



DUNKIRK POLICE DEPARTMENT

GENERAL ORDER

BY ORDER OF Chief David Ortolano	EFFECTIVE DATE: 8/31/2021 NUMBER: 20.1
	SECTION: OPERATIONS
REPLACES order issued G.O 20.1 4/28/2003	TOPIC: Use of Force

20.1 Use of Force

A. Purpose – To provide members of the Dunkirk Police Department with guidelines regarding the use of force by its members.

B. Policy – It is the policy of the Department to value and preserve all human life. Officers shall use only the force that is objectively reasonable to effect a lawful arrest or detention, prevent escape, or in defense of themselves or others. Officers shall use force only when no reasonably effective alternative appears to exist and shall use only the level of force which a reasonable officer would use under the same or similar circumstances. The standard for objective reasonableness, established by the US Supreme Court in *Graham v. Conner*, is used in this policy and is intended to provide officers with guidelines for the use of force, including deadly physical force.

C. Definitions:

1. 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 or similar circumstances, without the benefit of 20/20 hindsight, and be based on the totality of the facts known to the officer at the time the force was used.

2. Deadly Force: Any force, which under the circumstances in which it is used, is readily capable of causing death or serious physical injury as defined in Section 10.0 (11) of the New York State Penal Law.

3. Serious Physical Injury: Any 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 and defined in Section 10.0 (10) of the New York State Penal Law.

4. Physical injury: The impairment of physical condition or substantial pain as defined in Section 10.0 (9) of the New York State Penal Law.

5. De-escalation: Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning or pausing.

D. Determining the Objective Reasonableness of Force

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 the 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.

E. Use of Force General provisions

1. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person, or otherwise overcome active or passive resistance posed by the subject.
2. Use of force should be discontinued when resistance ceases and the situation is under control.
3. Once the scene is safe and as soon as practical an officer who has custody of a person must provide attention to the medical and mental health needs of such person 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 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 serious harm to themselves or others.
4. An officer 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 the unreasonable force, if and when the officer has a realistic opportunity to prevent harm.

5. An officer who observes another officer use force that exceeds the degree of force as described above in subsection 3 of this section, should promptly report these observations to a supervisor.

F. De-escalation

1. An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever possible and appropriate before resorting to force and to reduce the need for force.
2. Whenever possible and when such delay will not compromise the safety of the officer or another, and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.

G. Use of Less-Lethal Force

When de-escalation techniques are not effective or appropriate, an officer may consider the use of less-lethal force to control a non-compliant or actively resistant individual. An officer is authorized to use agency approved less-lethal force techniques and issued equipment:

1. To protect the officer or others from immediate physical harm,
2. To restrain or subdue an individual who is actively resisting or evading arrest,
3. To bring an unlawful situation safely and effectively under control.

H. Use of Deadly Force

1. 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.
2. Deadly physical force may be used to stop a fleeing suspect when:
 - a) 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,
 - b) The officer reasonably believes that the suspect poses an imminent threat of serious physical injury or death to the officer or another if the suspect is not immediately apprehended.
3. Where feasible, some warning should be given prior to the use of deadly physical force.
4. Chokeholds and Obstruction of Breathing or Blood Circulation;

- a) 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.
5. Deadly Force Restrictions:
- a) Deadly force should not be used against persons whose actions are a threat only to themselves or property.
 - b) Warning shots are inherently dangerous; therefore, officers are prohibited from firing warning shot.
 - c) Firearms shall not be discharged at a moving vehicle unless:
 - i. A person in the vehicle is threatening the officer or another person with deadly physical force by means other than the vehicle, or
 - ii. The vehicle is operated in a manner deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.
 - d) Firearms shall not be discharged from a moving vehicle except in exigent circumstances. In these situations, an officer must have an articulable reason for the use of deadly physical force.

I. Reporting Use of Force Incidents.

1. Officers involved in use of force incidents shall notify their supervisor as soon as practicable and shall complete a departmental use of force form, and in accordance with NYS Executive Law 837-t, report the following use of force incidents via the IJ portal when:
 - a) Use of force results in a physical injury.
 - b) A reasonable person would believe the force used is likely to cause a physical injury.
 - c) The force used results in a complaint of pain except complaints of minor discomfort from compliant handcuffing.
 - d) **Displays a chemical agent**-To point a chemical agent at a person or persons.
 - e) **Use/Deploy a chemical agent**-The operation of a chemical agent against a person or persons in a manner capable of causing physical injury.
 - f) **Brandishes a firearm**-To point a firearm at a person or persons.
 - g) **Uses/Discharges a firearm**-To discharge a firearm at or in the direction of a person or persons.
 - h) **Brandishes an electronic control weapon**-To point an electronic control weapon at a person or persons.

- i) **Uses/Deploys an electronic control weapon**-The operation of an electronic control weapon against a person or persons in a manner capable of causing physical injury.
- j) **Brandishes an impact weapon**-To point an impact weapon at a person or persons.
- k) **Uses/Deploys an impact weapon**-The operation of an impact weapon against a person or persons in a manner capable of causing physical injury.
- l) **Uses a chokehold or similar restraint**-Any application of sustained pressure to the throat, windpipe, neck, or blocking the nose or mouth of a person in a manner that may hinder breathing, reduce air intake or obstruct blood circulation.
- m) **Conduct which results in the death or serious bodily injury of another person**-Serous injury includes bodily injury that creates or causes:
 - i. A substantial risk of death; or
 - ii. Unconsciousness; or
 - iii. Serious or protracted disfigurement; or
 - iv. Protracted loss or impairment of the function of any bodily member, organ, or mental faculty.

J. Reviewing Use of Force Incidents.

1. Where practicable, a supervisor should respond to the scene to begin the preliminary use of force investigation.
2. A supervisor who is made aware of a use of force incident shall ensure the completion of a departmental use of force form by all officers engaging in a reportable use of force incident and, to extent practical, make a record of all officers present.
3. Supervisors are responsible to ensure reporting requirements are met in accordance with NYS Executive Law 837-t.
4. Any requests for necessary medical or mental health treatment as well as efforts to arrange for such treatment should be documented.
5. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
6. Shift supervisors will evaluate the incident for:
 - a) Adherence to General Orders.
 - b) Identify needs for training and/or if immediate corrective action is necessary.
7. Shift supervisors are responsible to fill out the supervisory review section of the department's use of force form, then forward the form to the detective lieutenant for final review.

8. The detective lieutenant will determine if further investigation is warranted.

K. Training

1. All officers shall receive training, at least annually, on this use of force policy and related legal updates in order to enhance officers' discretion and judgement when faced with a use of force decision.
2. Training topics will include but not limited to:
 - a) use of force including actual situations and conditions;
 - b) conflict prevention;
 - c) conflict resolution and negotiation;
 - d) de-escalation techniques and strategies.
 - e) duty to intervene and prohibited conduct.