

**POLICY**

Law enforcement officers around the country, state and here in the Village of Muttontown are authorized to use reasonable and legitimate force in specific circumstances. Federal constitutional and state statutory standards dictate when and how much force can be used. This policy is founded in these standards but is not intended to be an exhaustive recitation of state and/or federal legal framework governing use of force. The policy is designed to provide guidance in accordance with Executive Law §840(4)(d)(3). This policy is not intended to endorse any particular tactic, technique, or method of employing force. Separate policy guidance and training will be provided for each of the available force instrumentalities made available to officers.

PURPOSE

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness. [1] 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. The standard of objective reasonableness, established by the United States Supreme Court in *Graham v. Connor*, is used in this policy and is intended to provide officers with guidelines for the use of force, including deadly physical force.

As the Supreme Court has recognized, this reasonableness inquiry embodies “allowance for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation.” [2]

This policy is written in recognition of the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires a careful balancing of all interests.

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. [3]

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. [4]

C. Physical Injury – Impairment of physical condition or substantial pain. [5]

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. [6]

E. Serious Bodily Injury – Bodily injury that causes: (1) a substantial risk of death; or (2) unconsciousness; or (3) serious protracted disfigurement; or (4) protracted loss or impairment of the functions of any bodily member organ, or mental faculty.

F. Chokehold – a restraint that applies pressure to the throat, windpipe in a manner that may hinder breathing or reduce intake of air (NY Executive Law § 837-t (1) (b)).

SCOPE

All Members of the Department

SOURCES

[1] 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.

[2] *Graham v. Connor*, 490 U.S. 386 at 396 (1989).

[3] *Graham*, 490 U.S. 396 (1989)

[4] NY Penal Law § 10 (11) (McKinney 2013)

[5] NY Penal Law § 10 (9) (McKinney 2013)

[6] NY Penal Law § 10 (10) (McKinney 2013)

[7] NY Penal Law and § 35.30(1) (McKinney 2013)

[8] *Graham*, 490 U.S. at 396 (1989)

[9] *Ibid*.

[10] *Ibid*.

[11] *Scott v. Harris*, 550 U.S. 372 (2007)

[12] *Graham*, 490 U.S. at 396 (1989)

	<p>[13] Analysis of cases under the 4th Amendment require the focus to be on the perspective of a reasonable officer on the scene which includes the training and experience of the officer. <i>Graham v. Connor</i>, 490 U.S. 386 (1989), <i>Terry v. Ohio</i>, 392 U.S. 1 (1968)</p> <p>[14] <i>Sharrar v. Felsing</i>, 128 F. 3d 810 (3rd Cir. 1997) (numbers of officers or subjects)</p> <p>[15] Courts have repeatedly declined to provide an exhaustive listing of factors. <i>Chew v. Gates</i>, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)</p> <p>[16] NY Penal Law and § 35.30(1)(c)(McKinney 2013)</p> <p>[17] NY Penal Law and § 35.30(1), as restricted by <i>Tennessee v. Garner</i>, 471 U.S. 1 (1985) (restricting the use of deadly physical force as it relates to fleeing felons) In <i>Garner</i>, the Supreme Court uses “significant threat of serious physical harm, either to the officer or others” in describing the limited circumstances under which deadly force can be used to prevent the escape of a felon.</p> <p>[18] Chiefs of police departments, County Sheriffs, and the Superintendent of State NY Executive Law § 837-t (1) (b)</p> <p>Police should consider utilizing these forms to ensure compliance with the administrative reporting requirement of EXC §837-t.</p> <p>[19] EXC §840(4)(d)(2)(vi)</p> <p>[20] EXC §840(4)(d)(2)(vii)</p> <p>NY Penal Law §121.13-a</p> <p>NY Civil Rights Law§ 123-28</p> <p>NY Executive Law § 835-v</p> <p>NY Executive Law§ 837-v</p>
RULES	There are no rules associated with this procedure.
PROCEDURE MEMBERS OF DEPARTMENT	<p>I. USE OF FORCE</p> <p>A. In general terms, force is authorized to be used when reasonably believed to be necessary to affect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of one’s self or another. [7]</p> <p>B. Under the 4th 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. [8]</p> <p>II. DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE</p> <p>A. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.</p> <p>B. Factors that may be used in determining the reasonableness of force include,</p>

but are not limited to:

1. The severity of the crime or circumstance; [9]
2. The level and immediacy of threat or resistance posed by the suspect; [10]
3. The potential for injury to citizens, officers, and suspects; [11]
4. The risk or attempt of the suspect to escape; [12]
5. The knowledge, training, and experience of the officer; [13]
6. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects; [14]
7. Other environmental conditions or exigent circumstances. [15]

III. 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 shall promptly report these observations to a supervisor.

IV. 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. [16]
- 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. [17]

V. 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 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. Officers shall not commit the crime of aggravated strangulation upon a subject.

NOTE: Aggravated Strangulation New York State Penal Law Section § 121.13-a

A person is guilty of aggravated strangulation when, being a police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedural law, he or she commits the crime of obstruction of breathing or blood circulation, as defined in section 121.11 of the New York State Penal Law, or uses a chokehold or similar restraint, as described in paragraph b of subdivision one of section eight hundred thirty-seven-t of the executive law, and thereby causes serious physical injury or death to another person.

Aggravated strangulation is a class C violent felony.

NOTE: Criminal obstruction of breathing or blood circulation New York State Penal Law § 121.11

A person is guilty of criminal obstruction of breathing or blood circulation when, with intent to impede the normal breathing or circulation of the blood of another person, he or she: (a) applies pressure on the throat or neck of such person; or (b) blocks the nose or mouth of such person.

