

# HUNTINGTON WOODS DEPARTMENT OF PUBLIC SAFETY

## GENERAL ORDER

	DATE OF ISSUE: 4-8-2021	EFFECTIVE DATE: 4-8-2021	NUMBER: 005
SUBJECT: WD.POLICE USE OF FORCE	BY ORDER OF: ANDREW PAZUCHOWSKI, DIRECTOR OF PUBLIC SAFETY		DISTRIBUTION: ALL OFFICERS
REFERENCE:	AMENDS: 11-24-2020 9-2-2020 6-17-2020 12-6-2017 8-4-2014 ALL PREVIOUS		REEVALUATION DATE: ANNUALLY

### I. APPLICATION

This order constitutes Department policy and is not intended to enlarge the employer's or employee's civil or criminal liability in any way. It shall not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims insofar as the employer's or employee's legal duty as imposed by law.

### II. PURPOSE

The purpose of this order is to establish policy and procedure regarding the appropriate and acceptable use-of-force, to provide for a high degree of officer safety, and provide of the treatment of any injury or complaint of injury arising from the use-of-force.

### III. DEFINITIONS

- A. *"Control"* is the method/methods an officer uses to neutralize the unlawful actions of a subject, or to protect the subject from injuring himself or others.
- B. *"Resistance"* is defined as the subject's attempt to evade an officer's attempts to establish control.
- C. *"Force"* is the attempt to establish control through physical means, in the presence of resistance. "Force" includes all physical means more than the "mere touching" required to handcuff a normally cooperative person. All force is a means of control, however, control can, at times, be achieved without the use of physical force.

- D. "*Non-Deadly Force*" is that amount of force that will not likely result in death or serious physical injury.
- E. "*Deadly Force*" is that amount of force that could result in death or serious physical injury. For the purpose of this policy, "deadly force" includes the threatened use of firearms, i.e., pointing firearm at person(s) to gain compliance.
- F. "*Reasonable Belief*" means facts, circumstances, or knowledge present to the officer sufficient to justify a thought or feeling, within reason, moderate action suitable to the situation, consistent with Department approved training and policies. The final decision as to the reasonableness of police action will be determined on a case-by-case basis by those members of the Department called upon to review the appropriateness of those tactics or actions, based on what a "reasonable" officer would have done under like circumstances.
- G. "*Serious Physical Injury*" Injury, which creates a probability of death, or which causes significant, permanent loss or impairment of the function of any body part or organ.
- H. "*Last Resort*" situations are those wherein certain immediate and drastic measures must be undertaken by an officer in order to protect human life. Force used in these situations may involve the use of techniques or weapons not permitted or covered by policy; however, they remain to be measured by "reasonable" and "necessary" use-of-force standards.

\*The definitions above shall be included and reviewed during annual in-service training as part of the weapons training programs.

#### **IV. POLICY**

It shall be the policy of this Department to employ the amount of force that is reasonable and necessary to overcome the resistance offered, affect a lawful arrest, and/or accomplish the lawful performance of duty while protecting the public. In use-of-force situations, officers shall utilize de-escalation techniques where possible.

The use of unreasonable, unnecessary force, and/or the failure to provide proper medical treatment following the use-of-force, shall, in every case, result in certain and severe disciplinary action against those who use or allow the use of such force, or fail to provide for the care of persons in custody.

#### **V. AUTHORIZATION FOR THE USE OF FORCE**

- A. Absent a reasonable and lawful purpose, the non-consensual touching by a police officer may constitute a crime, as well as result in civil liability. When reasonable and lawful purpose exists, criminal and civil liability may still occur if the limits of the law are exceeded.
- B. During the officer's tour-of-duty, it may be necessary to use some level of control to affect an arrest or protect others. In many situations, control may be achieved without the use of physical force. In other instances, based on resistance offered, the officer may find it necessary to use varying levels of force to control a subject's resistance.

#### **VI. USE OF FORCE PROCEDURES**

- A. The use-of-force will be examined from two (2) perspectives; resistance and control. Both resistance and control can be in the form of verbal responses (subject) or directives (officer), or physical actions.
- B. Officers should assess the incident in order to determine the level of control that would be appropriate. When possible, officers should attempt to gain control by means of verbal directives or commands.
- C. If verbal directives or commands are ineffective, or not feasible given the circumstances of the situation, the officer may find it necessary to escalate to control methods that involve the use of physical force. If force is necessary, the officer must decide which technique(s) or authorized equipment will best de-escalate the incident and bring it under control in a safe manner.
- D. Officers are authorized to use Department approved control techniques and authorized equipment for resolution of incidents, as follow:
  - 1. To stop potentially dangerous and unlawful behavior;
  - 2. To protect the officer or another from injury or death;
  - 3. To protect subjects from injuring themselves;
  - 4. To effect a lawful arrest when subject offers resistance.

