



# ROCKLAND COUNTY SHERIFF'S CIVIL ENFORCEMENT DIVISION

<b>MANUAL INDEX # §4.8</b> <b>REPLACE: All Previous</b>	<b>SUBJECT: <u>GENERAL ORDER</u></b>
<b>REF:</b> <b>Rules of Conduct (4.1.38)</b>	 <b>Use of Force Policy</b>
<b>NYSSAAS No.</b> <b>40,41,78,79,80,83,85</b>	<b>APPROVED:</b>  <b>Sheriff/Chief</b>
<b>EFFECTIVE DATE:</b> <b>3/9/2021</b>	<b>REVIEW DATE: Annually</b>
<b>DISTRIBUTION: ALL SWORN MEMBERS OF CIVIL DIVISION</b>	

**PURPOSE**

- A. To establish policy and guidelines for the use of force by all members of the Rockland County Sheriff's Civil Division when confronted by a situation where the use of PHYSICAL FORCE or DEADLY PHYSICAL FORCE may be necessary.

**POLICY**

- A. Federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness. The amount of force that is used by the officers shall be the amount of force that is objectively reasonable under the circumstances for the officer involved to effect an arrest, prevent an escape, or in defense of themselves or others.
- B. Force which is objectively reasonable is insulated from criminal liability through Article 35 of the NYS Penal Law and civil liability by the 4th Amendment standard of objective reasonableness.
- C. The standard of objective reasonableness, established by the United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 at 396 (1989) is used in this policy and is intended to provide officers with guidelines for the use of force, including deadly physical force.
- D. This policy is consistent with Article 35 of NYS Penal Law, (Defense of Justification Sections 35.00 – 35.30) and with the Municipal Police Training Council Use of Force Model Policy pursuant to Executive Law 840 (4)(d)(3), Executive Law 837-t and 9 NYCRR 6058,
- E. All use of force will be documented, reviewed, investigated, and reported as laid out in this policy
- F. This policy is written in recognition of the value of all human life and dignity without prejudice to anyone. As members of the Sheriff Office, we are sworn to protect human life. It is the responsibility of each officer in the Division to ensure

that they are constantly aware of their duty with regards to the use of force and the limitations for the use of that authority.

- G. This policy will be posted on the Sheriff's PowerDMS website.

## DEFINITIONS

- 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 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.
- 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.

## PROCEDURE

- A. **AUTHORIZATION:** Article 35 of the NYS Penal Law authorizes the Use of Force but does not command it.
- B. **NECESSARY USE OF FORCE:** The use of physical force by Department members will always be a direct response to the threat posed by an offender(s). Therefore, the policy of the department shall be that the offender's action will determine the level of force that a Department member shall utilize and the level of force utilized was the direct result of the offender's compliance or noncompliance. (See Force options chart).
- C. **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 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.

D. **ABSENCE OF RECKLESSNESS:** Avoidance of recklessness should be considered in any situation involving deadly physical force. In cases where deadly physical force is both authorized by law and reasonable and necessary under the circumstances, you still must consider the safety of innocent bystanders.

E. **USE OF DEADLY PHYSICAL 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 where:
  - i. 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,
  - ii. The officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officer or to others.
  - iii. Where feasible, some warning should be given prior to the use of deadly physical force.
3. Deadly physical force may also be used to dispatch a dangerous animal or an animal so badly injured that humanity requires that it be removed from further suffering. In these cases, obtain permission from the owner whenever possible and protect the public from the possibility of injury at all times by insuring a safe line of fire and a suitable back stop for projectile.
4. Chokeholds and Obstruction of Breathing or Blood Circulation: Any application of pressure to the throat, windpipe, neck, or blocking of 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. NYS PL 121-13a established the crime of aggravated strangulation.

F. **DE-ESCALATION**

1. De-escalation is tied to the principle that an officer should exhaust all available methods of resolving a situation before using force. 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 verbal commands before force is used. Respect and dignity is the foundation of being able to de-escalate.
2. De-escalation has proven effective in certain circumstances to diffuse what would otherwise be a dangerous encounter. De-escalation tactics, that include both verbal and non-verbal communication strategies, can slow down an evolving situation and reduce the risk of a situation becoming violent.

Command presence, tactical positioning and stance, verbal persuasion through tone of voice and word choices, can either calm a situation or inflame an already tense situation.

G. UNECESSARY FORCE:

1. Unnecessary Force occurs when physical control of a person, that is unjustified, has occurred or when it is apparent that the type or degree of force employed was neither necessary nor appropriate, or when ANY degree of force is used as a summary punishment or vengeance.
2. If physical force is used when not required, or is unreasonable in its intensity or application it is usually construed as brutality and is considered to be the ultimate in misconduct and therefore, abuse of authority. (LOUIMA vs. City of NY 01)

H. PROHIBITED USES OF FORCE

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 purposes 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.
5. Against unarmed, non-dangerous fleeing felons or misdemeanants, or traffic offenders.

