


# GENERAL ORDER

# 130.10

	<b>Subject:</b> Use of Force and Deadly Physical Force		<b>Effective Date:</b> June 13, 2019
	<b>DCJS Standards:</b> 20.1, 20.5, 20.6, 21.2, 21.2, 32.3	<b>CALEA Standards:</b> 1.3.1, 1.3.2, 1.3.3, 1.3.4, 1.3.5, 1.3.6, 1.3.7, 1.3.8	<b>Revision Date:</b> -
	<b>Issuing Authority:</b> <i>Chief David J. Amico</i> David J. Amico, Executive Director of Public Safety and Emergency Management		

## I. POLICY:

It is the policy of the Mohawk Valley Community College Department of Public Safety that officers use only that level of force that is reasonably necessary to control an incident, to affect an arrest, or to protect themselves or others from personal harm or death. The degree of force used by the officer should be within the limits established by Article 35 of the New York State Penal Law, and consistent with the training given by the Mohawk Valley Community College Department of Public Safety.

## II. DEFINITIONS:

**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 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.

**Physical Injury:** Impairment of physical condition or substantial pain.

**Low-Level Force:** A level of force or control that is neither likely nor intended to cause physical injury.

**Intermediate Force:** A level of force that, under the circumstances in which it is used, is readily capable of causing physical injury.

**Non-Deadly Force:** The use of force which is applied to compel compliance, which is not intended to cause serious physical injury. All low-level and intermediate force is non-deadly force.

**Deadly Physical Force:** The use of force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury. Deadly physical force is not limited to the use of firearms.

**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.

**Reportable Force:** Any use of force which requires official documentation for departmental review. Some low-level force is Reportable Force. All Intermediate Force and all Deadly Physical Force is Reportable Force.

### III. GUIDELINES:

#### A. USE OF FORCE

1. In general terms, force is authorized to be used when reasonably believed to be necessary to effect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of one's self or another.
  - a. By law, an officer need not retreat in performance of their lawful duties, but a tactical retreat in the face of overwhelming odds may be a wise choice.
2. Under the 4th Amendment, a police officer may use only such force as is "objectively reasonable" under the circumstances.

#### B. APPROVED EQUIPMENT AND USAGE

1. Only departmental issued or approved equipment will be carried on duty and used when applying physical force, except in emergency situations when an officer must use any resources at his disposal.
2. Officers shall use less lethal substances and devices such as a conducted energy weapon, a baton, or self-defense spray pursuant to departmental policy and training.
3. Use of restraining devices is mandatory on all prisoners, unless in the officer's judgment, unusual circumstances exist which make the use of restraining devices impossible or unnecessary (e.g. prisoner is very elderly or handicapped, etc.)
  - a. Any subject who is handcuffed will be handcuffed behind the back unless in the officer's judgment, unusual circumstances exist which make this impossible or unnecessary (e.g. prisoner is very elderly or handicapped, etc.) Handcuffs will always be double locked.
  - b. Handcuffs will be inspected, if possible, to ensure they are not injuring the subject. Adjustments may be made at the officer's discretion to ensure the subject does not receive injury, however, this will not be done if the officer risks injury to him/herself or others in doing so.
  - c. The mere placing of handcuffs on a prisoner will not be construed to be reportable force.

#### C. DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE:

1. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.
2. It is the responsibility of each member of the department of Public Safety to know and understand the Use of Force Continuum. The Use of Force Continuum represents escalating and deescalating levels of force and is as follows:
  - a. **Verbal Commands**; e.g. Clear and deliberate lawful orders given by the officer
  - b. **Low-level Force**; e.g. Use of restraints/handcuffs; empty hand controls, impact weapon (as escort tool)
  - c. **Intermediate Force**; e.g. Strikes, impact weapons, chemical agents, Conducted Energy Weapon
  - d. **Deadly Physical Force**; e.g. Firearms,