## **VII. DEADLY FORCE PROCEDURES**

### **A. AUTHORIZED USE OF DEADLY FORCE**

The use of deadly force is limited to the following situations:

- 1. To protect the officer or another from what is reasonably believed to be an imminent threat of death or serious physical injury.
- 2. To prevent the escape of a subject who is fleeing from an inherently violent felony crime, and the officer has probable cause to believe that the subject poses a significant threat of death or serious physical injury to the officer or others.
- 3. Whenever any one of the two conditions described above is present, where feasible, officers shall identify themselves and provide a warning before the force is applied.

### **B. USE OF DEADLY FORCE PROHIBITED**

- 1. To shoot at or from a moving vehicle;
- 2. The establishment or use of a roadblock.
- 3. To fire "warning" shots.

### **C. CHOKEHOLDS**

A chokehold is defined as any physical use-of-force maneuver applied by an officer that restricts the intake of oxygen, thus affecting an individual's ability to breathe for the purposes of control or incapacitation. Chokeholds are strictly prohibited for use by members of this agency except in those situations where the use of deadly force would be considered reasonable, or where the use of deadly

force is authorized in accordance with this Department policy.

#### D. VASCULAR NECK RESTRAINTS

A vascular neck restriction is defined as any physical use-of-force maneuver applied by an officer that restricts blood flow to the brain of an individual for purposes of control or incapacitation. Vascular neck restraints are strictly prohibited for use by members of this agency.

### VIII. ESCALATION AND DE-ESCALATION OF FORCE

- A. Escalation of force may be justified when an officer reasonably believes that the level of force being use is insufficient to stop or control the resistance.
- B. Officers may escalate to the level of force that is "reasonable" and "necessary" to control the situation, based on the level of resistance encountered. As the subject begins to de-escalate or lessen the resistance offered, the officer must de-escalate in a similar manner.
- C. The officer should consider the following variables when making a decision to escalate or to de-escalate the level of control.
  1. Officer/Subject: size, physical abilities;
  2. Environmental conditions: such as closed or confined areas;
  3. Nature of contact;
  4. Exigent Conditions: number of officers, number of subjects involved, and availability of back up;
  5. Reaction Time: the officer must consider that action is faster than reaction; thus, the officer must pay attention to the above factors when preparing for a course of action;
  6. Reactionary Gap: officers should be cognizant of and utilize a reactionary gap during all police contacts. The reactionary gap is defined as a safety zone between the officer and subject which affords the officer more time to react to aggression:
    - a. The average distance is six feet or more;
    - b. Varies with type of weapon the subject may possess;
    - c. The officer always has two "Reactionary Options" available:
      - i. Penetrate the gap to attempt control;
      - ii. Disengage to create distance.

### IX. DUTY TO INTERVENE; DUTY TO REPORT EXCESSIVE FORCE

- A. Every law enforcement officer is expected and required to intervene and take all appropriate action necessary in any situation where the law enforcement officer observes and is clearly convinced that another individual (agency employee or public safety associate) is using unreasonable force in violation of the law, Departmental policy or local ordinance.
- B. Law enforcement officers have a duty to report all instances in which they believe the force used by other officers is excessive, given the circumstances.
- C. On, or off-duty, any time an agency employee witnesses what they reasonably believe to be an excessive or inappropriate use of force, the employee will immediately report such incident to their immediate supervisor, or another supervisor or command officer of the Huntington Woods

Department of Public Safety.

D. All reported instances of alleged excessive force will be completely and thoroughly investigated.

## **X. MOTOR VEHICLES AS FORCE**

A. Officers must be aware, and acknowledge, that in many instances the motor vehicle can be viewed as an instrument of force. Partial or complete roadblocks have been ruled to be a use-of-force. The use of any such technique or action has a high probability of causing death or serious physical injury. Refer to G.O. 013 on the use of Roadblocks as they are defined as a use of deadly force in this policy and are prohibited by this agency.

## **XI. MEDICAL CONSIDERATION**

A. Where injuries to a subject occur (whether express, implied or observed) following any law enforcement action (use-of-force, apprehension, etc.), officers shall ensure that reasonable, timely, appropriate medical aid/treatment is available to that subject when:

1. The subject is unconscious;
2. The subject requests medical treatment;
3. The subject complains of injury or continued pain;
4. An officer observes or suspects injury to the subject, or where medical distress is apparent;
  - a. A specific officer should be designated to monitor the subject.
  - b. Any subject upon whom force is used should be monitored closely.
  - c. Persons exhibiting signs of unusual distress should be transported to a medical facility for treatment.
5. The subject does not substantially recover from the effects of an Aerosol Subject Restraint (ASR) within the reasonable and expected period of time (where available, officers will provide a subject with fresh air and flush the area of the eyes with a copious amount of water);
6. Directed by a supervisor.