The following acts associated with the use of force are also prohibited.

6. Firing into crowds.
7. Firing a warning shot.
8. Firing from or at a moving vehicle is prohibited except where the officer reasonably believes that:
  - i. An occupant of the other vehicle is using, or threatening to use, deadly force by a means other than the vehicle; OR
  - ii. A vehicle is operated in a manner deliberately intended to strike an officer or a citizen and all other reasonable means of defense have been exhausted (or are not present), including moving out of the path of the vehicle and the safety of innocent persons would not be unduly jeopardized by the officer's action.

- iii. Officers shall not fire at or in the direction of a vehicle that no longer poses an immediate threat.
9. Firing into a building or through doors when the person fired at is not clearly visible unless officers are being fired upon from such building or through such door.
10. Firing at a suspect when lesser force could be used and the officer believes that the suspect can be apprehended reasonably soon thereafter without the use of deadly force, or when there is any substantial danger to innocent bystanders.
11. Any application of pressure to the throat, windpipe, neck, or blocking of 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. NYS PL 121-13a established the crime of aggravated strangulation.
12. Use of any type of flashlights as batons. An officer may use a flashlight or other object designed for a use other than as a weapon only to defend him/or herself or another from imminent serious physical injury or death and then only if departmentally sanctioned methods are not available or are impractical.
13. Carrying or use of a second back-up firearm without notification to the chief and proof of proficiency.
14. The carrying or use of saps, blackjacks, slapjacks.
15. Use of deadly force against unarmed, non-dangerous fleeing felons, fleeing misdemeanants, or traffic offenders.
16. Any use of force not reasonably necessary in the light of the circumstances confronting the officer.

I. 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 1 of this section should promptly report these observations to a supervisor.

J. REPORTING & REVIEWING THE USE OF FORCE

1. An officer 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. (NY Civil Rights Law Sec28)

- i. This includes appropriate and timely medical attention being provided to a party injured as a result of a use of force incident.
  - ii. 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. (NY Mental Hygiene Law 9.41)
  - iii. Officers should document any requests for necessary medical or mental health treatment as well as efforts of officers to arrange for such treatment.
2. Officers involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete the attached "Use of Force Report". The "Use of Force Report" will also be completed whenever deemed necessary by the Shift supervisor and reviewed by the Use of Force Coordinator or the Chief of Civil/Sheriff.
  3. Whenever any Physical Force is used to control a non-compliant subject.
  4. In Use of Force incidents that are likely to or result in physical injuries, appropriate and timely medical attention will be provided to the injured party or parties.
  5. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
  6. Incidents where a conducted energy device (CED) was displayed, intentionally discharged or accidentally discharged after being displayed.
  7. Incidents where a firearm was displayed or discharged at a subject.
  8. Incidents where O.C. or a less lethal weapon was displayed or used to control a subject.

#### K. REPORTING TO DCJS

1. Section 837-t of the New York Executive Law has been amended to add a new section requiring the Chief of every Police Department, each County Sheriff, and the Superintendent of State Police to report to DCJS any instance in which a police officer or a peace officer, as defined in the criminal procedural law, uses force in any manner enumerated in the new legislation.
2. The requirement to begin tracking these specific use of force incidents is effective July 11, 2019. DCJS is currently in the process of developing a reporting structure for agencies to submit the statutorily required reportable use of force incidents and will issue a future advisory to law enforcement agencies on the manner in which to submit the use of force information.

## L. INVESTIGATING USE OF FORCE INCIDENTS- - PROCEDURE

1. Where practicable, a supervisor should respond to the scene to begin the preliminary Use of Force investigation.
2. 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.
3. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
4. Any use of Force incident that results in, or is alleged to have resulted in injury or death of another person will be reviewed in a timely fashion by the Use of Force Coordinator or the Chief of Civil/ Sheriff to determine if:
  - i. Divisional orders were violated.
  - ii. Relevant divisional policy was clearly understandable and effective to cover the situation.
  - iii. Divisional training was adequate.
5. The Chief of Civil/Sheriff may convene a board of inquiry/internal investigation to examine an incident in which force was applied and to ascertain training and policy needs.
6. Whenever an officer discharges a firearm other than in training or for lawful recreational purposes, each such incident will be reviewed:
  - i. To ensure that firearms are used correctly,
  - ii. To evaluate the need for further training, and
  - iii. To evaluate the adequacy of the firearms and ammunition for the incident.
7. The process should evaluate the circumstances and results of the incident and include a review of on and off-duty incidents, accidental discharges and the destruction of animals regardless of whether the incident occurred in or outside of the geographical area of employment.
8. At least annually, the Sheriff's Office shall compile an analysis of use of force incidents to be made available to the public.
9. Failure to adhere to use of force guidelines will be addressed consistent with agency disciplinary protocols and the applicable collective bargaining agreements.

