFICE

## POLICY 19

### USE OF PHYSICAL FORCE

It is the purpose of this Sheriff's Office Order to define the policy of the Sheriff's Office concerning the use of physical force.

#### I. POLICY

It is the policy of the Sheriff's Office that:

- A. Employees may use physical force in the performance of their duties within the limits established by Article 35 of the New York State Penal Law.
- B. Any employee using physical force shall report or cause to be reported all facts relative to the incident in a supplemental report.

#### II. DEFINITIONS

Definitions of terms in this order are consistent with the definitions as set forth in Article 10 and elsewhere in the New York State Penal Law, when applicable.

- A. **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 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.
- B. **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.
- C. **Physical Injury** – Impairment of physical condition or substantial pain.
- D. **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.

#### III. USE OF FORCE

- A. In general terms, force is authorized to be used when reasonably believed to be necessary to effect a lawful arrest or detention, prevent escape of a person from custody, or in defense of one's self or another.
- B. Under the 4<sup>th</sup> 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.

#### IV. DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

- A.** When used, force should only be 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 :
  - 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 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.

## **V. 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.

**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.

**C.** Chokeholds and Obstruction of Breathing or Blood Circulation

- 1. 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.

## **VI. 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 purpose 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.

## **VII. PROCEDURE**

### **A. Responsibilities of members using physical force:**

1. Use of physical force shall be consistent with the training and policies of the Sheriff's Office.
  - a. Only issued or approved equipment will be carried on duty or when applying physical force, except in an emergency situation when an officer must use any resources at his disposal.
  - b. Use of restraining devices is mandatory on all prisoners unless, in the members judgment unusual circumstances exist which make the use of restraining devices impossible or unnecessary (ie. prisoner is elderly or unconscious).
2. 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.
3. A police or peace officer or other law enforcement entity who has custody of a person must provide attention to the medical and mental health needs of a person in their custody and obtain assistance and treatment of such needs, which are reasonable and provided in good faith.
  - a. This includes appropriate and timely medical attention being provided to a party injured as a result of a use of force incident.
  - b. 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.
4. After physical force is used, the member shall immediately evaluate the need for medical attention or treatment for that person upon whom the physical force was used and arrange for such treatment if that person is injured or complains of injury or

discomfort. *Officers should document any requests for necessary medical or mental health treatment as well as efforts of police to arrange for such treatment as well as document any refusal of treatment.*

5. Members involved in use of force incidents as described below shall notify their Supervisor as soon as practicable and shall complete a department use of force report.
  - Use of force that results in physical injury.
  - Use of force incidents that a reasonable person would believe is likely to cause an injury.
  - Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
  - Incidents where a conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed.
  - Incidents where a firearm was discharged at a subject.
6. Failure to adhere to use of force guidelines may result in a disciplinary investigation.

#### **B. Responsibilities of Supervisors:**

1. The employee's immediate supervisor will respond to the scene of the incident immediately after learning of the use of physical force. If the employee's immediate supervisor is not available, the Shift OIC will be dispatched to the scene.
2. Supervisors will insure that employees receive any necessary assistance, including medical treatment. They shall also insure that any injuries to the employee or any] suspects are properly documented, reported and photographed.
3. Supervisors will determine if an investigator will be summoned to the scene of the incident and to what level the services of the investigator will be needed. In minor incidents the patrol camera may be used.
4. Supervisors will insure that a thorough investigation is conducted of the incident. Whenever possible, this investigation will be conducted at the scene. The supervisor should identify police or civilian witnesses to the incident and obtain statements from them. The supervisor will include a written report documenting his action and a cover memorandum with his/her opinion of the incident.
5. In the event that an employee is unable to complete reports due to injuries, the supervisor will prepare or cause to be prepared the needed reports and submit them through the chain of command. The reports will be copied and forwarded as per current Sheriff's Office Orders and Directives.
6. Supervisors will notify the following with the circumstances and facts of the incident: The Road Patrol Supervisor, Operations Captain, Undersheriff, and Sheriff.

#### **C. Subject Resistance Management Report:**

The Subject Resistance Management Report shall be completed whenever physical force is used.