B. When a subject complains of injury/injuries, or where an officer observes obvious signs on injury/injuries to a subject, the subject should be closely monitored for changes in condition.

C. Officers will provide treatment/aid consistent with Medical First Responder (MFR) training & certification. Alliance Mobile Health (AMH) shall be requested for subject injury incidents which fall outside the scope of MFR training or where there is a need for additional or continued treatment.

D. Medical treatment will be provided at a Departmentally designated medical facility.

E. Officers who provide a subject with medical treatment shall, before removing the subject from the medical facility, receive written authorization from the attending physician to do so.

F. Officers that provide a subject with medical treatment shall, while at the medical facility, notify their immediate supervisor of the incident and injuries sustained as result of the incident.

G. A description of all medical treatment shall be documented in the CLEAR report and on the "Subject Resistance/ Officer Control" form.

## **XII. INVESTIGATION - USE-OF-FORCE**

- A. When an officer uses force, their immediate supervisor will conduct an administrative review of the incident.
- B. All applications of force shall be reported by the involved officer(s) to their immediate on-duty supervisor.
- C. As soon as reasonably possible, officers that have used force shall complete an incident report and the Departmental "Subject Resistance/ Officer Control" form as required by the Department's incident reporting and use-of-force review policies contained elsewhere in this manual.
- D. As part of the review, the investigating supervisor should review all available incident reports (to include outside agencies where applicable), witness statements, injury reports, review in-car and/or booking video(s) and/or conduct interviews where/when necessary.
- E. After conducting a review of the circumstances attending the use-of-force, the supervisor shall submit a written report of the results of the investigation to the Director of Public Safety. In those instances where no impropriety is found or suspected, the properly reviewed and signed "Subject Resistance/ Officer Control" form shall suffice as the supervisor's written report.

### **XIII. INVESTIGATION - USE-OF-FORCE INVOLVING SERIOUS INJURY OR DEATH**

#### **A. Criminal Investigation Authority**

The Huntington Woods Department of Public Safety and its designated members have the authority to conduct a criminal investigation when force is used, including incidents involving death or serious bodily injury. This criminal investigation may also be delegated to an outside agency, including, but not limited to, the Michigan State Police or the Oakland County Sheriff's Department, when deemed advisable by the Director of Public Safety and/or his designee. Members of the Huntington Woods Department of Public Safety who are under criminal investigation retain all of their rights and privileges, and the ability to assert those rights and/or privileges, including, but not limited to, any applicable collective bargaining agreements, regardless of which entity conducts the criminal investigation.

#### **B. Internal Administrative Investigation Authority**

The Director of Public Safety and/or his designee have the authority to conduct an internal administrative investigation involving use-of-force incidents that result in death or serious bodily injury. This internal investigation may also be delegated to an outside agency, including, but not limited to, the Michigan State Police or the Oakland County Sheriff's Department, when deemed advisable by the Director of Public Safety and/or his designee. Members of the Huntington Woods Department of Public Safety who are under internal administrative investigation retain all of their rights and privileges, and the ability to assert those rights and/or privileges, including, but not limited to, the Disclosures by Law Enforcement Officers Act (MCL 15.391, et seq.), *Garrity v. New Jersey*, *NLRB v. Weingarten*, *Miranda v. Arizona*, and any other applicable rights and/or privileges, including the right to insist on compulsion from their own Department/employer.

#### **C. Prosecutor's Office Role**

The role of the Oakland County Prosecutor's Office is normally limited to reviewing the criminal investigation, once it is complete and submitted to their office for review. The prosecutor's office is normally not involved in the criminal investigation itself, but they can be utilized for legal guidance.

#### **XIV. COMPLIANCE**

Violations of this policy, or portions thereof, may result in disciplinary action.

#### **XV. OFFICERS ASSIGNED TO OTHER AGENCIES**

Officers of this Department assigned to or assisting other law enforcement agencies will be guided by this policy.

#### **XVI. DIRECTOR OF PUBLIC SAFETY**

- A. Annually, the Director of Public Safety, or his designee, will conduct an analysis of all use-of-force incidents, activities, policies, procedures and practices. The analysis shall identify;
  - 1. Date and time of incidents;
  - 2. Types of encounters resulting in use(s)-of-force;
  - 3. Trends or patterns related to race, age and gender of the subjects involved;
  - 4. Trends or patterns resulting in injury to any person including employees; and
  - 5. Impact of findings on policies, practices, equipment and training.
  
- B. In addition, the Director of Public Safety, or his designee, will conduct a review of all assaults made on officers of this agency. The review is intended to identify and determine trends or patterns of such incidents and when/where necessary, the Director of Public Safety, or his designee, shall revise policy, make appropriate recommendations to enhance officer safety and/or address training issues.