3. If circumstances dictate, the officer may bypass lower levels of force and immediately respond with a higher level; it is the responsibility of each officer to be knowledgeable of those requirements.
  - a. The officer must consider all factors before using force and choose a reasonable option based on the totality of circumstances. The movement, escalation/de-escalation, from the application of one force type to another should always be objectively reasonable.
4. Factors that may be used in determining the reasonableness of force include, but are not limited to:
  - a. The severity of the crime or circumstance;
  - b. The level and immediacy of threat or resistance posed by the suspect;
  - c. The potential for injury to citizens, officers, and suspects;
  - d. The risk or attempt of the suspect to escape;
  - e. The knowledge, training, and experience of the officer;
  - f. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;
  - g. Other environmental conditions or exigent circumstances.

#### **D. PROHIBITED USES OF FORCE:**

1. Force shall not be used by an officer for the following reasons:
  - a. To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;
  - b. To coerce a confession from a subject in custody;
  - c. To obtain blood, saliva, urine, or other bodily fluid or cells, from an individual for the purposes of scientific testing in lieu of a court order where required;
  - d. 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.

#### **E. DUTY TO INTERVENE:**

1. 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.
2. An officer who observes another officer use force that exceeds the degree of force as described in subdivision III.C.1 of this section should promptly report these observations to a supervisor. Complete a departmental Use of Force Report whenever force is used by an officer and witnessing officers.

## **F. USE OF DEADLY PHYSICAL FORCE:**

Members of the Mohawk Valley Community College Department of Public Safety may use deadly physical force only when:

1. As authorized by the provisions of Section 35 of the Penal law, including but not limited to sections 35.30, a Peace Officer may use deadly physical force in order to protect the officer or another person from what is reasonably believed to be an immediate threat of death or other serious physical injury, or to prevent the escape of a fleeing felon, as stated in section 35.30, whom the officer has reasonable cause to believe will pose a significant threat to human life should the escape occur.
  - a. Firearms should not be discharged when it appears that a third party may be injured as a result.
  - b. A Peace Officer shall not draw or exhibit any firearm unless circumstances create reasonable cause to believe that it may be necessary to use the firearm in conformance with this policy.
  - c. Where feasible, some warning should be given prior to the use of deadly physical force.
2. It shall be this Department's policy that a Peace Officer is justified in the discharge of his or her firearm in the following limited circumstances:
  - a. The defense of his/her own life; or
  - b. The defense of a fellow officer's life or the life of a third person; or
  - c. To prevent the actual commission of a violent felony, (those stated in Section 35.15, 35.20, and 35.30 of the N.Y.S. Penal Law) where human life is being jeopardized by the subject.
    1. The above mentioned instances relate solely to self-defense of a 3rd person from deadly physical force.
  - d. The destruction of an animal for humanitarian purposes.
3. Firearms may be used against animals:
  - a. When they are attacking or presenting an imminent danger to any person; or
  - b. For critically sick or injured wildlife, when authorized by a supervisor.
4. Unauthorized use of a firearm shall be cause for disciplinary action up to and including termination. The reckless or criminally negligent conduct by a Peace Officer in the use of a firearm amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody, will result in that individual officer being personally responsible for justifying his or her action, both criminally and civilly.

## **G. REQUIRED OFFICIAL NOTIFICATION AND WRITTEN REPORTS AFTER THE DISCHARGE OF A FIREARM**

1. Each Peace Officer is responsible for the immediate notification to any on-duty supervisor or OIC, or to the Executive Director of Public Safety and Emergency Management of any instance of the voluntary or involuntary discharge of a firearm while the officer is on-duty, regardless of injury.
  - a. The report shall include the full circumstances of the weapon's discharge and all relevant information related to the incident.