### **Instructions – Subject Resistance Management Report**

## **SUBJECT**

1. List all information pertaining to the subject, all related CFS numbers, date, time, and specific location.
2. Indicate if the subject was charged or released. If released, enter the name of the approving supervisor: if charged, list charges.

## **REASON FOR USE OF FORCE/CONTROL OF SUBJECT & SUBJECT RESISTED BY**

Describe fully, using an additional sheet if necessary, and include:

1. The subject's resistance, behavior or conduct and the verbal statements (describe, give examples)
2. All specific techniques or countermeasures used (e.g., verbal directions, pressure point, ASP baton techniques).
3. Reason(s) why tactics were used.
4. If necessary, explain why tactics were not effective.
5. Specific equipment used (e.g. hands, ASP baton, and handcuffs). It is important to indicate when equipment is used in conjunction with a technique (e.g. ASP strike as opposed to fist jab).

## **TACTIC EFFECTIVENESS**

Indicate, by checking yes or no, if listed tactic was used. For the tactic used, check the level of effectiveness that best applies.

If only OC square is checked, beside the OC annotation insert the name of the officer(s) who administered the OC.

## **LAW ENFORCEMENT OR OTHER PERSONNEL AT SCENE**

1. List the reporting officer's name as well as other law enforcement personnel or other support personnel at scene; include police Ids or agency name, when applicable.
2. Enter personnel's height and weight.
3. Duty Type – Enter OFF for off-duty, ON for on-duty or AE if incident occurred while performing additional employment.
4. Uniform – Enter YES if in uniform or NO if in plainclothes.
5. Injured/Treated – Either a YES or NO response in both the upper (injured) and lower (treated) parts of this box.
6. Addendum – (use of force memorandum) enter yes.

## **DEPOSED WITNESSES**

Enter the name, address, and applicable phone number(s) of those witnesses who provided a statement. Indicate if a witness was interviewed but refused to give a statement.

## **MEDICAL**

Check the box that best describes the physical state of the subject at the time of the incident.

Indicate (if known) if the subject had injuries before any type of force or tactic was used and describes those injuries.

Indicate if subject incurred injuries during the incident and describe those injuries.

If subject was exposed to OC, indicate where subject was treated and by whom. If subject was NOT exposed, enter N/A on the line provided.

If subject was not taken to the hospital, state the reason. If the subject was taken to the hospital, indicate by which method the subject was transported.

If the subject was taken to the hospital, indicate hospital name.

Enter name of attending professional.

Indicate subject treatment status.

Enter appropriate time.

Enter name of person witnessing refusal.

Check the applicable boxes and enter the name of the person performing the task.

## **SUPERVISORY REVIEW**

Signature of ranking officer on scene and date.

Signature of division supervisor/commander reviewing the report and date.

## **VIII. DISTRIBUTION**

The supplemental report will be filed at the completion of the tour of duty. After the immediate supervisor's review, the report will be forwarded to the Patrol Commander, who will be responsible to forward the report to the Operations Captain. The operations Captain will be responsible to forward the report to the Undersheriff and Sheriff.

## **IX. USE OF FORCE DATA COLLECTION**

For reporting purposes, Executive Law 837-t requires the reporting of any occurrence in which a police officer or peace officer employs use of force as listed below:

- A. When an officer engages in conduct which results in the death or serious bodily injury of another person.
  - Serious bodily injury is defined as bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- B. When one of the following is initiated by an officer:
  - a. Brandishes, uses or discharges a firearm at or in the direction of another person;

- b. Uses a chokehold or similar restraint that applies pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air;
  - c. Displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas;
  - d. Brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy;
  - e. Brandishes, uses or deploys an electronic control weapon, including, but not limited to, an electronic stun gun, flash bomb, or long range acoustic device.
- C. Reporting of use of force incidents to DCJS will be the responsibility of the Sr. Investigator.

## **X. TRAINING**

- A. All officers should 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 strategies including but not limited to: interacting with persons presenting in an agitated condition as well as duty to intervene and prohibited conduct.
- C. 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.

## **XI. BI-ANNUAL REVIEW**

Twice a year all use of force cases will be reviewed by the Operations Captain, Road Patrol Division commander, Jail Superintendent, and Senior Investigator.

## **BY ORDER OF THE SHERIFF**



**Gary W. Howard, Tioga County Sheriff**

**Effective Date**

**01-01-04**

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