M. USE OF LESS-THAN-LETHAL SUBSTANCES AND DEVICES)

Generally members of the Department may use less-than-lethal substances and devices in the performance of their duty in the following circumstances.

1. To prevent the commission of a crime or breach of the peace or other unlawful acts.
2. To prevent a person from injuring him or herself.
3. To effect a lawful arrest of a subject who is resisting arrest or attempting to flee from custody.
4. In self-defense.

N. DEPARTMENT ISSUED EQUIPMENT

5. The ASP/baton issued by this department is to be used in accordance with the training techniques of the NYS Bureau of Municipal Police.
6. ASP issued by the department may be used by those officers trained in its use and deployment techniques and the defensive tactics instruction of the Rockland County Sheriff's Office.
7. Chemical & O.C. Pepper Spray issued by the department may be used by those officers trained in its use and deployment techniques.
8. Officers who have received training and certification in other impact weapons and whose training credentials are current and have received authorization to carry from the Chief, may carry and use these other less-than-lethal substances and devices.

NOTE: Only Department issued and approved equipment shall be carried on duty and used when applying physical force, except in an emergency, when officers may use other resources at their disposal.

O. FIREARMS AND AMMUNITION:

1. Any firearm carried as a duty or off duty weapon must be authorized by the Chief of Civil or his/her designee in addition to being registered with the Department.
2. Ammunition for on duty and off duty weapons will be of a type authorized by the Chief of Civil or his/her designee.



P. OFF-DUTY INCIDENT INVOLVING USE OF FORCE:

1. If an officer is involved in an incident off duty involving the Use of Force, the following shall be required.
  - i. If the incident occurs while off duty, the officer will make a full report to the police agency having jurisdiction and is further required to verbally report the incident to his or her supervisor within six hours as well as prepare and file a written report within forty-eight hours of the incident. NYS Executive Law 837-v also provides that a law enforcement officer or peace officer is not prevented from invoking his or her constitutional right to avoid self-incrimination.
  - ii. As soon as possible, a Divisional Incident report will be generated to reflect the circumstances justifying the Use of Force. i.e.: Police Assist, Crime in Progress, Public Assist.
  - iii. Copy of the incident report along with completed Division Use of Force Report will be forwarded without delay to your Supervisor and the Use of Force Coordinator for review and determination.

Q. TRAINING

1. All officers will receive annual 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.
3. 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.

R. QUALIFICATION:

No officer shall carry or use any firearm, chemical agent, or less lethal weapon unless he or she has received training and demonstrated proficiency in its use.

1. Officers who fail to pass the qualification shall be reassigned to non-enforcement duties until such time as proficiency is proven.
2. Officers who have taken extensive leave or suffered an illness or injury that could affect the use of firearms or non-deadly weapons shall re-qualify before returning to enforcement duties

S. ASSIGNMENT:

During administrative review, any officer who has taken the life of or seriously injured another person shall be removed from line-duty assignment but shall remain on administrative leave with pay, with no change to his accruals. This status may change if the officer is subjected to disciplinary actions being taken by the department.

T. PSYCHOLOGICAL SERVICES:

Psychological follow-up of post-shooting trauma will normally be directed by the Chief of Civil/Sheriff whenever deemed appropriate. During an internal investigation, the department shall do all within its power to avoid placement of a stigma on the officer who discharges a firearm in performance of duty. Following a shooting resulting in a death, the officer shall not return to duty until a psychological evaluation has been conducted, and the officer has received any necessary counseling. At the employee's option, said examination may be conducted by RCPBA's Membership Assistance Program.

R. RESPONSIBILITY OF THE SUPERVISOR

- a. Upon notification, the supervisor will immediately respond to the scene. If not available another supervisor will be summoned to respond.
- b. The Supervisor will be responsible for all notifications that need to be made. Sheriff/Undersheriff must be notified.
- c. The Supervisor will ensure the employee receives any necessary assistance, including medical attention.
- d. All employee injuries are to be documented.
- e. The Supervisor will coordinate with the Patrol Division Supervisor at the scene.
- f. In addition to the Deputy's Use of Force Report, the Supervisor will submit his/her own report to include an account of his/her actions taken. In the event that an employee is unable to complete reports due to injuries, the Supervisor will prepare or cause them to be prepared and submit the reports through a proper chain of command.

# FORCE OPTIONS

## SITUATIONALLY DEPENDENT