Criminal Obstruction of breathing or blood circulation is a class A misdemeanor.

VI. REPORTING & REVIEWING THE USE OF FORCE

A. Any injuries resulting from a use of force incident shall result in the appropriate and timely medical attention being provided to the injured party.

B. Members involved in use of force incidents shall notify their supervisor as soon as practicable and shall complete a Police Department, Village of Muttontown New York Use of Force Report. The reporting member will complete a case report for all use of force incidents. The member will attach the Police Department, Village of Muttontown New York Use of Force Report to the case report and forward the original to the Office of the Police Chief. Members involved in use of force incidents as described below shall require the proper reporting of the incident.

1. Use of force that results in a physical injury.
2. Use of force incidents that a reasonable person would believe is likely to cause an injury.
3. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
4. Incidents where a conducted energy device (CED) was displayed or discharged intentionally or accidentally against a subject.
5. Incidents where a self-defense device was displayed or used such as oleoresin capicum spray, baton, etc.
6. Incidents where a firearm was displayed, discharged or used against a subject.
7. Use of a choke hold or similar restraint (Any application of sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air).
8. Conduct that results in death, serious physical injury or serious bodily injury.

NOTE: A Police Department, Village of Muttontown New York Use of Force Report is **not** required for training situations.

C. A Police Department, Village of Muttontown, New York Use of Force Report shall be used to document any reportable use of force incident. (18)

VII. PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS

- A. Where practicable, a supervisor should respond to the scene to begin the preliminary force investigation.
- B. A Supervisor that is made aware of a force incident shall ensure the completion of a Use of Force Report by officers engaging in reportable use of force and make a record of all officers present. Additionally, the supervisor will see to it that a case report is completed for the incident.
- C. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects. Photographs will be attached to the case report.
- D. The appropriate Supervisor or designee will receive the Use of Force Report and conduct an investigation when warranted.
- E. The Supervisor will notify use of force incidents to New York State Division of Criminal Justice Services (NYS DCJS) via the IJ Portal website (eJustice). Questions regarding the IJ Portal use of force reporting process can be emailed to NYS DCJS at useofforce@dcjs.ny.gov.
- F. The failure to adhere to use of force guidelines will result in an investigation and possible filing of Department Charges. [19]

VIII. TRAINING

- A. All officers shall receive training and demonstrate their understanding on the proper application of force at their annual firearm training.
- 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. [20]

NOTE: A Police Department, Village of Muttontown New York Use of Force Report is not required for training situations.

IX. Medical Attention for Persons under Arrest

All officers shall request and see to it that medical attention is provided to any

person in police custody who, requests or is on visible need, of medical or mental health services. Officers will not allow a person in custody to refuse medical or mental health services where the person: is intoxicated; under eighteen years of age; a danger to themselves or others; or where it is apparent to officers or medical personnel that the person in custody is in need of medical or mental health services.

New York State Civil Rights Law § Section 28 (Chapter 103)

When a person is under arrest or otherwise in the custody of a police officer, peace officer or other law enforcement representative or entity, such officer, representative or entity shall have a duty to provide attention to the medical and mental health needs of such person and obtain assistance and treatment of such needs for such person, which are reasonable and provided in good faith under the circumstances. Any person who has not received such reasonable and good faith attention, assistance or treatment and who, as a result, suffers serious physical injury or significant exacerbation of an injury or condition shall have a cause of action against such officer, representative, and/or entity. In such civil action, the court, in addition to awarding actual damages and costs, may award reasonable attorneys' fees to a successful plaintiff. The provisions of this section are in addition to, but shall not supersede, any other rights or remedies available in law or equity.

X. Report of Discharge of Weapon

1. Any law enforcement officer or peace officer who discharges his or her weapon while on duty or off duty under circumstances wherein a person is struck by a bullet from a weapon, including situations wherein such officer discharges his or her weapon in the direction of a person, shall verbally report the incident to his or her superiors within six hours of the occurrence of the incident and shall prepare and file a written report of the incident within forty-eight hours of the occurrence of the incident. Nothing contained in this section shall prevent any officer from invoking his or her constitutional rights.

XI. Reporting duties of Law Enforcement Departments with Respect to Arrest-Related Deaths

1. The Chief of the Muttontown Police Department shall promptly report to the New York State Division of Criminal Justice Services (NYS DCJS) any arrest related death, disaggregated by county. The data shall include all information the division shall report pursuant to the requirements of subdivision five of this section.
2. The initial report required by this subdivision shall be for the period beginning six months after the effective date of this section (December 12, 2020) and shall be reported on an annual basis thereafter. Each annual report shall be reported no later than February first.
3. The division shall make the information required by subdivision one of this section available to the public by posting it on the website of the division. With respect to information required by subdivision one of this section, the division shall update such information on a monthly basis and such information shall be posted in alphanumeric form that can be digitally transmitted or processed and not in portable format or scanned copies of original documents.
4. The division shall promulgate regulations to effectuate the reporting of data from law enforcement departments sufficient to make the reports required by subdivision five of this section.
5. The division shall submit to the governor and the legislature an annual report of arrest-related deaths disaggregated by county. An arrest-related death is a death that occurs while an individual is in law enforcement custody or during an attempt to establish custody including, but not limited to, deaths caused by any use of force. Such report shall include the following information: (a) the number of arrest related deaths; (b) the race, ethnicity, age, and sex of the individual; (c) the zip code location where the death occurred; and (d) a brief description of the circumstances surrounding the arrest-related death.