- b. After a firearm is discharged (firing of a weapon) on or off duty, a Department Use of Force Report must be completed immediately by the officer and witnessing officers involved.
  - c. The officer will forward a copy of the report prior to the end of shift to the supervisor for; review, comments, and recommendations.
  - d. After review for accuracy and completeness, the supervisor or OIC on duty at the time of the incident will record comments and recommendations prior to the end of shift and forward same to the Executive Director of Public Safety and Emergency Management.
2. In the event of a discharge of a firearm which involves the physical injury, serious physical injury, or death of a suspect or of any person, the Executive Director of Public Safety and Emergency Management will be notified immediately.
  - a. If that notification is not completed, notification should next be made to the Vice President of Administrative Services, or to the President of the College.
3. Each Peace Officer shall immediately report in person or by telephone (followed by the completion of the Department Use of Force Report) to the Executive Director of Public Safety and Emergency Management the voluntary or involuntary discharge of a firearm, while on or off duty, excluding recreational shooting and firearms training session. The report shall include the full circumstances of the weapon's discharge and all relevant information related to the incident.

#### **H. MEDICAL ATTENTION**

1. After physical force is used, an officer shall immediately evaluate the need for medical attention or treatment for that subject upon whom the physical force was used.
  - a. An officer will arrange for such treatment when:
    1. That subject has a visible physical injury or serious physical injury; or
    2. That subject complains of a physical injury; or
    3. That subject requests medical attention.
  - b. If medical aid is not provided, heightened observation to detect obvious changes in the subject's physical condition should take place.

#### **I. REPORTING AND REVIEWING THE USE OF FORCE:**

1. This policy directs members involved in use of force incidents to report to their immediate supervisor any instances of reportable force by an officer.
2. Reportable force is determined by any of the following circumstances being present:
  - a. Use of force that results in a physical injury or a complaint of physical injury from the suspect;
  - b. Use of force that results in serious physical injury;
  - c. Incidents where an officer used any type of hold which applied pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air on a subject;

- d. Incidents where an officer used the restraints/handcuffs as an appliance to exert force necessary to further control a prisoner or where the suspect physically resists the application of handcuffs;
  - e. Incidents where a chemical agent was displayed, used, or deployed on a subject;
  - f. Incidents where an impact weapon was displayed, used, or deployed on a subject;
  - g. Incidents where a conducted energy weapon was displayed, used, or deployed at a subject;
  - h. Incidents where a firearm was displayed, used, or discharged at or in the direction of another person;
3. Whenever force that was used by any officer(s) qualifies as reportable force, it shall be documented using A Use of Force Report (Attachment A). Members are to complete a departmental Use of Force Report (Attachment A) and notify their supervisor as soon as practicable.
    - a. The officer will forward a copy of the report prior to the end of shift to the on-duty supervisor or OIC.
    - b. Witnessing officer(s) should also complete the Use of Force Report and submit it to the on-duty supervisor or OIC.
  4. After review for accuracy and completeness of the Use of Force Report, the supervisor or OIC on duty at the time of the incident will record comments and recommendations prior to the end of shift and forward same to the Executive Director of Public Safety and Emergency Management.

#### **J. PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS:**

1. Where practicable, a supervisor should respond to the scene to begin the preliminary force investigation.
  - a. A supervisor that is made aware of a force incident shall ensure the completion of a use of force report by all officers engaging in reportable use of force and, to the extent practical, make a record of all officers present.
    1. A comprehensive report will be written by both the member who used force, and the most senior officer or supervisor on duty. These reports will be completed by the members before going off-duty.
  - b. Diagrams, photographs, sketches, evidence collection, and other investigative tools and methods will be used to document the scene.
    1. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
2. When any use of force causes serious physical injury or death, the Police agency of jurisdiction and the District Attorney's office will receive the supervisor's report and conduct an investigation.

#### **IV. TRAINING:**

##### **A. USE OF FORCE**

1. All officers should receive training and demonstrate their understanding on the proper application of force.

2. 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.

## **B. FIREARMS**

1. All Peace Officers are required to successfully qualify with their issued sidearm at least once per year to carry this weapon.

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.